



**New York City Department of Youth and Community Development**

**INVITATION FOR BID**

**FOR**

**2017-18 CHILD AND ADULT CARE FOOD PROGRAM**

**AT**

**VARIOUS COMMUNITY CENTERS THROUGHOUT NEW YORK CITY**

**Bid No.: 26016B0001**

**Bid Opening Date and Time: May 2, 2017 at 10:00AM**

**Bid Opening location: 2 Lafayette Street, Room 1426 (14<sup>th</sup> floor) New York, NY 10007**

**SEALED Bids must be received by the Office of Contract Procurement, Attention: Dana Cantelmi, Agency Chief Contracting Officer, Office of Contract Procurement, Department of Youth and Community Development, 2 Lafayette Street, 14th Floor, New York, New York 10007 prior to the bid opening date stated above.**

### **AUTHORIZED AGENCY CONTACT**

The authorized agency contact for all matters concerning this Invitation for Bid (IFB) is:  
BIDQUESTIONS@dycd.nyc.gov (Indicate Food Bid in the subject line.)

Questions regarding this IFB must be transmitted in writing no later than three business days before the bid opening date and time to the agency contact. Substantive information/responses to questions will be released in an addendum to the IFB unless, in the opinion of the agency, the questions are of a proprietary nature.

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## **I. BACKGROUND**

- A. The New York City Department of Youth and Community Development (DYCD) funds programs that provide holistic services for youth and adults in community centers across New York City (“Community Centers”). DYCD was granted Federal funding to operate a Child and Adult Care Food Program (“CACFP”) at its Community Centers;
- B. DYCD has issued this Invitation for Bids (“IFB”) for a qualified food service management company (“FMSC(s)”) to implement the 2017-18 CACFP (the “Program”) at Community Centers (the “Centers”) located in various New York City Housing Authority developments (“Developments”). For the past twenty-nine years, NYCHA has sponsored the Program that provides meals and snacks at designated Centers in all five Boroughs throughout New York City. Going forward, DYCD will sponsor the Program and continue serving meals and snacks to qualifying individuals and families throughout New York City.

**DYCD will enter into one (1) city-wide requirements contract with a single FSMC.**

The above referenced contract (the “Requirements Contract”), will be based on the form contract attached to this IFB as **Attachment 1**. Pursuant to the Contract, the FSMC will provide and deliver to the Centers complete, safe and nutritious meals that conform to the United States Department of Agriculture (“USDA”) Required Meal Patterns and Food Specifications set forth in **Attachment 1, Schedule 2**, and also conform to the New York City Food Standards set forth in **Attachment 1, Schedule 3**. In the event of a conflict between the requirements of **Attachment 1, Schedule 2** and **Attachment 1, Schedule 3**, the stricter requirements shall prevail.

- C. **This IFB must be read together with the attached sample Contract.** By submitting a Bid, the Bidder agrees to the terms and conditions set forth in the Contract. **No changes will be made to** the Contract. In the event of any conflict or inconsistency between this IFB and the Contract, the Contract shall govern.
- D. This IFB includes its Attachments and the Contract (**Attachment 1** to the IFB) and the Exhibit and Schedules attached to and incorporated into the Contract.

## **II. INSTRUCTIONS TO BIDDERS**

### **A. Definitions**

As used herein:

1. **"ACCO"** means the Agency Chief Contracting Officer of the Department of Youth and Community Development.
2. **"Addenda"** means written instruments issued by DYCD prior to the opening of the Bids in order to modify or interpret the Bidding Documents by addition, deletions, clarifications or corrections.
3. **"Adequate Refrigeration"** includes, but is not limited to, packing the food in coolers for transportation in refrigerated vehicles. As per City DOHMH regulations, temperature when transporting food should be 40° or lower.
4. **"Bid(s)"** means an offer to perform the work described in this IFB at the fixed unit price specified in accordance with terms and conditions of this IFB. In this IFB, where applicable, all references to this term in the singular shall include the plural and references to the plural shall include the singular.
5. **"Bidder(s)"** means an FSMC submitting Bids in response to this IFB. In this IFB, where applicable, all references to this term in the singular shall include the plural and references to the plural shall include the singular.
6. **"Bidding Documents"** include the advertisement of the Bid, the Invitation for Bid, all conditions and specifications, the Bid forms, including any Addenda, and the Contract.
7. **"Center"** means the child-care center at each Development listed in Attachment 1, Schedule 1 and to which the FSMC will deliver meals.
8. **"City DOHMH"** means New York City Department of Health and Mental Hygiene.
9. **"Contract(s)"** means the formal agreement(s) between DYCD and the FSMC pursuant to which and for compensation to be paid by DYCD, the FSMC will provide all services, materials, supplies and/or equipment in accordance with all conditions and specifications in the Bidding Documents. In this IFB, where applicable, all references to this term in the singular shall include the plural and references to the plural shall include the singular.
10. **"Consultant(s)," "Contractor," or "Vendor"** means the successful FSMC(s) that is/are awarded (a) Contract(s) by DYCD for the Child and Adult Care Food Program. In this IFB, where applicable, all references to this term in the singular shall include the plural and references to the plural shall include the singular.

11. **"Delivery Ticket"** means the documentation prepared by the FMSC which itemizes number and details the type of meals delivered to DYCD Centers.
12. **"FSMC(s)"** means the food service management company(ies) or organization(s) (including a public or private nonprofit company or school) with which DYCD may contract for the preparation and, unless otherwise provided for, the delivery of unitized meals, with milk. In the Contract(s), FSMC(s) means the selected bidder(s) that is a party thereto. In this IFB, where applicable, all references to this term in the singular shall include the plural and references to the plural shall include the singular.
13. **"Institution"** means DYCD, the entity that issued this IFB and will operate the Program.
14. **"Invitation for Bid" (IFB)** means this document through which DYCD solicits Bids using the formal advertising method of procurement. The IFB will be attached to and incorporated into the Contract(s) entered into by DYCD and the selected Bidder.
15. **"Invoice"** means an invoice for services rendered by the FMSC and acceptable to DYCD.
16. **"Program"** means the Child and Adult Care Food Program.
17. **"Sponsoring Organization" or "SO"** means DYCD, as the approved entity to issue this IFB.
18. **"State DOH"** mean New York State Department of Health.
19. **"Unitized Meal(s)"** means an individual pre-portioned meal delivered and served as a unit, with milk. Such unitized meal must consist of a combination of foods that meet the United States Department of Agriculture ("USDA") Required Meal Patterns and Food Specifications set forth in Attachment 1, Schedule 2 as well as those of the New York City Food Standards set forth in Attachment 1, Schedule 3. In this IFB, where applicable, all references to this term in the singular shall include the plural and references to the plural shall include the singular.
20. **"Unit Price Schedule"** means the chart setting forth the Bidder's unit price per meal and total price. The Unit Price Schedule will be incorporated into the Contract as Attachment 1, Schedule 4.
21. **"USDA"** means U.S. Department of Agriculture.

## **B. Bidder's Responsibilities**

If a Bidder is interested in visiting and examining a Center listed in **Attachment 1, Schedule 1**, it should contact Jerry Hyppolite at 646-343-6493 to make arrangements. The FSMC's ignorance of any data, conditions or requirements that exist or that may be encountered under this IFB or the Contract will not excuse the FSMC's failure or omission with respect to fulfilling all the Contract requirements, nor will the same be accepted as a basis for any claim whatsoever for extra charges for food services.

## **C. Insurance Requirements**

1. The Contractor shall obtain and maintain the minimum insurance coverage as required in Part II of the Attachment 1 Requirements Contract.
2. All insurance necessary to perform under this contract shall be procured by the contractor at no additional cost to the User Agency.

## **D. Submission and Content of Bid**

1. Bids in response to this IFB must be received by DYCD no later than the bid opening date, 10:00am on **May 2, 2017** (the "**Bid Submission Deadline**") at 2 Lafayette Street, 14<sup>th</sup> Floor, room 1426. Bids must be securely sealed in a suitable envelope and addressed to the office issuing this IFB. The name and address of the Bidder must be marked on the outside of the envelope. Bids received prior to the time of opening will be kept by DYCD in a secure place and unopened. At the Bid Submission Deadline, the sealed Bids will be opened publicly. DYCD's representative will mark the envelope with the bid number and the date and time of opening. Bidders and the public must be able to witness the opening of any and all Bids to be considered. Upon opening each Bid, DYCD will read the name and address of the Bidder and the unit price per meal. At the Bid opening, DYCD need not decide which Bid will be accepted.
2. Bidders must carefully examine this IFB and attachments and the sample Contract attached hereto and its exhibits and schedules. Failure to do so will be at the Bidder's risk. With respect to the specifications for services solicited by this IFB, particular attention is called to the exhibits and schedules of the Contract.
3. All Bids shall be **executed and submitted in triplicate with one Bid designated as the "original"**. Any erasure on the Bid must be initialed and dated by the Bidder in ink prior to submission. All bids shall be signed in ink. The Bid shall be incorporated by reference into the Contract. In the event that there is a variance between the original Bid and others submitted, the Bid designated as the original shall be the governing version. No change in the Bid and other copies submitted by the Bidder is allowed. Upon selection of a Bidder, DYCD will provide the selected Bidder with a notice of award and the Contract.



4. Bidders are required to submit one (1) **Attachment 4** form with Bid prices on the Unit Price Schedules for a citywide Contract. All prices submitted on the Unit Price Schedules will reflect all items of the IFB, the Contract and the exhibits attached thereto.

**The Lowest Bid will be determined on the basis of the "Grand Total" listed on Attachment 4.**

**DYCD reserves the right to postpone or cancel this IFB, to reject any and all Bids, to re-advertise for new Bids and/or to not award any Contract(s) pursuant to this IFB if DYCD deems it in its best interest to do so.**

5. Each Bidder must satisfy/provide the following minimum criteria for its Bid to be considered:
  - a. proper licenses and/or registration to conduct business within New York State;
  - b. acknowledgement of the Bidder's ability to prepare and deliver the quantity of unitized meals estimated in the Contract;
  - c. proper certification that food preparation facilities satisfy all applicable New York State and local health, safety and sanitation standards; and
  - d. at least one (1) reference from a client of the Bidder indicating that the Bidder has prior experience in food service for a client similar in size and scope to DYCD.
6. Each Bid must include all of the documents listed in the Bidder Checklist in Attachment 8.
7. Proprietary Information/Trade Secrets.

The bidder shall identify those portions of their bid that they deem to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by DYCD. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential." Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the bid.

All such materials so indicated shall be reviewed by the ACCO and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. Prices, makes and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

8. Failure to comply with any of the above may, at DYCD's discretion, constitute reason for rejection of the Bid. DYCD reserves the right to reject the Bid of a Bidder that previously failed to perform properly, or to complete on time, a contract or contracts of a similar nature, or to reject the Bid of a Bidder that DYCD determines to be incapable or performance of the Contract.

**E. Specifications for Equipment and Supplies**

**1. Unused Items.**

Unless specifically noted in this Contract, all items related to the Services required must be new and unused, however, Bidders are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product; unless such use is precluded due to health, welfare or safety requirements or product specifications contained herein.

**2. Submission of Descriptive Literature.**

Descriptive literature shall not be submitted unless expressly requested elsewhere in the Contract Documents. Any unsolicited descriptive literature which is submitted shall not be examined and shall not be deemed to vary any of the provisions of this Contract. Should the City request descriptive literature from the Bidder, it shall be delivered by the Bidder, properly identified, within fifteen (15) calendar days of the request unless this Contract or the request letter indicates a different time. If the Bidder fails to deliver the same in a timely manner, the ACCO shall have the right to deem the bid non-responsive or to cancel and terminate the contract.

**F. Bidders' Conference/Written Addenda**

A Bidders' Conference, attendance at which is optional, will be held on April 19, 2017 at 3:00pm at 2 Lafayette Street, 14th floor auditorium in order to discuss project requirements and this IFB. Please note that the terms of this IFB cannot be modified except by the issuance of a written Addendum. Any written information given to a prospective Bidder concerning the IFB shall be furnished to all prospective Bidders as an Addendum to this IFB if such information is necessary to the submission of Bids in response to this IFB or if the lack of such information would be prejudicial to uninformed Bidders.

**G. Bidder's Certifications**

1. By the act of submitting a Bid, the Bidder and each person signing on behalf of the Bidder certifies, under the penalty of perjury, that, to the best of the Bidder's and such person's knowledge and belief:
  - a. The prices in the Bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
  - b. Unless otherwise required by law, the prices which have been quoted in the Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the Bid Submission Deadline, directly or indirectly, to any other Bidder or to any competitor; and
  - c. No attempt has been made or will be made by the Bidder to induce any other person,

partnership or corporation to submit or not to submit a Bid for the purposes of affecting competition.

#### **H. Acknowledgment of Addendum to IFB**

If DYCD issues an Addendum to this IFB, Bidders must acknowledge receipt of such Addendum by signing a copy of the Addendum and returning it to DYCD by certified mail or by email to [ACCO@dycd.nyc.gov](mailto:ACCO@dycd.nyc.gov). DYCD must receive such acknowledgment prior to the hour specified for the Bid opening. DYCD shall maintain the email or the receipt from a certified return receipt mailing.

#### **I. Offer and Acceptance**

##### **1. Firm Offer**

- a. The Bidder proposes to furnish and deliver the goods required under this contract, to provide all labor and services and to perform all other work in connection therewith, all as specified by the terms and conditions of the Contract, based upon the unit prices or lump sum prices in the bid. A submitted bid constitutes an Offer to DYCD by Bidder to furnish and deliver the goods and services specified at the unit or lump sum prices bid. The prices set forth in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is modified or withdrawn by written notice received in the office designated to receive bids before the time and date set for bid opening, or, after the expiration of 45 days from bid opening, in advance of an actual award.
- b. DYCD reserves the right to make awards within 45 days after the date of bid opening during which period the bid may not be withdrawn. If, however, an award is not made within the 45 day period, a bid shall remain in effect until a contract is awarded or the Bidder delivers to DYCD written notice of the withdrawal of its bid in advance of an actual award.

##### **2. DYCD's Acceptance**

- a. DYCD shall accept the Offer by mailing to the Bidder at the address specified in the bid a PURCHASE ORDER or NOTICE OF AWARD, for any of the items for which this bid is submitted. An acceptance of the Offer shall constitute a Contract between DYCD and the Bidder to furnish and deliver the items set forth in the PURCHASE ORDER or NOTICE OF AWARD at the unit prices or lump sum price specified in the bid subject to the terms set forth in the Contract as if said form of Contract had been signed by DYCD and the Bidder.

##### **3. Code of Federal Regulations and Procurement Policy Board Rules**

- a. This contract is subject to 2 CFR 200: Uniform Administrative Requirements, Cost

Principles, And Audit Requirements for Federal Awards and 7 CFR 226: Child and Adult Care Food Program. This contract is further subject to the Rules of the Procurement Policy Board of the City of New York, as amended. In the event of a conflict between said Rules and a provision of this Contract, the Rules shall take precedence. For information and updates on the Procurement Policy Board Rules, bidders are referred to [www.nyc.gov/ppb](http://www.nyc.gov/ppb), or the Mayor's Office of Contract Services at 212-788-0010.

**J. Award of Contract**

1. The single, citywide Contract, will be awarded to the lowest responsive and responsible bidder. The Contract shall have an initial term (the “Term”) of two (2) years and shall be renewable, at DYCD’s sole discretion, for up to three (3) additional years (the “Extended Term(s)”), under the same conditions, including Unit Prices, as apply during the Term.
2. Failure to furnish any of the information required pursuant to Division of Labor Services and VENDEX requirements may result in a finding of non-responsiveness which would preclude a bidder from being awarded this contract.
3. DYCD may reject any or all Bids or waive informalities and minor irregularities in Bids received.
4. DYCD reserves the right to request samples of any item offered in response to this solicitation to test said item for compliance to specifications. If so requested, such sample shall be furnished within two business days. Samples submitted by vendor(s) must be the exact representation of the product to be delivered to the Community Centers in quality and packaging.
5. DYCD also reserves the right to request a site visit to any of the facilities which will be responsible for preparing and distributing meals to the Community centers.

**K. Late Bids, Modifications of Bids, Errors in Bids or Withdrawals of Bids**

1. Any Bid received after the exact time specified herein for receipt will not be considered. Any request for withdrawal or modification received at the place designated in this IFB after the time and date set for receipt of bids is late and shall not be considered. The exception to this provision is that a late modification of a successful bid that makes the bid terms for favorable to DYCD shall be considered at any time it is received.
2. Mistakes in Bids
  - a. Mistakes Discovered Before Bid Opening  
A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in subsection b, below.

**b. Mistakes Discovered Before Award**

In accordance with Chapter Three, Section 3-02(m) of the Procurement Policy Board Rules, if a bidder alleges a mistake in bid after bid opening and before award, the bid may be corrected or withdrawn upon written approval of the ACCO if the following conditions are met:

- i. **Minor Informalities.** Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The ACCO may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City.
- ii. **Mistakes Where Intended Correct Bid is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- iii. **Mistakes Where Intended Correct Bid is Not Evident.** A bidder may be permitted to withdraw a low bid if:
  1. a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  2. the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

**c. Mistakes Discovered After Award**

Mistakes shall not be corrected after award of the contract except where the ACCO, subject to the approval of the City Chief Procurement Officer and the Corporation Counsel makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

**3. Rejection of Bids**

**a. DYCD may reject a bid if:**

- i. The bidder fails to furnish any of the information required pursuant to Division of Labor Services (<http://www1.nyc.gov/site/sbs/businesses/contract-compliance.page>) and VENDEX requirements (<http://www1.nyc.gov/site/mocs/resources/forms.page>) hereof; or if
- ii. The bidder is determined to be not responsible or non-responsive pursuant to the PPB Rules; or if
- iii. The bid, in the opinion of the ACCO, contains unbalanced bid prices and is thus non responsive.

**b. Rejection of All Bids.** DYCD, upon written approval by the ACCO, may reject all bids and may elect to resolicit bids if in its sole opinion it shall deem it in the best interest of DYCD so to do.

- c. **Rejection of All Bids and Negotiation With All Responsible Bidders.** DYCD may determine that it is appropriate to cancel the Invitation for Bids after bid opening and before award and to complete the acquisition by negotiation pursuant to applicable PPB rules.

**4. "Foreign" Goods**

If a Bidder proposes to furnish any item which is not produced, fabricated or processed in the United States or its territorial possessions, it must write the word "foreign" and the country of origin of such item in the Bid Book, and failure to do such may be a ground for rejection of such Goods. Unless the designated standard is of foreign origin, failure on the part of the Bidder to designate an item as foreign will be construed to indicate that the item offered is domestic.

**5. Low Tie Bids**

- a. When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the ACCO will break the tie in the following manner and order of priority:
  - i. Award to a certified New York City small minority or woman owned business entity bidder;
  - ii. Award to a New York City bidder;
  - iii. Award to a certified New York State small, minority or woman owned business bidder;
  - iv. Award to a New York State bidder.
- b. If two or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

**6. Waiving Informalities**

The ACCO reserves the right to waive any informality, technicalities, irregularities and omissions in a bid when the Agency Chief Contracting Officer deems such waiver to be in the interest of the City.

**7. Pre-Opening Modification or Withdrawal of Bids.**

Bids may be modified or withdrawn by written notice received in the office designated in the contract for receipt of bids, before the time and date set for the bid opening. A telegraphic, mailgram or email withdrawal shall be effective provided it was received in the manner set forth in Section 3 02(j) of the Procurement Policy Board Rules. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

**L. Right to Appeal Determinations of Non Responsiveness or Non Responsibility and Right to Protest Solicitations and Award.**

1. The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award. For further information concerning these rights, the bidder is directed to Chapter 2, Sections 2-07, 2-08 and 2-10 of the Procurement Policy Board Rules.

**M. New York City Comptroller**

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007, (212) 669-2323.



### **III. PRICING**

Bidders must submit prices on the Unit Price Schedule included as **Attachment 4** herein. The unit prices of each meal type and the total prices must be written in ink or typed in the blank space provided. Bid price must include the price of food, milk, packaging, transportation and all other related costs.

In evaluating the Bids submitted, DYCD will ascertain the accuracy of the calculations set forth in **Attachment 4**.

DYCD will not pay tax in any form or of any type; nor, under any circumstances, will DYCD pay any interest, late charge or penalty. Prices set forth in **Attachment 4**, shall not include such tax or costs.

### **IV. SERVICES TO BE PERFORMED**

**A.** By submitting a bid, Bidder agrees to perform all services outlined and in accordance with **Appendix A** to the Requirements Contract. Such Services include, but are not limited to, the provision of and delivery of Unitized Meals, to the Centers identified in **Attachment 1, Schedule 1**. (The "Schedules" are the annexes to the Contract.) The FSMC must provide Unitized Meals that comply in quality, content and quantity with the USDA Required Meal Patterns and Food Specifications set forth in Attachment 1, Schedule 2, as well as with those of the New York City Food Standards set forth in Attachment 1, Schedule 3.

**B. Quality Control Plan**

1. To ensure that health and sanitation requirements are met at all times during the preparation and delivery of the Unitized Meals, prior to commencement of Services pursuant to the Contract, the FSMC must demonstrate that it will comply with all applicable New York State and New York City health and sanitation requirements during the preparation, storage, packaging and delivery of food. To that end, the FSMC must have in place a quality control plan (the "Quality Control Plan"), for the Contract and must submit the Quality Control Plan with its Bid documents. The FSMC may not commence the performance of Services until the FSMC has the Quality Control Plan in place.
2. The Quality Control Plan must include, but shall not be limited to, the following:
  - a. a detailed description of the FSMC's quality-assurance procedures for meal preparation, packaging and transportation of food;
  - b. a detailed description of the monitoring methods the FSMC will employ to assure that, during meal preparation, assembly and delivery, FSMC personnel will maintain the proper standard of personal hygiene and that the FSMC's facilities will comply



- with all New York State and City health standards; and
- c. a detailed description of the FSMC's method of monitoring and recording food product temperatures to assure maintenance of safe food temperatures during all phases of handling, production, storage and delivery of Unitized Meals.
3. Within one week after the Contract has been awarded, the selected FSMC must submit to DYCD (a) a copy of the records used to monitor and record food temperatures during handling production, storage and delivery of food and (b) samples of weights taken during program operations.
  4. Unless DYCD has requested the FSMC to revise the Quality Control Plan submitted with its Bid, that Quality Control Plan will satisfy the requirement that the FSMC have a Quality Control Plan in place prior to commencement of Services under the Contract. If DYCD has advised the FSMC that the Quality Control Plan submitted must be revised, one week after receipt of notice of award, the selected FSMC must submit to DYCD a copy of the revised Quality Control Plan. Upon receipt of the revised Quality Control Plan, DYCD will review it and, if necessary, confer with the FSMC regarding further revision of the Quality Control Plan. Upon approval of the revised Quality Control Plan, DYCD will notify the FSMC of its approval.

(Conclusion of IFB)

**ATTACHMENT 1**  
**Requirements Contract**

**REQUIREMENTS CONTRACT**

**-between-**

**THE CITY OF NEW YORK  
DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT**

**-and-**

**[CONTRACTOR]**

**DYCD CONTRACT ID: [NUMBER]**

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**THIS REQUIREMENTS CONTRACT** (the “Agreement” or “Contract”), effective as of July 1, 2017, is made by and between The City of New York, acting through the New York City (“City”) Department of Youth and Community Development (“DYCD” or the “Department”) with offices at 2 Lafayette Street, 21st Floor, New York, New York 10007, and [CONTRACTOR] (“Contractor”), a corporation organized under the laws of the State of New York, having its principal office at [ADDRESS] (collectively, the “Parties” and individually, a “Party”).

**WHEREAS**, DYCD funds programs that provide holistic services for youth and adults in New York City Housing Authority (“NYCHA”) community centers across New York City (“Community Centers”); and

**WHEREAS**, DYCD was granted Federal funding to operate a Child and Adult Care Food Program (“CACFP”) at its Community Centers; and

**WHEREAS**, DYCD issued an Invitation for Bids (the “IFB”) on [DATE], attached hereto and made a part hereof as Appendix B, in which it sought a Contractor to provide CACFP services, all in accordance with the Procurement Policy Board Rules; and

**WHEREAS**, in response to the IFB, Contractor submitted a bid (the “Bid”) dated [DATE], attached hereto and made a part hereof as Appendix D; and

**WHEREAS**, Contractor represents it possesses the necessary knowledge, experience, and operational capacity to perform the work and services (“Services”) herein described; and

**WHEREAS**, DYCD desires to retain Contractor on the terms and conditions set forth in this Agreement, and Contractor has agreed to accept such engagement based upon the rates set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, DYCD and Contractor do hereby agree as follows:

**PART I**  
**CONTRACT 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:

1. "Agency Chief Contracting Officer" or "ACCO" shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
2. "Agreement" or "Contract" shall mean the various documents that constitute the contract between the Contractor and the City.
3. "City" shall mean The City of New York.
4. "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
5. "Commissioner" or "Agency Head" shall mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
6. "Contractor" shall mean the entity entering into this Agreement with the Department.
7. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.
8. "Department" or "Agency" shall mean the Department of Youth and Community Development.
9. "Fiscal Manual" shall mean a set of instructions provided by the Department to the Contractor documenting the applicable policies and procedures of the Department for Contractor to use in such matters as record-keeping, bookkeeping, reporting, invoicing and claiming, budgeting, cost allocating, procurement and payroll, as may be amended by the Department. The Fiscal Manual is incorporated by reference and may be found online at <http://www.nyc.gov/dycd>. The Fiscal Manual is not intended to amend the material terms of this agreement with respect to either the Scope of Work, or the terms and conditions of this document.
10. "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
11. "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
12. "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
13. "State" shall mean the State of New York.

## PART II INSURANCE

1. AGREEMENT TO INSURE. The Contractor shall not commence performing Services under this Contract unless and until all insurance required by this Part III is in effect, and shall ensure continuous insurance coverage in the manner, form and limits required by this Part III throughout the term of the Contract. Minimum insurance amounts are detailed in the Invitation For Bid, attached hereto as part of the Contract Documents.

2. COMMERCIAL GENERAL LIABILITY INSURANCE.

- 2.1 The Contractor shall provide Commercial General Liability Insurance covering the Contractor as Named Insured and the City including its officials and employees as Additional Insured. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 0001, and shall be "occurrence" based rather than "claims-made."
- 2.2 Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the latest edition of ISO Form CG 20 10 or ISO Form CG 20 26.

3. WORKERS' COMPENSATION, DISABILITY BENEFITS, AND EMPLOYER'S LIABILITY INSURANCE.

The Contractor shall maintain, and ensure that each Subcontractor maintains, Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of, or with regard to, all employees providing Services under this Contract.

4. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

- 4.1 If vehicles are used in the provision of Services under this Contract, then the Contractor shall maintain Commercial Automobile Liability Insurance for liability arising out of ownership, maintenance or use of any owned (if any), non-owned or hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.
- 4.2 If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

6. GENERAL REQUIREMENTS FOR INSURANCE COVERAGE AND POLICIES.

- 6.1 All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/ "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.
- 6.2 All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

- 6.3 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.
- 6.4 The City's limits of coverage for all types of insurance required pursuant to the Invitation For Bid shall be the greater of (i) the minimum limits set forth in the Invitation For Bid or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.
- 6.5 The Contractor may satisfy its insurance obligations under this Part III through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- 6.6 In his or her sole discretion, the Commissioner may, subject to the approval of the Comptroller and the City Corporation Counsel, accept Letters of Credit and/or custodial accounts in lieu of required insurance.
- 6.7 The Contractor shall be responsible for providing continuous insurance coverage in the manner, form and limits required by this Contract and shall be authorized to perform Services only during the effective period of all required coverage. In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately notify the Commissioner in writing of such lapse as required by Section 8.6, stop providing Services, and shall not recommence providing Services until authorized in writing to do so by the Commissioner. Contract time shall continue to run during such periods and an extension of time shall only be granted in the Commissioner's sole discretion. The Commissioner may also declare the Contractor in default for failure to maintain required insurance.

## **7. PROOF OF INSURANCE.**

- 7.1 For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage:
- 8.1.1 C-105.2 Certificate of Workers' Compensation Insurance;
  - 8.1.2 U-26.3 -State Insurance Fund Certificate of Workers' Compensation Insurance;
  - 8.1.3 Request for WC/DB Exemption (Form CE-200);
  - 8.1.4 Equivalent or successor forms used by the New York State Workers' Compensation Board;
- or
- 8.1.5 Other proof of insurance in a form acceptable to the City.
- 7.2 For each policy required by this Part III, except for Workers' Compensation Insurance, Employer's Liability Insurance, and Disability Benefits Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) days of award of this Contract. All Certificates of Insurance shall be (a) in a form acceptable to the City and the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to 2.2 hereinabove. All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the

form attached to this Contract or copies of all policies referenced in the Certificate of Insurance.

- 7.3 Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article 8 (Proof of Insurance). Such Certificates of Insurance shall comply with the requirements of Sections 8.1 and 8.2 herein, as applicable.
- 7.4 The Contractor shall provide the City with a copy of any policy required under this Part III upon the demand for such policy by the Commissioner or the New York City Law Department.
- 7.5 Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Part III (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.
- 7.6 In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Part III shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner of the New York City Department of Youth and Community Development, 123 William Street, 17<sup>th</sup> Floor, New York, New York, 10038 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, 1 Centre Street, Room 1005, New York, New York 10007.

## **8. MISCELLANEOUS.**

- 8.1 Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Part III, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York together with its officials and employees as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.
- 8.2 The Contractor's failure to maintain any of the insurance required by this Part III shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
- 8.3 Insurance coverage in the minimum amounts required in this Part III shall not relieve the Contractor or its subcontractors of any liability under this Contract, 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 Contract or Law.

8.4 The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any liability insurance required under this Part III (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 Contract.

8.5 In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Part III, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

8.6 There shall be no self-insurance program with regard to any insurance required under this Part III unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance under this Part III, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

8.7 The Contractor's failure to secure policies in complete conformity with this Part III, or to give an insurance company timely notice of any sort required in this Contract or to do anything else required by this Part III, shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

8.8 In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured thereunder, the Contractor shall ensure that the subcontractor name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

### **PART III** **TERMS AND CONDITIONS**

#### **1. COMPLIANCE WITH LAWS.**

The Contractor shall perform all Services under this Contract in accordance with all applicable Laws as are in effect at the time such Services are performed.

#### **2. PROCUREMENT POLICY BOARD.**

This Contract is subject to the Rules of the Procurement Policy Board (PPB Rules) of the City of New York, in effect at the time of this Contract. In the event of a conflict between the PPB Rules and a provision of this Contract, the PPB Rules shall take precedence.

#### **3. SCOPE OF SERVICES.**

The Contractor shall perform the Services described in the Appendix A, Scope of Work, attached to this Contract in the manner and within the time herein specified.



4. TERM AND TIME OF PERFORMANCE.

4.1 The Term of this Contract begins on July 1, 2017 for a period of two years through June 30, 2019 (the "Term").

4.2 Renewal.

DYCD, in its sole discretion, may renew this Agreement for a one (1) year period as many as three (3) times. All renewals shall be on substantially the same terms and conditions, including Unit Prices, contained in the Agreement. Any renewal will not be effective unless and until the renewal is registered pursuant to New York City Charter § 328. DYCD shall renew this Agreement by giving written notice to Contractor prior to the expiration date of this Agreement and prior to the expiration date of any renewal option. DYCD will endeavor to give Contractor notice ninety (90) days prior to renewal. Failure to give notice at least 90 days prior to renewal shall not impair DYCD's right to exercise its option to renew and shall not invalidate an option exercised by DYCD.

4.3 Non-Waiver. The performance by the Contractor of any Services after the Time of Performance shall not be deemed a waiver of the right of the Commissioner, his or her designee, the ACCO or other applicable Agency Head to terminate this Contract or to require the performance of any unperformed Service in accordance with this Contract or any other remedy whether contractual or otherwise stated at law or in equity.

5. CONTRACTOR RESPONSIBILITIES.

5.1 The Contractor shall perform the Services, as set forth in the Contract documents, and do all things incidental thereto.

5.2 Competent Workers. The Contractor shall employ only competent workers in the performance of this Contract. The Contractor's performance of this Contract, or of any other Services, shall not cause or result in a suspension of, delay in, or strike upon the Services to be performed hereunder by any of the trades working hereon or on any other contracts with the City. If, in the opinion of the ACCO, the Contractor violates such obligation, the ACCO, in his or her sole discretion and at his or her option, may either demand that any incompetent workers be replaced and not again employed in the performance of this Contract, which demand shall be complied with by the Contractor, or the ACCO may, upon notification to the Contractor, consider the Contractor in default.

5.3 The Contractor shall furnish all of the labor, machinery, equipment, materials and supplies necessary to perform all of the Services required for the complete and prompt execution of everything described or reasonably implied from, and in such manner as to comply with, the conditions and specifications as set forth in the Contract documents.

5.4 The Services required for the performance of this Contract includes any Services required to make the end result operative. If equipment, materials and/or methods are not detailed in drawings or specifications, but are required as industry standards for operative purposes, the Contractor will, at no additional cost to the City, provide such equipment, materials, and/or methods of a quality that meets both industry standards and is consistent with other Services provided under the Contract.

5.5 If equipment installation is required under the Contract, Contractor shall acquaint itself with conditions to be found at the site(s) and shall assume all responsibility for placing and installing equipment in the required locations.

5.6 All materials used in the installation of equipment shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound.

5.7 The Contractor shall protect the sites from damage and, at its own cost and expense, shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents.

5.8 Services shall be performed so as to cause the least inconvenience to the City and its Agencies and with proper consideration for the rights of other contractors or workers. The Contractor shall promptly perform its Services and shall coordinate its activities with those of other contractors.

5.9 Materials, equipment or supplies shall be stored at the sites only with the approval of the Agency and at the Contractor's sole risk. In general, Contractor should avoid such onsite storage to prevent possible damage to or loss of the material.

5.10 The Contractor shall clean up and remove all debris and rubbish resulting from its performance of Services as required or directed by the City, at its sole cost and expense. Upon completion of the Services, the premises shall be left in a neat unobstructed condition, broom clean and in satisfactory repair and order.

5.11 Substitution of Items. In the event a specified manufacturer's commodity listed in the Contractor's bid document becomes unavailable or cannot be supplied to the City by the Contractor for any reason beyond the Contractor's control, a product deemed by the ACCO to be the equal of the specified commodity must be substituted by the Contractor at no additional cost or expense to the City.

## 6. INSPECTION AND RISK OF LOSS.

6.1 The City shall have the right to inspect the goods and equipment upon which Services are performed at any place it may select. An inspection by the City shall in no way be deemed a waiver by the City of any right to later reject, revoke acceptance or recover damages for Services performed which are not in fact free from patent or latent defects; or of the Contractor's obligation to perform Services according to Specifications.

6.2 The Contractor agrees that the Services shall be in every respect at the risk of the Contractor until completed and accepted by the City.

## 7. NON-PERFORMANCE AND REJECTION.

7.1 Rejected Services. The City may withhold or revoke acceptance of or reject any Services which are found, upon examination, not to have been performed in strict conformance with the terms of this Contract. The City will send written notice of rejection to the Contractor at the address shown on the award.

7.2 Labels. Parts and equipment incorporated into the goods being serviced and which are customarily labeled or identified must have securely affixed thereto the original, unmutilated label or marking of the manufacturer. Failure to comply with this requirement may be considered sufficient cause for rejection. A label or marking required by any regulatory agency must be affixed to the parts or equipment furnished under this Contract.

## 8. REPRESENTATION AND WARRANTIES.

### 8.1 Conflicts of Interest.

8.1.1 The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Contract. 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 Contract.

8.1.2 Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official, 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 Contract which affects her or his personal interest or the interest of any corporation, partnership or other entity in which she or he is, directly or indirectly, interested, nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Contract. This Section 8.1 (Conflicts of Interest) shall not prevent directors, officers, members, partners or employees of the Contractor from participating in decisions relating to this Contract where their sole personal interest is in the Contractor.

8.1.3 The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

### 8.2 Procurement of Contract.

8.2.1 The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the Parties. The Contractor makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution of this Contract.

8.2.2 For any breach or violation of the representations and warranties set forth in 8.2.1 above, the Commissioner shall have the right to annul this Contract 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 Contract. The rights and remedies of the City provided in this Section 8.2 (Procurement of Contract) are not exclusive and are in

addition to all other rights and remedies allowed by Law or under this Contract.

8.3 Safe Working Conditions. The Contractor shall maintain safe working conditions during the performance of this Contract and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Services. The Contractor shall erect and maintain, as required by existing conditions and progress of the Services, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities, when applicable. Failure to maintain such conditions constitutes a breach of a material provision of this Contract.

8.4 Parts Guarantee. The Contractor warrants that parts and equipment incorporated into the goods being serviced are standard new equipment, the current model of regular stock product with all parts regularly used with the type of equipment serviced and that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

8.5 Vendex. The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services.

The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Contract, and represents and warrants that the information it and its principals have provided is accurate and complete.

8.6 Bankruptcy and Reorganization. In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

## 9. ASSIGNMENT AND SUBCONTRACTING.

9.1 Assignment. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, 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 Contract, 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. When used in this Contract, the phrases "otherwise dispose of this Contract" and "other disposition" shall be broadly construed, and shall be deemed to include, without limitation, sale or transfer of all or a majority of the shares of the Contractor, if the Contractor be a corporation, or any change in controlling ownership of the Contractor, if the Contractor be a partnership, limited partnership or any other form of business entity.

9.1.1 Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

9.1.2 Before entering into any such assignment, transfer, conveyance or other disposal of this Contract, the Contractor shall submit a written request for approval to the Department giving

the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified Services in accordance with the terms and conditions of this Contract. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

9.1.3 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 Contract, 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 Contract, except so much as may be necessary to pay the Contractor's employees.

9.1.4 The provisions of this Section 9.1 (Assignment) 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 of New York.

9.1.5 This Contract 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.

## 9.2 Subcontracting.

9.2.1 The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract, without the prior written approval of the Department. The Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the Services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department.

9.2.2 The Contractor acknowledges that the proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified Services in accordance with the terms and conditions of this Contract. The Department shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information.

9.2.3 All subcontracts shall contain provisions specifying that:

9.2.3.1 The Services performed by the subcontractor must be in accordance with the terms of the Contract between the City and the Contractor;

9.2.3.2 Nothing contained in the agreement between the Contractor and the subcontractor

shall impair the rights of the City;

9.2.3.3 Nothing contained in the agreement between the Contractor and the subcontractor, or under the Contract between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

9.2.3.4 The subcontractor specifically agrees to be bound by Part IV, Article 15 and Part V, Section 1.1 of this Contract and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

9.2.4 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.

9.2.5 For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

9.2.6 The Department may revoke the approval of a subcontractor granted pursuant to this Section 9.2 (Subcontracting) in writing if revocation is deemed to be in the interest of the City on no less than ten (10) days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all provision of Services under the Contract. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Contract beyond the effective date of the revocation. The City shall pay for Services provided by the subcontractor in accordance with this Contract prior to the effective date of revocation.

9.2.7 The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Contract.

9.2.8 Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 9.2 (Subcontracting).

## **10. LABOR PROVISIONS.**

10.1 **Independent Contractor Status.** The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Contract, and they will not, by reason of this Contract, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

### **10.2 Employees.**

10.2.1 All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform Services under this Contract are

neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their Services, direction, compensation, and personal conduct while engaged under this Contract. Nothing in the Contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Contract, nothing in this Contract shall impose any liability or duty on the City to any person or entity.

10.2.2 In performing the Services under this Contract, the Contractor is solely responsible for the necessary and adequate workers' compensation insurance, personal injury and property damage insurance, as further detailed in Part III of this Contract.

10.3 Removal of Individuals Performing Services. The Contractor shall not have anyone perform Services under this Contract 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 Services under this Contract.

10.4 Notice of Labor Disputes. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to the Department, including all relevant information with respect thereto.

10.5 Prohibited Acts. The Contractor shall not employ any labor or utilize materials or means which, during the course of this Contract, may in any way cause or result in strikes, Services stoppages, delays, suspension of Services or similar troubles by workers employed by the Contractor, by any of the trades working in or about the buildings and premises where Services are being performed under this Contract, by contractors or their subcontractors pursuant to other agreements or contracts or on any other building or premises owned or operated by the City, its agencies, departments boards or authorities. Any violation by the Contractor of these requirements shall be considered proper and sufficient cause for declaring the Contractor to be in default.

## 11. PRICING.

11.1 The Contractor, whenever required during the Contract, including but not limited to the time of bidding, shall submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a specified date.

11.2 The price of any change order, or contract modification subject to the conditions of 11.1 above shall be adjusted to exclude any significant sums by which the City finds that such price was based on cost or price data furnished by the Contractor which was inaccurate, incomplete or not current as of the date agreed upon between the Parties.

11.3 Time for Certification. The Contractor must certify that the cost or pricing data submitted are accurate, complete and current as of a mutually determined date.

11.4 Refusal to Submit Data. When any Contractor refuses to submit the required data to support a price, the ACCO may not allow the price.

11.5 Fund availability. This Contract shall be executory only to the extent of funds available to the Agency for the purchase of the Services. The Contractor acknowledges and is hereby given notice that financial obligations of the City payable under this Contract after the City's current fiscal year and all fiscal years thereafter are contingent upon funds for this Contract being appropriated, budgeted and otherwise made available.

## 12. PAYMENT.

12.1 The City agrees to pay and the Contractor agrees to accept, as full payment for the complete and satisfactory performance of the Services required herein, an amount not to exceed the value as stated on a purchase order issued by the Department; such amount being based upon the Contractor's bid for the Services required as set forth in the Bid Book

12.2 Prompt Payment. The prompt payment provisions of the PPB Rules, § 4-06, in effect at the time of this solicitation, will be applicable to payments made under this Contract.

12.3 Partial Payment. Whenever tests or analyses required on a contract for services are not complete when invoices have been duly rendered, the Contractor may be paid a partial sum for the Services performed, as shall be determined by the Agency.

12.4 Claims against Contractor. Any claim against the Contractor may be deducted by the City from any money due the Contractor under this Contract. If no such deduction or only a partial deduction is made in such fashion the Contractor shall pay to the City the amount of such claim or the portion of the claim still outstanding, on demand.

12.5 Non-performance. In the event of a question of non-performance, payment may be withheld in whole or in part, at the discretion of the ACCO or the Agency, if so delegated.

### 12.6 Final Payment and Estoppel.

12.6.1 Final Payment. The acceptance by the Contractor or its assignees of the final payment under this Contract, 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 Contract 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.

12.6.2 City Not Estopped. Neither the City, nor any agency, officer or employee thereof, shall be precluded or estopped by any determination, decision, order, letter, payment or certificate



made or given by any officer, inspector, employee, agent or appointee of the City, or under any provision of this Contract, from showing at any time, either before or after the complete performance and acceptance of the performance of this Contract and the last payment hereunder, the actual nature of the Services performed by the Contractor, or any person under this Contract; or from showing at any time that any certificate upon which the payment is made for any or all of the Services is untrue or incorrect, or improperly made in any particular, or that the Services or any part thereof performed by the Contractor do not conform to this Contract. The City shall have the right to demand and recover from the Contractor such damages as it may suffer by reason of Contractor's failure to comply with this Contract notwithstanding any return or certificate and payment in accordance therewith, signed by any official of the City, and such right of the City shall include recovery for any payment made for any or all of the Services performed and accepted.

- 12.6.3 **Statement of Claim.** Contractor shall not be barred from commencing an action for breach of contract under this provision provided that a detailed and verified statement of claim is served upon the Agency and Comptroller not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items. Should the provisions of this subsection conflict with those of Part IV, Sub-section 19.4.2 (Claims and Actions), the provisions of Part IV, Sub-section 19.4.2 shall control.

## 12.7 Electronic Funds Transfer.

- 12.7.1 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 Contract, 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 Contract. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

- 12.7.2 The Agency Head may waive the application of the requirements of this Section 12.7 (Electronic Funds Transfer) to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section 12.7 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.

12.7.3 This Section 12.7 (Electronic Funds Transfer) is applicable to contracts valued at twenty-five thousand dollars (\$25,000) and above.

### 13. INDEMNIFICATION AND PROTECTION OF PERSONS AND PROPERTY.

13.1 Reasonable Precautions. The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Contract.

13.2 Indemnification. The Contractor shall defend, indemnify and hold the City, its officials and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property, except for normal wear and tear, and from costs and expenses to which the City, its officials and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Contract or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

13.3 Infringement Indemnification. The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Contract, or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Contract. The Contractor shall defend, indemnify and hold the City, its officials and employees harmless regardless of whether or not the alleged infringement arises out of compliance with the Contract's scope of Services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

13.4 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 Contract, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Contract or of Law by the Contractor, its officers, employees, agents or subcontractors.

13.5 Indemnification Obligations Not Limited By Insurance Obligation The indemnification provisions set forth in this Article 13 shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Contract.

13.6 Actions By or Against Third Parties.

13.6.1 In the event any claim is made or any action brought in any way relating to this Contract, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

13.6.2 The Contractor shall report to the Department in writing within five (5) business days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Contract.

#### 13.7 Withholding Payments.

13.7.1 In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City, its officials and employees pursuant to this Contract, the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover said claim or action.

13.7.2 In the event that any City property is lost or damaged as set forth in Section 13.4 (Protection of City Property) hereinabove, except for normal wear and tear, the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover such loss or damage.

13.7.3 The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Part III has accepted the City's tender of the claim or action without a reservation of rights.

13.7.4 The City may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Contract 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 Contract.

13.7.5 The rights and remedies of the City provided for in this Section 13.7 shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Contract.

13.8 No Third Party Rights. The provisions of this Contract 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.

#### 14. COPYRIGHTS, PATENTS, INVENTIONS AND ANTITRUST.

##### 14.1 Copyrights.

14.1.1 Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Contract, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Contract, shall upon their creation become the exclusive property of the City.

14.1.2 Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Contract ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of the United States Copyright Act, 17

U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Contract without the prior written permission of the City. The 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.

14.1.3 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.

14.1.4 The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.

14.1.5 If the Services under this Contract 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 Contract.

14.1.6 If the Contractor publishes a work dealing with any aspect of performance under this Contract, 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.

14.2 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 Contract. If the Services under this Contract 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.

14.3 Pre-existing Rights. In no case shall Sections 14.1 (Copyrights) and 14.2 (Patents and Inventions) 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 Contract that existed prior to or was developed or discovered independently from the activities directly related to this Contract.

14.4 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 Contract.

## 15. RECORDS AND AUDITS.

15.1 Audits. This Contract and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Contract, 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.

15.1.1 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.

15.1.2 The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by the Department and by the Comptroller in the exercise of his or her powers under Law.

15.1.3 The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 15.1 (Audits).

## 15.2 Confidentiality.

15.2.1 The Contractor agrees to hold confidential, both during and after the completion or termination of this Contract, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Contract, by 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. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in 15.2.2 of this Section (Confidentiality), the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section (Confidentiality) to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL").

15.2.2 The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. The Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide prompt written notice of such to the Department. 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 Contract 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 Contract are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, if any.

15.2.3 The Contractor shall restrict access to confidential information to persons who have a legitimate work-related purpose to access such information; and agrees to instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Contract.

15.2.4 The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Contract, 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 Contract at least twenty-four (24) hours prior to any statement to the press or at least five (5) business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 15.2 (Confidentiality).

15.2.5 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 and shall destroy any such confidential information stored electronically and certify such destruction to the Department in writing. 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 this Section 15.2 (Confidentiality).

15.2.6 A breach of this Section 15.2 (Confidentiality) shall constitute a material breach of this Contract for which the Department may terminate this Contract. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

### 15.3 Records.

15.3.1 Books and Records. The Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

15.3.2 Retention of Records. The Contractor agrees to retain all books, records, and other documents relevant to this Contract, including those required pursuant to 15.3.1 above, for six (6) years after the final payment or expiration or termination of this Contract, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Contract has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

15.3.3 No Removal of Records from Premises. Where performance of this Contract involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during this Contract or after this Contract 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.

15.3.4 Inspections at Site. At any time during this Contract or during the record retention period set forth in 15.3.2 above, the City, including the Department and the Department's Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Section 15.3 (Records). Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the

Contractor kept pursuant to this Contract shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

15.3.4.1 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.

15.3.4.2 The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Sub-section 15.3.4 (Inspections at Site).

15.3.5 Electronic Records. As used in this Contract, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

#### 15.4 Investigations.

15.4.1 The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York 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.

15.4.2 (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

15.4.3 (a) The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the Parties involved to determine



if any penalties should attach for the failure of a person to testify.

- (b) If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to 15.4.5 below without the City incurring any penalty or damages for delay or otherwise.

15.4.4 The penalties that may attach after a final determination by the Commissioner or Agency Head may include, but shall not exceed:

15.4.4.1 The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

15.4.4.2 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 Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, Services performed, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

15.4.5 The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs 15.4.5.3 and 15.4.5.4 below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs 15.4.5.3 and 15.4.5.4, in addition to any other information that may be relevant and appropriate:

15.4.5.1 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.

15.4.5.2 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.

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

15.4.5.4 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 15.4.4 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 15.4.3 (a) 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.

15.4.6 Definitions. The following definitions shall apply to this Section 15.4 (Investigations):

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

15.4.6.2 The term "person" as used herein 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.

15.4.6.3 The term "entity" as used herein 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.

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

15.4.7 In addition to and notwithstanding any other provision of this Contract, the Commissioner or Agency Head may in his or her sole discretion terminate this Contract 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 Contract by the Contractor, or affecting the performance of this Contract.

## 16. RESOLUTION OF DISPUTES.

16.1 Except as provided in Sections 16.1(a) and 16.1(b) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this Article 16 (Resolution of Disputes) and PPB Rules § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

(a) This Article 16 (Resolution of Disputes) 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 the termination other than for cause.

(b) For construction and construction-related services, this Article 16 (Resolution of Disputes) shall apply only to disputes about the scope of Work delineated by this Contract, the interpretation of Contract documents, the amount to be paid for extra Work or disputed work performed in connection with this Contract, the conformity of the Contractor's Work to this Contract and the acceptability and quality of the Contractor's Work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the Contractor disagrees.

16.2 All determinations required by this Article 16 (Resolution of Disputes) 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 Article shall be deemed a non-determination without prejudice that will allow application to the next level.

16.3 During such time as any dispute is being presented, heard and considered pursuant to this Article 16 (Resolution of Disputes), the Contract terms shall remain in full force and effect and the Contractor shall continue to perform Work in accordance with this Contract and as directed by the ACCO or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. 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 Article and a material breach of contract.

16.4 Presentation of Dispute to Commissioner.

16.4.1 Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Commissioner within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Commissioner all materials she or he deems pertinent to the dispute. Following initial submissions to the Commissioner, 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 Commissioner 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.

16.4.2 Commissioner Inquiry. The Commissioner shall examine the material and may, in her or his discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Commissioner may seek such technical or other expertise as she or he shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both Parties as she or he deems fit. The Commissioner'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 Commissioner participated therein. The Commissioner 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 Contract and that Contractor shall be bound by the decision of the Commissioner.

Any Contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Article as the Contractor initiating the dispute.

16.4.3 Commissioner Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the Parties, the Commissioner shall make her or his 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 Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.

16.4.4 Finality of Commissioner Decision. The Commissioner's decision shall be final and binding on all Parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Article. 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 Commissioner.

16.5 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 her or his review, investigation, and possible adjustment.

16.5.1 Time, Form and Content of Notice. Within thirty (30) days of receipt of a decision by the Commissioner, the Contractor shall submit to the Comptroller and to the Commissioner 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 Commissioner; (ii) a copy of the decision of the Commissioner, 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 Commissioner, except at the request of the Comptroller.

16.5.2 Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Commissioner in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.

16.5.3 Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in the New York City Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, agency representatives, and any other personnel desired by the Comptroller.

**16.5.4 Opportunity of Comptroller to Compromise or Adjust Claim.** The Comptroller shall have forty-five (45) days from her or his receipt of all materials referred to in 16.5.3 above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of this Contract between the Parties.

**16.6 Contract Dispute Resolution Board.** The CDRB is composed of:

(a) 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 Article 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;

(b) the CCPO or his or her 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

(c) 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.

**16.7 Petition to CDRB.** In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Article, the Contractor, within thirty (30) days thereafter, may petition the CDRB to review the Commissioner determination.

**16.7.1 Form and Content of Petition by 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 Vendor contends that the dispute was wrongly decided by the Commissioner; (ii) a copy of the decision of the Commissioner; (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 Vendor 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 Commissioner and the Comptroller.

- 16.7.2 Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Commissioner and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the Parties, for an initial period of up to thirty (30) days.
- 16.7.3 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.
- 16.7.4 CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the Parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract. 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.
- 16.7.5 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 Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the Parties are formally notified of the CDRB's decision.
- 16.7.6 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.



16.8 Any termination, cancellation, or alleged breach of the Contract, prior to or during the pendency of any proceedings pursuant to this Article 16 (Resolution of Disputes) shall not affect or impair the ability of the Commissioner or CDRB to make a binding and final decision pursuant to this Article.

16.9 Notwithstanding the foregoing, for the purposes of purchase orders issued pursuant to this Contract, the term "Commissioner" or "Agency Head" shall, in this Article 16 (Resolution of Disputes) be defined as the Commissioner or Agency Head of a User Agency.

## 17. CONTRACT CHANGES.

17.1 Changes to this Contract shall be approved by the ACCO, or her or his designee, and the Contractor, in writing, and shall be reflected in a change order; which, once authorized, shall become part of the original Contract. A Contractor deviating from the requirements of an original purchase order or Contract, without a duly approved change order document, written Contract modification or amendment, does so at its own risk.

17.2 Contract changes will be made only for Services necessary to complete the Services included in the original scope of this Contract and non-material changes to the scope of the Contract. Changes are not permitted for any material alteration in the scope of work/services or for the insertion of a renewal clause to the Contract.

### 17.3 Price Adjustments.

17.3.1 The Contractor may be entitled to a price adjustment for extra Work performed pursuant to a written change order. If any part of this Contract Work is necessarily delayed by a change order, the Contractor may be entitled to an extension of Time of Performance. Adjustments to price shall be validated by using appropriate price and cost analysis and agreed upon in writing by both Parties.

17.3.2 Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification by post audit. If the post-audit reveals that the Contractor's costs for the change order Work were inaccurately stated during negotiations, the City shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price of the change order. This remedy is not exclusive and in addition to all other rights and remedies of the City.

17.3.3 Price Adjustments for Type "C" Requirement Contracts. Where a Requirement Contract contains price adjustment provisions, Contract changes shall be made in accordance with those provisions. Where no price adjustment provisions are specified, the City may seek a price decrease where there is evidence that market pricing is lower than contract pricing. If a Contractor does not agree to the price adjustment, in addition to any other remedy of the City under this contract, the City may terminate the contract in accordance with Part IV, Article 18 (Termination) herein.

17.3.4 Except in the case of Requirement Contracts, any Contract increases which cumulatively exceed the greater of 10% of the original contract amount or \$500,000.00 must be approved in writing by the CCPO. Any amendment which amends a unit price,

cancels required units or adds a new type of unit item to this Contract must be approved in writing by the ACCO.

17.4 Changes Through Fault of Contractor. In the event that any change is required in the data, documents, deliverables, or other Services to be provided under this Contract 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.

## 18. TERMINATION.

### 18.1 Termination by the City Without Cause.

18.1.1 The City shall have the right to terminate this Contract without cause, in whole or in part at any time.

18.1.2 If the City terminates this Contract pursuant to this Section 18.1 (Termination by the City Without Cause), the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in accordance with Section 18.5 (Procedures for Termination). The City shall pay for Services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

### 18.2 Reductions in Federal, State and/or City Funding.

18.2.1 This Contract is funded in whole or in parts 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 Contract in whole or in part, or to reduce the funding and/or level of Services of this Contract caused by such action by the federal, 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 Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this Section 18.2 shall be accompanied by an appropriate reduction in the Services performed under this Contract.

18.2.2 Any such notice of reduction to the Contractor, as referred to in 18.2.1 above, shall be effective as of the date set forth therein, but not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), Service(s), Service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the



Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

18.2.3 If the City reduces funding pursuant to this Section 18.2, the City shall pay for Services provided in accordance with this Contract prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract 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 Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

18.2.4 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 Contract, then the notice and effective date provisions of this Section 18.2 shall not apply, and the Department may reduce such public funds authorized under this Contract by informing the Contractor of the amount of the reduction and revising attachments to this Contract as appropriate.

### 18.3 Contractor Default.

18.3.1 The City shall have the right to declare the Contractor in default:

- (a) Upon a breach by the Contractor of a material term or condition of this Contract, including unsatisfactory performance of the Services; or if
- (b) The Contractor stops providing the Services to the City; or if
- (c) The Contractor shall, without just cause, reduce its working force to a number which, if maintained, would be insufficient in the opinion of the Commissioner, to perform the Services in accordance with the terms of the Contract; or if
- (d) The Contractor fails or refuses to increase sufficiently such working force when ordered to do so by the Commissioner; or if
- (e) The Contractor sublets, assigns, transfers, converts or otherwise disposes of this Contract other than as herein specified; or sells or assigns a majority interest in the Contractor; or if
- (f) The Contractor fails to secure and maintain all required insurance; or if
- (g) A receiver(s) is appointed to take charge of the Contractor's property or affairs; or if
- (h) The Commissioner shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if
- (i) The Commissioner shall be of the opinion that the Services cannot be completed within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Commissioner's opinion, attributable to conditions within the Contractor's control; or if

- (j) The Services are not completed within the time herein provided therefor or within the time to which the Contractor may be entitled to have such completion extended; or if
- (k) Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Services, the Project, or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made; or if
- (l) 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; or if
- (m) The Contractor refuses or fails to proceed with the Services under this Contract when and as directed by the Commissioner; or if
- (n) The Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of this Contract under any state or federal law of any of the following:
  - (i) a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
  - (ii) fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
  - (iii) a criminal violation of any state or federal antitrust law;
  - (iv) 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;
- (v) conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
- (vi) an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City Vendor; or if
- (o) The Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or if
- (p) The Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

- 18.3.2 The right to declare the Contractor in default for any of the grounds specified or referred to in this Section 18.3 (Contractor Default) shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend Services under this Contract pending the outcome of the default proceedings pursuant to this Section 18.3.
- 18.3.3 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 18.3 (Contractor Default). Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business Days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.
- 18.3.4 After the opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default pursuant to this Section 18.3, in accordance with Section 18.5 (Procedures for Termination).
- 18.3.5 The Commissioner's determination that the Contractor is in default shall be conclusive, final, and binding on the Parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the determination of the Commissioner, the Contractor may commence an action in a court of competent jurisdiction of the State of New York under Article 78 of the CPLR.
- 18.3.6 Buy Against. In the event the Contractor either (i) fails to perform or (ii) is declared in default by the Commissioner, the Commissioner may have the Services under this Contract 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 § 4-07. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. The cost of re-letting is hereby determined to be five hundred dollars (\$500.00).
- 18.3.6.1 Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under this Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

18.3.6.2 The term of a buy-against Contract shall not exceed the balance of the term remaining on the original Contract, without renewals, or such interval necessary to complete the original Services as agreed upon by the ACCO and the new vendor, whichever is longer.

#### 18.4 Force Majeure.

18.4.1 For the purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). 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.

18.4.2 In the event the Contractor cannot comply with the terms of this Contract (including any failure by the Contractor to make progress in the performance of the Services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate this Contract.

18.4.2.1 If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of this Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate this Contract. Such a termination shall be deemed to be without cause.

If the City terminates this Contract pursuant to this Section 18.4 (Force Majeure), the City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date and shall pay for Services provided in accordance with this Contract prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

18.4.2.2 If the performance of the Contractor is delayed because of a Force Majeure Event, an extension of time may be granted by the ACCO. Should a Force Majeure Event create an emergency thus necessitating the purchase of all or any part of the Contract Services elsewhere, which necessity shall be conclusively determined by the ACCO, the ACCO shall have the right to purchase such Services elsewhere without liability to the Contractor. To the extent such purchases are made, the City shall be relieved of the obligation to purchase the Services from the Contractor and the Contractor shall be relieved of the obligation to furnish such Services to the City.

#### 18.5 Procedure for Termination.

18.5.1 The Department and/or the City shall give the Contractor written notice of any termination of this Contract. Such notice shall specify the applicable provision(s) under which this Contract is terminated and the effective date of the termination. Except as

otherwise provided in this Contract, the notice shall comply with the provisions of this Section 18.5. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates this Contract in part, the Contractor shall continue the performance of this Contract to the extent not terminated.

18.5.2 Upon termination or expiration of this Contract, the Contractor shall comply with the City close-out procedures, including but not limited to:

- (a) Accounting for and refunding to the Department, within forty-five (45) days, any unexpended funds which have been advanced to the Contractor pursuant to this Contract;
- (b) Furnishing within forty-five (45) days, an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Contract and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
- (c) Turning over to the Department or its designees all books, records, documents and material specifically relating to this Contract within forty-five (45) days that the Department has requested be turned over;
- (d) Submitting to the Department, within ninety (90) days, a final statement and report relating to this Contract. The report shall be made by a certified public accountant or a licensed public accountant; and
- (e) Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

#### 18.6 Miscellaneous Provisions.

18.6.1 The Commissioner, in addition to any other powers set forth in this Contract or by operation of Law, may suspend, in whole or in part, any part of the Services to be provided under this Contract whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Contract pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Contract beyond the suspension date until such suspension is lifted. The City shall pay for Services provided in accordance with this Contract prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract 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 Contract.

18.6.2 Notwithstanding any other provisions of this Contract, 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 this Contract, 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.

18.6.3 The rights and remedies of the City provided in this Article 18 (Termination) shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Contract.

## 19. CLAIMS.

19.1 Choice of Law. This Contract shall be deemed to be executed in the City of New York, 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.

### 19.2 Jurisdiction and Venue.

19.2.1 The Parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be solely heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York 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.

19.2.2 If the Contractor commences any action in breach of this Section 19.3, the Contractor 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.

### 19.3 Claims and Actions.

19.3.1 Any claim against the City based on this Contract or arising out of this Contract, that is not subject to dispute resolution under the PPB Rules or this Contract, shall not be made or asserted in any legal proceeding, unless the Contractor has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as herein provided.

19.3.2 No action shall lie or be maintained against the City by Contractor upon any claims based upon this Contract unless such action shall be commenced within six (6) months after the date of filing in the Office of the Comptroller of the City of the voucher for final payment hereunder, within six (6) months of the termination or conclusion of this Contract or within six (6) months after the accrual of the cause of action, whichever first occurs.

19.3.3 In the event a claim is made or an action brought in any way relating to the Contract herein, the Contractor shall diligently render to the Department and/or the City of New York, without additional compensation, any and all assistance which the Department and/or City may require of the Contractor.

19.3.4 The Contractor shall report to the Department in writing, within three (3) working days

of the initiation by or against the Contractor, any legal action or proceeding in connection with or relating to this Contract.

19.3.5 No Claim against Officers, Agents or Employees. No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Contract.

19.3.6 No Waiver. Waiver by either the Department or the Contractor of a breach of any provision of this Contract 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 Contract unless and until the same shall be agreed to in writing by the Parties as required herein and attached to the original Contract.

## 20. NOTICE AND COMMUNICATIONS.

20.1 The Contractor hereby designates the business addresses specified in its bid and the Department hereby designates 2 Lafayette Street, New York, New York 10007 as the places where all notices, directions, or communications ("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. Any Communications by the Contractor to the Department must include a copy submitted to the ACCO and the Contract manager.

20.2 Any Communications from either Party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

20.3 Nothing in this Article 20 (Notice and Communications) 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 CPLR.

## 21. ADDITIONAL PROVISIONS.

21.1 Severability. If this Contract contains any unlawful provision not an essential part of this Contract and which shall not appear to have been a controlling or material inducement to the making of this Contract, the unlawful provision shall be deemed of no effect and shall, upon notice by either Party, be deemed stricken from this Contract without affecting the binding force of the remainder.

21.2 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 Contract.



21.3 Political Activity. The Contractor's provision of Services under this Contract 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 Contract be used for such purposes.

21.4 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 Contract, nor shall any of the funds provided under this Contract be used for such purposes.

## 22. MERGER.

This written Contract contains all the terms and conditions agreed upon by the Parties, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the Parties, or to vary any of the terms contained in this Contract, other than a written change, amendment or modification duly executed by both Parties pursuant to Part IV, Article 17 (Contract Changes) of this Contract.

## PART IV APPLICABLE LAWS

### 1. NON-DISCRIMINATION.

#### 1.1 Equal Employment Opportunity.

1.1.1 This Contract is subject to the requirements of City Executive Order No. 50 (April 25, 1980) (§ 10-14) ("E.O. 50"), as revised and the rules set forth at 66 RCNY § 10-01 et seq. No Contract 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 regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status or 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 (§ 10-14) and the rules and regulations promulgated thereunder;
- (e) Will furnish before this Contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§ 10-14), the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, 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.

1.1.2 The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, such noncompliance shall constitute a material breach of this Contract and noncompliance with E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

- (a) Disapproval of the Contractor; or
- (b) Suspension or termination of this Contract; or
- (c) Declaring the Contractor in default; or
- (d) In lieu of any of the foregoing sanctions, imposition of an employment program.

1.1.3 Failure to comply with E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

1.1.4 The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000.00) to which it becomes a party unless exempted by E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

1.1.5 The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for

shall not be considered a subcontractor for purposes of this Paragraph.

1.1.6 Nothing contained in this Section 1.1 (Equal Employment Opportunity) 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.

1.2 New York Labor Law, § 220-e. This Section 1.2 applies to a contract for the construction, alteration or repair of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies.

1.2.1 In the hiring of employees for the performance of Work under this Contract 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;

1.2.2 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 Contract on account of race, creed, color, disability, sex or national origin;

1.2.3 There may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of Fifty Dollars (\$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 Contract; and

1.2.4 This Contract 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 1.2.

1.2.5 The provisions of this Section 1.2 shall be limited to operations performed within the territorial limits of the State of New York.

1.3 New York City Administrative Code, § 6-108. If this Contract 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 the New York City Admin. Code § 6-108, that:

1.3.1 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.

1.3.2 It shall be unlawful for any person or any servant, agent or employee of any person,

described in Paragraph 1.3.1 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.

1.3.3 Breach of the foregoing provisions shall be deemed a breach of a material provision of this Contract.

1.3.4 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 1.3 shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment for not more than thirty (30) days, or both.

1.4 New York City Administrative Code, § 6-123. As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Contract for an amount in excess of Fifty Thousand Dollars (\$50,000.00) that such subcontractor shall not engage in any such unlawful discriminatory practice.

## 2. WHISTLEBLOWER EXPANSION ACT.

2.1 Contractor shall comply with the terms of the Whistleblower Protection Expansion Act Rider, attached hereto.

## 3. PARTICIPATION IN INTERNATIONAL BOYCOTT.

3.1 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.

3.2 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 Contract.

3.3 The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

## 4. LABOR LAW REQUIREMENTS

4.1 Section 6-109 of the New York City Administrative Code.

4.1.1 Section 6-109(a).

4.1.1.1 Except for those employees whose minimum wage is required to be fixed by Section 220 or 230 of the Labor Law of the State of New York, all persons employed by the Contractor and any subcontractor in the manufacture or furnishing of supplies, materials or equipment, or the furnishing of Work, labor or services used in the

performance of this Contract will be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the sum mandated by Law.

4.1.1.2 No part of the Work, labor or services will be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this paragraph.

4.1.1.3 For any breach or violation of any of the representations and stipulations required in any Contract under the provisions of this subsection, the party responsible therefor shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any such Contracts or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damages for any other breach of such Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of such Contract.

In addition, the Department shall have the right to cancel the Contract for any violation of this subsection and enter into other contracts for the completion of the original Contract, charging any additional cost to the original Contractor. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages in violation of the provisions of this subsection shall be held in a special deposit account and shall be paid without interest, on order of the Executive Director for Economic Development, directly to the employees who have been paid less than minimum rates of pay as set forth in such Contracts and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

4.1.2 Section 6-109(b). The provisions of subdivision (a) of Section 6-109 shall not apply to contracts for the furnishing or purchase of agricultural or farm products processed for first sale by the original producers; nor shall subdivision (a) of Section 6-109 apply to any work performed on any contract outside of the United States or its territories.

4.1.3 If there has been a breach or violation of the aforesaid Section 6-109 or of the aforesaid rules and regulations, the Contractor must state the time, place and circumstances of such breach or violation on the bid form submitted.

4.2 Workers' Compensation Laws. If this Contract be of such a character that the employees engaged thereon are required to be insured by the provisions of the New York Workers' Compensation Law, and acts amendatory thereto, the same shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Contract such employees in compliance with the provisions of said Law.

## **5. MACBRIDE PRINCIPLES PROVISIONS.**

5.1 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.

5.2 The Contractor agrees that the covenants and representations in the preceding paragraph are material conditions to this Contract. In the event the contracting entity receives information that the Contractor is in violation of this Article 5 (MacBride Principles Provisions), the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this Contract for cause and procure the supplies, Services or Work from another source in any manner the entity deems proper.

5.2.1 In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and the cost to the contracting entity of completing performance of this Contract either itself or by engaging another contractor or contractors.

5.2.2 In the case of a Requirement Contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its Contract.

5.3 This Article does not apply if the Contractor is a not-for-profit corporation.

## **6. VOTER REGISTRATION.**

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

6.2 **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 Contract, hereby agrees as follows:

- 6.2.1 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.
- 6.2.2 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.
- 6.2.3 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.
- 6.2.4 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.
- 6.2.5 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.
- 6.2.6 For the purposes of Section 6.1 (Participating Agencies) above, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.
- 6.2.7 The provisions of Section 6.1 (Participating Agencies) above 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.
- 6.3 Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:
- 6.3.1 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.



6.3.2 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.

6.3.3 If, in connection with the provision of services under this Contract, 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.

6.3.4 The provision of Section 6.2 (Distribution of Voter Registration Forms) services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

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

6.4.1 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.

6.4.2 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.

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

6.4.4 The Contractor and the Contractor's employees shall not:

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

6.4.4.2 display any political preference or party allegiance;

6.4.4.3 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

6.4.4.4 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.

6.5 The Contractor, as defined above and in this Contract, agrees that the covenants and representations in this Article 6 (Voter Registration) are material conditions of this Contract.

6.6 The provisions of this Article 6 (Voter Registration) do not apply where the services under this Contract 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.

## 7. ALL LEGAL PROVISIONS DEEMED INCLUDED.

Each and every provision required by Law to be inserted in this Contract is hereby deemed to be a part of this Contract, whether actually inserted or not.

## **PART V**

### **SPECIAL CONDITIONS**

1. **INFORMATION SECURITY REQUIREMENTS.** The Contractor agrees, with respect to information technology contracts, that it shall comply with all Citywide Information Security Policies and Standards ("Policies and Standards") as published by the City's Department of Information Technology and Telecommunications ("DoITT"), as it may be modified, and which are available at <http://www.nyc.gov/infosec>. Citywide Policies and Standards include, without limitation, a requirement that a Contractor cooperate with and ensure the successful completion of any security accreditation tasks and processes relevant to the Services and/or deliverables it provides. A Contractor must bear the cost of compliance with all such Citywide Policies and Standards. This provision shall apply to all persons in the Contractor's or subcontractors' organizations who may have access to any City information or City information assets, in the course of carrying out their responsibilities or job function while performing Work pursuant to the terms of this Contract.

2. **TOXIC SUBSTANCES – SAFETY DATA SHEETS.**

2.1 Pursuant to the Hazard Communication Standard (29 CFR 1910.1200, as amended effective May 25, 2012), manufacturers, importers, and distributors must develop or obtain safety data sheets ("SDS") for each hazardous chemical they produce, import or distribute, in accordance with the provisions of 29 CFR 1910.1200(g) and Appendix D thereto. The City, in order to meet its responsibilities as an employer under the Hazard Communication Standard requires that manufacturers, distributors and suppliers submit a SDS for: (1) any hazardous chemical, as defined in the Hazard Communication Standard; or (2) any product containing a hazardous chemical, as a requirement of bid consideration, contract award, and/or purchase. Failure to submit a SDS as required may result in the rejection of a bid, contract award and/or purchase. 2.2 Material Safety Data Sheets, as required by the 1994 Hazard Communication Standard, may be submitted until June 1, 2015. After such time, only SDSs as required by the Hazard Communication Standard, as amended effective May 25, 2012, will be accepted as a condition of bid consideration, contract award and/or purchase.

3. **PROHIBITION ON USE OF TROPICAL HARDWOODS.** Tropical hardwoods, as defined in the State Finance Law § 165-b shall not be utilized in the performance of this Contract except as expressly permitted by State Finance Law § 165.

4. **CONTRACTOR AFFIRMATION.** By submission of its bid, each Contractor and each person signing on behalf of any Contractor certifies, and in the case of a joint bid each Party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

4.1 No collusion. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and

4.2 **Prices Not Disclosed.** Unless otherwise required by law, the prices which have been quoted in this

bid have not been knowingly disclosed by the Contractor and will not knowingly be disclosed by the Contractor prior to opening, directly or indirectly, to any other bidder or to any competitor; and

- 4.3 No Attempt to Restrict Competition. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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 Article 4 (Contractor Affirmation).

5. BREACH OF CONTRACT. Any breach or violation of any of the subdivisions of this Part VI entitled "Special Conditions" shall be deemed a breach or violation of a material provision of this Contract.

6. REGISTRATION OF CONTRACT.

- 6.1 New York City Comptroller. This Contract shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

- 6.2 Approvals Not in Lieu of Other Requirements. The requirements of this Section 6 (Registration of Contract) of this Contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Contract to be effective and for the expenditure of City funds.

**PART VI**  
**ORDER OF PRIORITY**

During the term of the Agreement, conflicts between the various documents shall be resolved in the following order of precedence, such documents constituting the entire Agreement between the Parties:

1. Requirements Contract (this document);
2. Appendix A (Scope of Work);
3. Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts;
4. Schedule 1 to Appendix A (Community Center CACFP Site List);
5. Schedule 2 to Appendix A (USDA Required Meal Patterns and Food Specifications);
6. Schedule 3 to Appendix A (New York City Food Standards);
7. Schedule 4 to Appendix A (Contractor Unit Price Schedule);
8. Schedule 5 to Appendix A (Contractor Quality Control Plan);
9. Schedule 6 to Appendix A (DYCD Sample Invoice & Memorandum);
10. All addenda issued by the ACCO prior to the receipt of bids;
11. Appendix B (DYCD Child and Adult Care Food Program Invitation For Bid);

12. Fiscal Manual;
13. Notice of Award;
14. The Purchase Order(s).

**PART VII**  
**UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED**  
**PROCUREMENT CONTRACTS**

The attached “Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts” is incorporated and made a part of this Agreement.

**IN WITNESS WHEREOF**, the parties undersigned executed this Amendment effective as of the date first above written.

**[CONTRACTOR]**

**CITY OF NEW YORK  
DEPARTMENT OF YOUTH AND  
COMMUNITY DEVELOPMENT**

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Caroline Press  
General Counsel

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### AFFIRMATION

The undersigned Contractor affirms and declares that said contractors 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 Contractor to receive public contracts except

\_\_\_\_\_  
(If none, so state):

Full Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### CHECK ONE (1) BOX AND INCLUDE APPROPRIATE NUMBER:

- ( ) A. INDIVIDUAL OR SOLE PROPRIETORSHIP\*  
SOCIAL SECURITY NUMBER  
\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
- ( ) B. PARTNERSHIP, JOINT VENTURE OR OTHER UNINCORPORATED ORGANIZATION  
EMPLOYER IDENTIFICATION NUMBER  
\_\_\_\_\_
- ( ) C. CORPORATION  
EMPLOYER IDENTIFICATION NUMBER  
\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
(SIGNATURE) (TITLE)

If a corporation, place seal here

Must be signed by an officer or duly authorized representative

\* "Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in bidder'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 of businesses which seek City Contracts.



**ACKNOWLEDGEMENT BY CITY**

STATE OF NEW YORK       )  
  ) ss:  
COUNTY OF NEW YORK    )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally came Caroline Press, to me known and known to me to be General Counsel of the NEW YORK CITY DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT, the person described in and who is duly authorized to execute the foregoing instrument on behalf of the Commissioner, and she acknowledged to me that she executed the same for the purpose therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF CONTRACTOR IF A CORPORATION**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF CONTRACTOR IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is \_\_\_\_\_ partner of \_\_\_\_\_, a limited/general partnership existing under the laws of the State of \_\_\_\_\_, the partnership described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said partnership.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF CONTRACTOR IF AN INDIVIDUAL**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_, and that he/she is the individual whose name is subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument, said individual executed the instrument.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

## **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 \_\_\_\_\_

**Exhibit 1**

**Uniform Federal Contract Provisions Rider for Federally Funded  
Procurement Contracts**

**UNIFORM FEDERAL CONTRACT PROVISIONS RIDER  
FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS  
(11/10/2015)**

***[Instructions to Agencies: This Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts ("Rider") must be attached to all federally funded procurement contracts (of any dollar amount) that are subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). This Rider does not apply to subrecipient or subaward agreements. Procurement contracts funded by the U.S. Department of Housing and Urban Development CDBG Program or CDBG-DR Program must also include the CDBG or CDBG-DR Rider, as applicable.]***

**A. Definitions.** As used in this Rider:

- (1) "Awarding Entity" means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.
- (2) "City" means the City of New York.
- (3) "Commissioner" means the head of the City agency entering into this Contract.
- (4) "Construction" means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
- (5) "Contract" refers to the contract or the agreement between the Awarding Entity and the Contractor.
- (6) "Contractor" means the entity performing the services pursuant to a Contract.
- (7) "Federal Agency" means the U.S. agency or agencies funding this Contract in whole or in part.
- (8) "Government" means the U.S. government.
- (9) "Rider" means this Uniform Federal Contract Provisions Rider.

**B. Termination and Remedies for Breach of Contract.** The following provisions concerning remedies for breach of contract and termination apply to Contracts between the City and the City's Contractor.

- (1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the City may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the City may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the

Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the City may be charged against and deducted out of monies earned by the Contractor.

(2) **Termination.** The City shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:

a. **Termination for Cause.** The City shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the City to be necessary, the City shall effect termination according to the following procedure:

- i. *Notice to Cure.* The City shall give written notice of the conditions of default signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Contract pending the outcome of the default proceedings pursuant to this section.
- ii. *Opportunity to be Heard.* If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Contractor must be given an opportunity to be heard upon not less than five (5) business days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.
- iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination ("Notice of Termination"), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.
- iv. *Grounds for Default.* The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Contract, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Contract when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

- v. ***Basis of Settlement.*** The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in its Notice of Termination. The City shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.
- b. **Termination for Convenience.** The City shall have the right to terminate the Contract for convenience, by providing written notice ("Notice of Termination") according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.
- c. **Termination due to Force Majeure**
  - i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Force Majeure Events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
  - ii. In the event the Contractor cannot comply with the terms of the Contract (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.
  - iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.
- d. **Termination due to Reductions in Federal Funding**



- i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.
- ii. In the case of the reduction option referred to in subparagraph (i), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the City shall not be bound to utilize any of the Contractor's suggestions and that the City shall have sole discretion as to how to effectuate the reductions.
- iii. If the City reduces funding pursuant to this paragraph (c), the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

**C. Standard Provisions.** The Contractor shall comply with, include in its subcontracts, and cause its subcontractors to comply with the following provisions, as applicable:

- (1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.
- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.
- (4) *Energy Efficiency.* The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).

- (5) *Debarment.* The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.
- (6) *Byrd Anti-Lobbying Amendment (31 USC §1352).* Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining this Contract. If the Contract is \$100,000 or more, the Contractor shall disclose to the City any lobbying with non-Federal funds that took place in connection with obtaining this Contract. Each lower tier subcontractor shall make such certification and forward any required disclosures from tier to tier up to the City as grant recipient. (Certification appears in Federal Appendix A)
- (7) *Solid Waste Disposal Act.* Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (8) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.
- (9) *Records Retention.* The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract for three years after final payment under the Contract is made and all other pending matters are closed.
- (10) *Records Access.* The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.
- (11) *Small Firms, M/WBE Firms, and Labor Surplus Area Firms.* Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:
- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. Assuring that small and minority businesses, and women's business enterprises

are solicited whenever they are potential sources;

- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

(12) *Intangible Property.*

- a. Pursuant to 2 CFR § 200.315(d), the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.
- b. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Contract without the prior written permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.
- c. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- d. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the

Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.

- e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- f. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

**D. Special Provisions for Construction Contracts.** If this Contract involves Construction work, design for Construction, or Construction services, all such work or services performed by the Contractor and its subcontractors shall be subject to the following requirements in addition to those set forth above in paragraphs (A), (B), and (C):

(1) *Federal Labor Standards.* The Contractor will comply with the following:

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, in Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.
- b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
- c. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but "permissible" salary deductions.

- d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

(2) *Equal Employment Opportunity*. Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction .

**Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000.**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship

and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.



p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.



15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(3) (A) **Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR Part 6-1.4(b).  
**[Effective through January 10, 2016]**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**(B) Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR Part 6-1.4(b).  
**[Effective starting January 11, 2016]**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by

rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**E. Rights to Inventions. [Special Provisions For Contracts Involving Experimental, Developmental, or Research Work.]**

(1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (A), (B), and (C), unless the Contract specifically states that this provision is superseded:

*a. Definitions.* The following definitions apply to this section (D).

- i. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*).
- ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.
- iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- v. "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- vi. "Nonprofit Organization" means a university or other institution of

higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

- b. *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- c. *Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.*
  - i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
  - ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.
  - iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of

Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

- iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may be granted at the discretion of the Federal Agency.

*d. Conditions When the Government May Obtain Title*

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

- i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Federal Agency may only request title within 60 calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.
- ii. In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.
- iii. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

*e. Minimum Rights to Contractor and Protection of the Contractor Right to File*

- i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.
- ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and

continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty calendar days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Contractor Action to Protect the Government's Interest

- i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- iii. The Contractor will notify the Federal Agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.
- iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made

with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention.”

g. Subcontracts

- i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor’s subject inventions.
  - ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.
- h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- i. *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- j. *March-in Rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or



applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

- i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor is a nonprofit organization, it agrees that:

- i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
- iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its



plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding Small Business Firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv).

1. *Communication.* The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the City upon request.

**Certification Regarding Lobbying**

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**NOTICE TO BIDDERS**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

**Goals and Timetables for Minorities**

<u>Trade</u>	<u>Goal</u> <u>(percent)</u>
Electricians .....	9.0 to 10.2
Carpenters .....	27.6 to 32.0
Steamfitters .....	12.2 to 13.5
Metal Lathers .....	24.6 to 25.6
Painters .....	28.6 to 26.0
Operating Engineers .....	25.6 to 26.0
Plumbers .....	12.0 to 14.5
Iron Workers (structural) .....	25.9 to 32.0
Elevator Constructors .....	5.5 to 6.5
Bricklayers .....	13.4 to 15.5
Asbestos Workers .....	22.8 to 28.0
Roofers .....	6.3 to 7.5
Iron Workers (ornamental) .....	22.4 to 23.0
Cement Masons .....	23.0 to 27.0
Glazers .....	16.0 to 20.0
Plasterers .....	15.8 to 18.0
Teamsters .....	22.0 to 22.5
Boilermakers .....	13.0 to 15.5
All Other .....	16.4 to 17.5

**Goals and Timetables for Women**

From April 1, 1980 until the present ..... 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Contract, the "covered area" is the City of New York.

**FEDERAL EXHIBIT 2**

**[Insert Exhibit 2 for applicable federal grant program]**

### **Applicable Riders**

- Certification Regarding Lobbying
- Notice to Bidders
- Paid Sick Leave Law Contract Rider
- Whistleblower Protection Expansion Act Rider 2012
- Hiring and Employment Rider: HireNYC and Reporting Requirements

## **PAID SICK LEAVE LAW CONTRACT RIDER**

### **Introduction and General Provisions**

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.<sup>1</sup> Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative 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”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. 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.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, 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.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://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 Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

### **Applicability, Accrual, and Use**

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 forty hours of sick time to an employee in any Year.

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

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<sup>1</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty 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.

An employee entitled to sick time pursuant to the PSLI may use sick time for any of the following:

- 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;
- 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;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

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 PSLI. 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 PSLI must be treated by the employer as confidential.

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.

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.



### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- 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;
- 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;
- 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;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- 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
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

### 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.

### Notice of Rights

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>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

### 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.

### Enforcement and Penalties

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.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative 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 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

#### 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

## **WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER 2012**

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

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

## **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](http://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.

**Appendix A**  
**Scope of Work**



## **APPENDIX A SCOPE OF WORK**

### **ARTICLE I – DEFINITIONS**

#### **Section 1.01 Definitions.**

As used in this Scope of Work, the following terms will have the meanings set forth below:

- A.** “Adequate Refrigeration” includes, but is not limited to, packing the food in coolers for transportation in refrigerated vehicles. As per City DOHMH regulations, temperature when transporting food must be 40° or lower.
- B.** “CACFP” means the Child and Adult Care Food Program.
- C.** “Center” means the New York City Housing Authority Community Center at each New York City Housing Authority Development listed in Schedule 1 and to which the Contractor will deliver meals.
- D.** “Community-Based Organization” or “CBO” means the organizations contracted by DYCD to provide and administer the Cornerstone Initiative Program at New York City Housing Authority Community Centers.
- E.** “Delivery Ticket” shall mean the documentation prepared by Contractor which itemizes number and details the type of meals delivered to Cornerstone Community Centers.
- F.** “DOH” means the New York State Department of Health.
- G.** “DOHMH” means the New York City Department of Health and Mental Hygiene.
- H.** “Invoice” shall mean an invoice for services rendered by Contractor and acceptable to DYCD.
- I.** “NYCHA” means the New York City Housing Authority.
- J.** “Program Day(s)” shall mean the days of operation of the Cornerstone Program.
- K.** “Time of Performance” shall mean the specific time or times indicated in which or within which delivery is to be completed.
- L.** “Unitized Meal(s)” shall mean an individual pre-portioned meal delivered and served as a unit, with milk. Such unitized meal must consist of a combination of foods that meet the United States Department of Agriculture (“USDA”) Required

Meal Patterns and Food Specifications set forth in Appendix A, Schedule 2 as well as those of the New York City Food Standards set forth in Appendix A, Schedule 3. In this Agreement, where applicable, all references to this term in the singular shall include the plural and references to the plural shall include the singular.

- M.** “Unit Price Schedule” shall mean the chart setting forth Contractor’s unit price per meal and total price. The Unit Price Schedule is attached to and incorporated into the Agreement as Appendix A, Schedule 4.
- N.** “USDA” shall mean United States Department of Agriculture.

## **ARTICLE II – CACFP SERVICES**

### **Section 2.01 General.**

- A.** Contractor agrees to perform the Services set forth in this Article II. Such Services include, but are not limited to, the provision of and timely delivery of Unitized Meals, to the Centers identified in the attached Schedule 1.
- B.** Contractor shall deliver Unitized Meals to the Centers each Program Day at or before 2 p.m. during the Term of the Agreement.
- C.** Contractor must provide Unitized Meals that comply in quality, content and quantity with the USDA Required Meal Patterns and Food Specifications set forth in Schedule 2, as well as with those of the New York City Food Standards set forth in Schedule 3.

### **Section 2.02 Average Quantity.**

- A.** DYCD’s estimation of the average number of Unitized Meals to be delivered each Program Day is set forth in the applicable Schedule 1. The Unitized Meal quantities set forth in Schedule 1 are estimates only and do not constitute purchases or purchase orders under the Contract. DYCD is not obligated to place any minimum dollar amount of orders in the amounts shown in Schedule 1.
- B.** DYCD may increase or decrease the number of Unitized Meals to be delivered to any Center listed in Schedule 1 by providing a minimum of 24 hours advance notice to Contractor. At DYCD’s sole discretion, a shorter period of advance notice may be provided. In the event DYCD does not actually order Unitized Meals in the amounts or quantities estimated in Schedule 1, such event shall not constitute the basis for a unit price adjustment under the Contract.
- C.** DYCD will pay Contractor at 100% of the unit cost rate for Unitized Meals actually ordered and delivered during the Term of this Agreement. In order to

meet the dietary needs and requirements of Cornerstone Participants, DYCD may purchase foods from sources other than Contractor.

### **Section 2.03 Locations of Centers.**

- A.** During the Term of this Agreement, DYCD may also, at its sole discretion, without limitation, unilaterally amend and modify Schedule 1 to increase or decrease the number of Centers to which Contractor must provide Unitized Meals. The resulting amendment to Schedule 1 will identify (i) all Centers that have been added or deleted subsequent to execution of the Contract and (ii) any changes in the approved level of Unitized Meal service for a Center.
- B.** DYCD shall employ best efforts to provide Contractor with a copy of any amendment to Schedule 1 at least 24 hours prior to implementing the change set forth in the amendment.

### **Section 2.04 Program Days.**

- A.** DYCD's estimation of the number of Program Days at each Center during the Term is set forth below:
  - 1. 164 weekdays;
  - 2. 23 holidays; and
  - 3. 39 weekend days
- B.** DYCD and/or its CBOs may decrease the number of holidays on which Unitized Meals must be delivered, but each Center will require delivery of Unitized Meals on no less than 15 holidays during the Term.
- C.** DYCD shall provide a minimum of 24 hours advance notice to Contractor regarding whether each Center will require delivery on each holiday during the Term.

### **Section 2.05 Food Specifications.**

- A.** Unitized Meals delivered by Contractor pursuant to the Contract must be unitized, that is, the meal, excluding milk, must be contained in a single package or container. In accordance with the requirements of the New York City Food Standards set forth in Schedule 3, Contractor must deliver milk with each Unitized Meal.
- B.** To assure compliance with the USDA Required Meal Patterns, upon DYCD's request, Contractor shall apprise DYCD of the food specifications and nutritional content per serving of each Unitized Meal and its recipes for the components of such Unitized Meals.

- C.** All meat and meat products shall have been slaughtered, processed and manufactured in plants inspected under a USDA approved seal. At the time of delivery, all meats and meat products must be sound, sanitary and free of objectionable odors or signs of deterioration.
- D.** Milk and milk products are defined as pasteurized fluid types of flavored or unflavored whole milk, low-fat milk, skim milk, or cultured buttermilk that meet New York State and local standards for such milk. All milk should contain vitamins A and D at the levels specified by the United States Food and Drug Administration ("FDA") and shall be consistent with New York State and local standards for such milk. Contractor shall provide milk that conforms to such specifications.

#### **Section 2.06 Menu Procedure.**

- A.** The unit prices set forth in Schedule 4 shall include the price of food, milk, packaging, transportation and all other related costs (e.g., condiments, utensils, etc.). DYCD also reserves the option to request a limited quantity of specially-prepared meals for special dietary requirements (i.e. vegetarian, religious, allergy, etc.)
- B.** DYCD shall have the right to review Contractor's proposed menus and may require Contractor to alter proposed menus, but such alterations must conform to Contractor's unit prices.

#### **Section 2.07 Packaging and Assembly.**

- A.** Contractor may not subcontract total Unitized Meals, with or without milk, or the assembly of the Unitized Meals. Unitized Meals may not be assembled (i.e., the components of the meal put in the unitized package) more than 24 hours before delivery.
- B.** In accordance with New York State and New York City health codes, Contractor must package the hot Unitized Meals in unit packaging that maintains Unitized Meals in a safe and sanitary condition. Hot foods must be placed in a container and overlay with an air-tight closure that is of non-toxic material and capable of withstanding temperatures of 400 degrees F (240 degrees C) or higher.
- C.** Cold Unitized Meals (or Unitized Meals unnecessary to heat) must be packaged in containers and overlays that are plastic or paper and non-toxic.
- D.** Cartons used by Contractor must be labeled and the label must include (a) Contractor's name and address (plant); (b) the Unitized Meal type and contents; (c) the date of production; and (d) the quantity of individual units per carton.

- E.** Each individually wrapped meal shall have affixed to it instructions regarding the maximum heating time and temperature for the meal, however no meal shall require more than forty (40) minutes total heating time. Contractor must provide a manual that provides such instruction.
- F.** Contractor must provide appropriate table-setting supplies and condiments for Unitized Meals delivered, including garbage bags, gloves, ice-packs and coolers for building delivery locations.

#### **Section 2.08 Delivery Requirements.**

- A.** Each Program Day of the Term, at or before 2 p.m., Contractor shall deliver Unitized Meals that conform to the requirements of the New York City Food Standards set forth in Schedule 3 and USDA Required Meal Patterns and Food Specifications in Schedule 2 to the Centers. Contractor shall unload such Unitized Meals and place them in the area designated by CBO staff at each Center.
- B.** DYCD may require Contractor to provide and deliver more than one meal in advance to be served on a different day ("Multiple Meal Delivery"). For example, Contractor may be required to deliver two (2) days of meals on one day. This manner of delivery will be contingent upon a Center's freezer capacity.
- C.** Food must be transported in vehicles equipped with refrigeration/freezer for storage of cold and frozen foods, and with heaters for the storage of hot foods (if applicable), as specified in the New York City Department of Health Codes.
- D.** Contractor must deliver the exact number of Unitized Meals ordered for each Center for each Program Day, as instructed by DYCD and/or its CBOs. Upon delivery, CBO personnel at each Center will count the Unitized Meals delivered before such Unitized Meals are accepted. Damaged or incomplete Unitized Meals will be rejected and will not be included when the number of delivered Unitized Meals is determined.
- E.** For each delivery to each Center, Contractor must prepare, in triplicate, a Delivery Ticket that itemizes the number of Unitized Meals and the type of Unitized Meals delivered to the Center. Contractor will retain one copy of the Delivery Ticket, will provide a copy to the Center and will attach a copy to the Invoices submitted to DYCD for payment. At delivery, CBO personnel at the Center will inspect the Unitized Meals to ascertain that they comply with the terms of the Contract and, upon acceptance of the delivery, will sign the Delivery Ticket.
- F.** Contractor shall provide adequate refrigeration or heating, at its facility and during delivery, in order to insure that at delivery, the food's wholesomeness is in accordance with New York State and New York City health codes.

- G.** With respect to delivery-related problems (the “Problem(s)”) that may arise (i.e., late delivery, failure to deliver correct amount of Unitized Meals, etc.), each Program Day between 9:00 a.m. and 2:00 p.m., a managerial representative of Contractor must be available by telephone to receive communications from DYCD regarding delivery-related Problems and to assist with and resolve such Problems.
- H.** In accordance with local environmental rules and regulations, Contractor shall provide each Center with a sufficient number of industrial-strength plastic trash bags to accommodate all disposable items from each day's delivery.

**Section 2.09 Emergencies.**

- A.** In the event of an emergency that will prevent Contractor from complying with the terms of the Contract and from making timely delivery(ies) of Unitized Meals, Contractor shall immediately notify DYCD by telephone, e-mail or fax and shall advise DYCD of the following: (a) whether it will be impossible for Contractor to make on-time delivery(ies); (b) the circumstance(s) that preclude on-time delivery(ies); and (c) whether future delivery(ies) will be affected.
- B.** If an emergency circumstance occurs at a Center precluding DYCD from utilizing Unitized Meals to be delivered by Contractor, DYCD may cancel Unitized Meals that are scheduled to be delivered. To effect such cancellation, DYCD shall employ best efforts to provide at least 24 hours advance notice to Contractor.

## **ARTICLE III – ADMINISTRATIVE REQUIREMENTS**

### **Section 3.01 Submission of Invoices**

- A. On or before Wednesday of each week, Contractor shall submit an invoice (the "Invoice") to DYCD requesting payment for the Services provided during the preceding week. The Invoice must be in the form attached as Appendix A, Schedule 6 and must be accompanied by a copy of the Delivery Ticket for each delivery, pursuant to Appendix B. Payment will be calculated at the unit prices shown on the Unit Price Schedule, Appendix A, Schedule 4. In Accordance with the terms of the Agreement, DYCD will pay all approved Invoices and each payment period will be calculated and paid for independent of other periods. No payment shall be made for any Unitized Meals that DYCD or its contracted CBOs have rejected in accordance with the terms of the Agreement

### **Section 3.02 Liquidated Damages and Invoice Adjustments.**

- A. Liquidated damages will be assessed in the event Contractor does not deliver Unitized Meals at or before 2:00 p.m. each Program Day ("Non-Delivery").
- B. In the event of Non-Delivery, DYCD and/or its CBOs may purchase replacement meals that exceed the unit prices set forth in Schedule 4 to Appendix A.
- C. The amount of liquidated damages to be assessed against Contractor is the total cost, up to ten times each unit price set forth in Schedule 4 to Appendix A, to DYCD of replacing the Unitized Meals or additional food items Contractor failed to deliver at or before 2:00 p.m.
- D. DYCD and/or its CBOs shall provide a record to Contractor of replacement costs in the event of Non-Delivery. Such replacement costs shall be deducted from payments owed to Contractor, in accordance with Article IV herein.

### **Section 3.03 Record Keeping.**

- A. In addition to and not in limitation of the requirements of Appendix A, Contractor shall maintain records that include, but are not limited to, copies of all Delivery Tickets, Invoices submitted to DYCD for payment and purchase orders. Such records shall be available for inspection by authorized representatives of the USDA and any other appropriate oversight agencies for the Term of the Agreement.
1. For the purpose of establishing that the Unitized Meals provided meet the USDA meal component requirements, Contractor must retain recipes used in meal preparation and upon DYCD's request, make such recipes available to DYCD.



### **Section 3.04 Supervision and Inspection.**

- A.** Contractor shall provide management supervision at all times and shall maintain daily quality-control inspections to check for portion size, appearance and packaging, in addition to the quality of products.
- B.** Without limiting DYCD's general legal rights or remedies, including Article VI of the Agreement, CBO personnel at the Centers may inspect and determine the quality of food delivered and may reject any Unitized Meals that do not comply with the requirements and specifications of this Scope of Work. DYCD and/or its CBOs may demand replacement of or refuse payment for (a) deliveries made later than 2:00 p.m. each Program Day; (b) unauthorized menu changes; (c) incomplete Unitized Meals; and (d) Unitized Meals that do not meet the USDA requirements or are spoiled or unwholesome at the time of delivery or have not been prepared or handled according to New York State or local health codes.
- C.** DYCD shall notify Contractor in writing on a weekly basis as to the number of Unitized Meals rejected and the reason for rejection. If Unitized Meals are rejected due to any of the reasons stated above, DYCD and/or its CBOs may obtain Unitized Meals from other sources. Under such circumstances, Contractor will be responsible for any excess cost, will receive no adjustment if the alternative Unitized Meals are procured at a lesser cost, and may be responsible for liquidated damages pursuant to Article VI of the Agreement.
- D.** The CACFP regulations provide that statistical sampling methods may be used to disallow payment for Unitized Meals that are not in compliance with standards set forth in 7 CFR Part 225. In the event that disallowances are made on the basis of statistical sampling, DYCD will notify Contractor of the number of Unitized Meals disallowed, the reasons for disallowance and the methodology of the statistical sampling procedure employed.
- E.** At any time during the term of this Agreement, without notice to Contractor, DYCD, the State DOH and the USDA or any other agency designated to inspect food service operations and meal quality for the State of New York or City of New York, may periodically inspect Contractor's preparation facilities and may be present at those facilities during preparation and packaging of Unitized Meals. Such inspections will be conducted in accordance with USDA regulations.
- F.** At the direction of the State DOH and for the purpose of testing to determine bacteria levels in the Unitized Meals provided by Contractor, Contractor shall provide the City DOHMH or a designated independent agency with samples of Unitized Meals it prepares. The Unitized Meals prepared by Contractor must contain levels of bacteria that conform to the standards applied by the City DOHMH with respect to the level of bacteria that may be present in Unitized Meals served by establishments in the locality. The results of the inspections must be submitted promptly to DYCD.



- G.** Contractor must comply with all applicable federal, state and local health laws, regulations, and codes.

#### **Section 3.05 Sanitation.**

- A.** Contractor shall comply with all applicable federal, state and local pure food laws and ordinances, as well as all related regulations adopted and promulgated by federal, state and local departments of health and other agencies that have jurisdiction over food service facilities, operations, transportation and disposal.
- B.** Contractor will fully comply with any change in federal, state and/or local laws governing and controlling the food service facilities, operations, transportation and disposal.

#### **Section 3.06 Quality Control Plan.**

- A.** To ensure that health and sanitation requirements are met at all times during the preparation and delivery of the Unitized Meals, Contractor must demonstrate that it will comply with all applicable New York State and New York City health and sanitation requirements during the preparation, storage, packaging and delivery of food. To that end, Contractor must develop and maintain a quality control plan (the "Quality Control Plan(s)"), which shall be incorporated as part of this Agreement as Schedule 5. Contractor may not commence the performance of Services until Contractor has the Quality Control Plan in place.
- B.** The Quality Control Plan must include, but shall not be limited to, the following:
  - 1. A detailed description of Contractor's quality-assurance procedures for meal preparation, packaging and transportation of food;
  - 2. A detailed description of the monitoring methods Contractor will employ to assure that, during meal preparation, assembly and delivery, Contractor personnel will maintain the proper standard of personal hygiene and that Contractor's facilities will comply with all New York State and City health standards; and
  - 3. A detailed description of Contractor's method of monitoring and recording food product temperatures to assure maintenance of safe food temperatures during all phases of handling, production, storage and delivery of Unitized Meals.

**Schedule 1**

**Community Center CACFP Site List**

### CACFP Listing of Sites

Provider	Community Centers	Site Address	Borough	Zip Code
BronxWorks	Betances	465 St. Ann's Ave.	Bronx	10455
MMCC (Mosholu Montefiore Community Center, Inc.)	Boston Secor	3540 Bivona Street	Bronx	10475
CASW (Children's Arts & Science Workshops)	Bronx River	1619 East 174th St.	Bronx	10472
DFOY (Directions For Our Youth)	Butler	1368 Webster Avenue	Bronx	10456
SoBro (South Bronx Overall Economic Development Corp)	Davidson	1221 Prospect Avenue	Bronx	10459
Good Shepherd Services	East 180th Monterey	2100 Monterey Avenue	Bronx	10457
NIDC (Neighborhood Initiatives Development Corporation)	Eastchester Gardens	3016 Yates Ave.	Bronx	10469
MMCC (Mosholu Montefiore Community Center, Inc.)	Edenwald	1150 East 229th St.	Bronx	10466
MMCC (Mosholu Montefiore Community Center, Inc.)	Fort Independence	3350 Bailey Avenue	Bronx	10463
MMCC (Mosholu Montefiore Community Center, Inc.)	Gun Hill	745 Magenta Street	Bronx	10467
Catholic Charities (CCCS)	Highbridge Gardens	1155 University Avenue	Bronx	10452
MMCC (Mosholu Montefiore Community Center, Inc.)	Marble Hill	5365 Broadway	Bronx	10463
BronxWorks	Melrose	286 East 156th Street	Bronx	10451
ACDP (Community Association for Progressive Dominicans)	Murphy	601 Crotona Park North	Bronx	10457
MMCC (Mosholu Montefiore Community Center, Inc.)	Parkside	2972 Bronx Park East	Bronx	10467

### CACFP Listing of Sites

Provider	Community Centers	Site Address	Borough	Zip Code
MMCC (Mosholu Montefiore Community Center, Inc.)	Pelham Parkway	785 Pelham Parkway North	Bronx	10467
BronxWorks	Saint Mary's Park	595 Trinity Avenue	Bronx	10455
ACDP (Community Association for Progressive Dominicans)	Sedgwick	1553 University Avenue	Bronx	10453
Phipps	Sotomayor	1000 Rosedale Avenue	Bronx	10472
Phipps	Soundview	1680 Seward Ave.	Bronx	10473
CAMBA	Albany	164 Troy Avenue	Brooklyn	11213
University Settlement Society of New York, Inc.	Atlantic Terminal	501 Carlton Avenue	Brooklyn	11238
Bergen Basin Community Development Corp.	Bay View	5955 Shore Parkway	Brooklyn	11236
CAMBA	Boulevard	726 Stanley Avenue	Brooklyn	11207
PAL (Police Athletic League, Inc.)	Breukelen	715 East 105 Street	Brooklyn	10029
CAMBA	Brevoort	280 Ralph Avenue	Brooklyn	11233
Grand Street Settlement, Inc.	Bushwick/Hylan	50 Humboldt St.	Brooklyn	11206
BCS (Brooklyn Bureau Community Services)	Carey Gardens	2315 Surf Avenue	Brooklyn	11224
Coalition for Hispanic Family Services	Cooper Park	76 Kingsland Avenue	Brooklyn	11211
CAMBA	Cypress Hills	475 Fountain Ave.	Brooklyn	11208

### CACFP Listing of Sites

Provider	Community Centers	Site Address	Borough	Zip Code
BCS (Brooklyn Bureau Community Services)	Farragut	228 York St.	Brooklyn	11201
FDC (Flatbush Development Corp)	Glenwood	5816 Farragut Road	Brooklyn	11234
Coalition for Hispanic Family Services	Hope Garden	422 Central Avenue	Brooklyn	11221
CAMBA	Howard	90 Watkins Street	Brooklyn	11212
Research Foundation of CUNY	Hughes (Langston Hughes)	301 Sutter Avenue	Brooklyn	11212
El Puente de Williamsburg	Independence Towers	114 Taylor Street	Brooklyn	11211
University Settlement Society of New York, Inc.	Ingersoll	177 Myrtle St.	Brooklyn	11201
FDC (Flatbush Development Corp)	Kingsborough	129 Kings 1st Street Walk	Brooklyn	11233
Grand Street Settlement, Inc.	Lafayette	442 Dekalb Avenue	Brooklyn	11205
Research Foundation of CUNY	Marcus Garvey	20 Amboy Street	Brooklyn	11212
FIAO (Federation of Italian-American Organizations of Brooklyn)	Marlboro	2298 West 8th St.	Brooklyn	11223
BCS (Brooklyn Bureau Community Services)	O'Dwyer Gardens	2945 West 33rd Street	Brooklyn	11224
CAMBA	Penn-Wortman (Pennsylvania Avenue-Wortman Ave)	895 Pennsylvania Avenue	Brooklyn	11207
CAMBA	Pink Houses	2702 Linden Blvd.	Brooklyn	11208

### CACFP Listing of Sites

Provider	Community Centers	Site Address	Borough	Zip Code
Good Shepherd Services	Red Hook East/Miccio	110 West 9th Street	Brooklyn	10011
Grand Street Settlement, Inc.	Roosevelt II	400 Hart Street	Brooklyn	11206
Research Foundation of CUNY	Saratoga Village	940 Hancock Street	Brooklyn	11233
BCS (Brooklyn Bureau Community Services)	Seth Low	137 Belmont Avenue	Brooklyn	11212
CAMBA	Sheepshead Bay	3679 Nostrand Avenue	Brooklyn	11229
CAMBA	Stuyvesant Gardens	214 Stuyvesant Avenue	Brooklyn	11221
St. Nicks Alliance	Sumner	862 Park Ave.	Brooklyn	11206
Heartshare Human Services	*Surfside (Relocated Liberation High School)	2865 W. 19th Street	Brooklyn	11224
El Puente de Williamsburg	Taylor-Wythe	80 Clymer St.	Brooklyn	11211
Research Foundation of CUNY	Tilden	630 Mother Gaston Blvd.	Brooklyn	11212
Grand Street Settlement, Inc.	Tompkins	736 Park Avenue	Brooklyn	11206
Grand Street Settlement, Inc.	Unity Plaza	576 Blake Avenue	Brooklyn	11207
Research Foundation of CUNY	Van Dyke	392 Blake Avenue	Brooklyn	11212
El Puente de Williamsburg	Williams Plaza	321 Roebling Street	Brooklyn	11211
Grand Street Settlement, Inc.	Williamsburg	195 Graham Avenue	Brooklyn	11206

### CACFP Listing of Sites

Provider	Community Centers	Site Address	Borough	Zip Code
Goodwill Industries (Summer Only)	Wyckoff Gardens	280 Wyckoff Street	Brooklyn	11217
Young Men's Christian Association of Greater NY	Borinquen	125 Humboldt Street	Brooklyn	11206
Grand Street Settlement, Inc.	Baruch	605 FDR Drive	Manhattan	10002
University Settlement Society of New York, Inc.	Campos Plaza	611 East 13th Street	Manhattan	10009
SCAN	Clinton	120 East 110th Street	Manhattan	10029
Children's Village	Drew Hamilton	220 West 143rd Street	Manhattan	10030
Catholic Charities (CCCS)	Dyckman	3782 Tenth Avenue	Manhattan	10022
SCAN	East River	404 East 105th Street	Manhattan	10029
MMCC (which Contract?)	Grant	1301 Amsterdam Avenue	Manhattan	10027
Stanley M. Isaacs	Johnson	1833 Lexington Ave. 1829-1839 Lexington	Manhattan	10029
SCAN	Kings Towers	2 West 115th Street	Manhattan	10026
SCAN	Lehman	1589 Madison Avenue	Manhattan	10029
Graham-Windham Services To Families & Children	Manhattanville	530 West 133rd Street	Manhattan	10027
PAL (Police Athletic League, Inc.)	Polo Grounds	2975 Eighth Avenue (mailing)	Manhattan	10039
Henry Street	Riis	80 Avenue D	Manhattan	10009

### CACFP Listing of Sites

Provider	Community Centers	Site Address	Borough	Zip Code
SCAN	Robinson (Jackie Robinson)	110 East 129th Street	Manhattan	10035
Grand Street Settlement, Inc.	Rutgers	200 Madison Street	Manhattan	10002
Grand Street Settlement, Inc.	Seward Park	56 Essex Street	Manhattan	10002
YMCA/Chinatown	Two Bridges	286 South St.	Manhattan	10002
SCAN	Wagner	435 East 120th Street	Manhattan	10035
HANAC (Hellenic American Neighborhood Action Committee)	Astoria	4-05 Astoria Blvd	Queens	11102
CCNY (The Child Center of New York)	Beach 41st	426 Beach 40th Street	Queens	11691
Action Center of Education and Community Development, Inc.	Hammel	81-14 Rockaway Beach Blvd.	Queens	11693
CCNY (The Child Center of New York)	Latimer Gardens	34-30 137th St.	Queens	11354
Action Center for Education and Community Development, Inc.	Ocean Bay	57-10 Beach Channel Drive	Queens	11692
Jacob A. Riis Neighborhood Settlement, Inc.	Ravenswood	35-40 21st St.	Queens	11106
PAL (Police Athletic League, Inc.)	Redfern	1544 Hassock St.	Queens	11691
SQPA (Southern Queens Park Association)	South Jamaica II	109-04 160th St.	Queens	11433
Sunnyside Community Services	Woodside	50-19 Broadway	Queens	11377
Queens Community House Incorporated	Forest Hills	108-25 62nd Drive	Queens	11375



### CACFP Listing of Sites

Provider	Community Centers	Site Address	Borough	Zip Code
Queens Community House Incorporated	Pomonok	67-09 Kissena Boulevard	Queens	11367
United Activities Unlimited. Inc.	Berry	211 Jefferson Street	Staten Island	10306
United Activities Unlimited. Inc.	Mariner's Harbor	157 Brabant Street	Staten Island	10303
JCC (Jewish Community Center of Staten Island, Inc.)	Richmond Terrace	71 Jersey Street	Staten Island	10012
United Activities Unlimited. Inc.	South Beach	155 Norway Avenue	Staten Island	10305
JCC (Jewish Community Center of Staten Island, Inc.)	Todt Hill	255 Westwood Avenue	Staten Island	10314
United Activities Unlimited. Inc.	West Brighton I	230 Broadway	Staten Island	10310
JCC (Jewish Community Center of Staten Island, Inc.)	Carter (Gerard Carter/Stapleton)	230 Broad Street	Staten Island	10304

## **Schedule 2**

**USDA Required Meal Patterns and Food Specifications**

## HEALTHY CHILD MEAL PATTERN

		REQUIRED MINIMUM QUANTITIES			
		AGES 1 AND 2	AGES 3-5	AGES 6-12	
FOOD COMPONENTS		FOOD ITEMS			
BREAKFAST	Milk	Fat-free <sup>1</sup> or Low-fat (1%)	1/2 cup	3/4 cup	1 cup
	Vegetables/Fruits	Vegetable or Fruit or 100% Juice <sup>2</sup>	1/4 cup	1/2 cup	1/2 cup
	Grains/Breads	Bread <i>or</i> Cornbread, Biscuit or Roll <i>or</i> Dry Cereal <i>or</i> Cooked Cereal	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup 1/4 cup	1 slice 1 serving 3/4 cup 1/2 cup
	Milk	Fat-free <sup>1</sup> or Low-fat (1%)	1/2 cup	1/2 cup	1 cup
	Vegetables/Fruits	Vegetable or Fruit or 100% Juice <sup>2</sup>	1/2 cup	1/2 cup	3/4 cup
SNACK	Grains/Breads (see lists above and below)	1/2 serving	1/2 serving	1 serving	
	Meat/Meat Alternates (see list below)	Lean Meat, Poultry or Fish <i>or</i> Peanut Butter <i>or</i> Peanuts, Nuts or Seeds <i>or</i> Fat-free or Low-fat Yogurt	1/2 oz. 1 Tbsp. 1/2 oz. 1/4 cup	1/2 oz. 1 Tbsp. 1/2 oz. 1/4 cup	1 oz. 2 Tbsp. 1 oz. 1/2 cup
	Milk	Fat-free <sup>1</sup> or Low-fat (1%)	1/2 cup	1/2 cup	1 cup
	Vegetables/Fruits	Two Vegetables and/or Fruit <sup>3</sup>	1/4 cup total	1/2 cup total	3/4 cup total
	Grains/Breads (see list above)	Bread <i>or</i> Cooked Pasta, Noodles or Grains <i>or</i> 6" Tortilla	1/2 slice 1/4 cup 1/2 tortilla	1/2 slice 1/4 cup 1/2 tortilla	1 slice 1/2 cup 1 tortilla
	Meat/Meat Alternates	Lean Meat, Poultry or Fish <i>or</i> Cottage Cheese <i>or</i> Cheese <i>or</i> Egg <i>or</i> Cooked Dry Beans, Peas or Lentils <i>or</i> Peanut Butter <i>or</i> Peanuts, Nuts or Seeds <i>or</i> Fat-free or Low-fat Yogurt	1 oz. 1/4 cup 1 oz. 1/2 large 1/4 cup 2 Tbsp. 1/2 oz.=50% 1/2 cup	1 1/2 oz. 3/8 cup 1 1/2 oz. 3/4 large 3/8 cup 3 Tbsp. 3/4 oz.=50% 3/4 cup	2 oz. 1/2 cup 2 oz. 1 large 1/2 cup 4 Tbsp. 1 oz.=50% 1 cup
	All 5 components must be served				
	LUNCH OR SUPPER				

<sup>1</sup>Whole milk is required for children up to 2 years of age. Unflavored milk is required for children younger than 6 years old and recommended for children six and older.

<sup>2</sup>No more than one serving of juice may be served per day.

<sup>3</sup>CACFP recommends serving two vegetables or one vegetable and one fruit.

Refer to the *Crediting Foods in CACFP* for information about specific meal components.

This institution is an equal opportunity provider.

**Schedule 3**

New York City Food Standards

# MEALS/SNACKS PURCHASED AND SERVED

*This document outlines standards for food purchased and meals and snacks served, with the goal of improving the health of all New Yorkers served by City agencies and their contractors. The New York City Food Standards ("Standards") aim to reduce the prevalence of chronic disease, such as obesity, diabetes, and cardiovascular disease, by increasing access to healthy foods and improving dietary intake.*

Agencies and their contractors are required to follow the standards described in each of the four sections:

## Section I. Standards for Purchased Food

- Addresses food items purchased and provides specific standards by food category.

## Section II. Standards for Meals and Snacks Served

- Addresses the overall nutrient requirements for meals and provides standards for snacks and special occasions.

## Section III. Agency and Population-Specific Standards and Exceptions

- Addresses standards for specific populations (e.g. children) and agencies. The additions and exceptions in this section supersede the first two sections. For example, children under 2 years may be served whole milk, instead of 1% or non-fat milk required in Section I.

## Section IV. Sustainability Recommendations

- Addresses recommendations to support a healthy and ecologically sustainable food system.

The first two sections overlap: all purchased food items must meet the standards in Section I and be incorporated into meals or snacks that meet the nutrient requirements in Section II. The Standards for Purchased Food ensure that people who only eat a few items of each meal still consume healthy options. The Standards for Meals and Snacks Served ensure that people eating whole meals and snacks have a healthy, balanced diet.

The Standards were developed based on agency feedback, review, and agreement. All food purchased and served by a City agency must meet the **required** standards that appear in bold. Agencies are expected to be in compliance with the revised Standards by December 31, 2015. Agency contractors are also required to comply with these Standards. This includes foodservice contractors, such as caterers, and programmatic contractors that serve food within the context of the program. These Standards do not apply to concessions that provide food for sale through leases, licenses, or contracts at City programs.

The New York City Food Standards were made effective by Executive Order 122 on September 19, 2008,<sup>1</sup> and revised in October 2014. The Executive Order mandates that all City agencies follow the Standards for all foods that are purchased, prepared, and/or served by the agency and/or agency contractors, as well as the New York City Standards for Food Vending Machines and the New York City Standards for Beverage Vending Machines.<sup>2</sup>

For more information, please contact: [nycfoodstandards@health.nyc.gov](mailto:nycfoodstandards@health.nyc.gov)

<sup>1</sup> View the Executive Order at: [www.nyc.gov/html/ceo/downloads/pdf/eo\\_122.pdf](http://www.nyc.gov/html/ceo/downloads/pdf/eo_122.pdf)

<sup>2</sup> View the New York City Standards for Food Vending Machines and New York City Standards for Beverage Vending Machines at: <http://www.nyc.gov/html/doh/downloads/pdf/cardio/cardio-vending-machines-standards.pdf> and <http://www.nyc.gov/html/doh/downloads/pdf/cardio/cardio-vending-machines-bev-standards.pdf>

## Section I. Standards for Purchased Food

*These standards are defined per serving of food as shown on a product's Nutrition Facts label unless otherwise specified.<sup>3</sup>*

### A. Nutrient Requirements

*The following applies to all purchased food:*

#### Trans fat

- Require all items labeled contain 0 g trans fat.<sup>4</sup>

#### Sodium

- Require all individual items contain  $\leq 480$  mg sodium per serving, unless a lower standard is specified in the Food Category Requirements below.
- Recommend items be "low sodium" ( $\leq 140$  mg sodium per serving).

### B. Food Category Requirements

*The following applies to specific categories of purchased foods:*

#### Beverages

- Require all beverages contain  $\leq 25$  calories per 8 oz, with the exception of 100% fruit juice or milk.
- Require fruit juice be 100% fruit juice.
- Require milk be 1% or non-fat, and unsweetened.
- Require fluid milk substitutes (e.g. soymilk) be unflavored.

#### Dairy

- Require yogurt be low-fat or non-fat.
- Require yogurt be plain or contain  $\leq 30$  g sugar per 8 oz or equivalent (e.g.  $\leq 15$  g sugar per 4 oz,  $\leq 23$  g sugar per 6 oz).
- Recommend lower sodium cheese (e.g. Swiss).

#### Bread and other grains

- Require sliced sandwich bread:
  - contain  $\leq 180$  mg sodium per serving, and
  - be whole wheat/whole grain, and
  - contain  $\geq 2$  g fiber per serving.
- Require other baked goods (e.g. dinner rolls, muffins, bagels, tortillas) contain  $\leq 290$  mg sodium per serving.
- Recommend all grains be whole grain (e.g. brown rice, whole grain pasta, dinner rolls, muffins, bagels, and tortillas).

<sup>3</sup> Serving size is based on FDA-established lists of "Reference Amounts Customarily Consumed Per Eating Occasion."

<sup>4</sup> Restriction is consistent with NYC law. For more information: [www.nyc.gov/html/doh/downloads/pdf/public/notice-adoption-hc-art81-08.pdf](http://www.nyc.gov/html/doh/downloads/pdf/public/notice-adoption-hc-art81-08.pdf)

## **Cereal**

- **Require** cereal:
  - contain  $\leq 215$  mg sodium per serving, and
  - contain  $\leq 10$  g sugar per serving,<sup>5</sup> and
  - contain  $\geq 2$  g fiber per serving.

## **Fruits and vegetables**

- **Require** canned/frozen vegetables and beans contain  $\leq 290$  mg sodium per serving.
- **Require** canned fruit be in unsweetened juice or water. Do not purchase fruit canned in syrup.

## **Tuna, salmon and other seafood**

- **Require** canned/frozen seafood contain  $\leq 290$  mg sodium per serving.

## **Poultry**

- **Require** canned/frozen poultry contain  $\leq 290$  mg sodium per serving.

## **Beef and pork**

- **Require** canned beef or pork contain  $\leq 480$  mg sodium per serving.
- Recommend beef and pork be extra lean (total fat  $\leq 5\%$ ) and  $\geq 90\%$  lean, if ground.
- Recommend bacon contain  $\leq 290$  mg sodium per serving.

## **Luncheon meat**

- **Require** luncheon meat contain  $\leq 480$  mg sodium per serving.

## **Condiments and sauces**

- **Require** salad dressings contain  $\leq 290$  mg sodium per serving.
- **Require** sauces contain  $\leq 480$  mg sodium per serving.<sup>6</sup>
- Recommend lower sodium condiments and sauces (e.g. reduced sodium soy sauce).

## **Portion controlled items and other convenience foods**

- **Require** portion controlled items and other convenience foods (e.g. breaded chicken, veal patties, and frozen French toast and waffles) contain  $\leq 480$  mg sodium per serving.

## **Frozen whole meals**

- **Require** frozen whole meals contain  $\leq 35\%$  of the daily sodium limit (adults and seniors:  $\leq 805$  mg, children 6-18 years:  $\leq 770$  mg).

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<sup>5</sup> Cereals that contain dried cranberries, dates, and/or raisins are exempt from the sugar standard due to the limited availability of this product type that meets the sugar standard. Cereals must still meet fiber and sodium standards. Recommend phasing out these high sugar cereals over time.

<sup>6</sup> Soy sauce is exempt due to lack of market availability for products that meet this standard. Recommend reduced sodium soy sauce.

## Section II. Standards for Meals and Snacks Served

*This section applies to all meals and snacks that are served.<sup>7</sup> All City agencies must have a plan for regular menu review to ensure that they meet the standards in Parts B and C.*

### A. Food Preparation and Service

- Require no use of deep fryers; no deep frying.
- Require all new or renovated kitchens be built without deep fryers.
- Recommend, to help ensure reasonable portion sizes, programs establish size standards for food containers (e.g. smaller food plates or beverage cups).

### B. Meals Served

#### I. Nutrient Requirements

**For sites serving 3 meals per day:**

- Require 3 meals combined meet the following daily standards:<sup>8,9</sup>

Calories*	2,000 calories
Sodium	< 2,300 mg
Total Fat	≤ 35% of total calories
Saturated Fat	< 10% of total calories
Fiber	≥ 28 grams

\* **Require** daily calories are no more than 10% above or below the standard

**For sites serving only one or two meals per day:**

- Require each meal served meets appropriate range of calories, sodium and fiber:
  - 25-30% for breakfast
  - 30-35% for lunch
  - 30-35% for dinner
- Require each meal served meet the percentages for Total Fat and Saturated Fat stated in the chart above.

#### Exemption

A contracted agency program may apply for exemption from the above Nutrient Requirements if it meets ALL of the following requirements:

- Meals are prepared on site or by another similar program (e.g. a daycare center that prepares food for another facility); and
- Program does not have access to a City agency-employed nutritionist for regular menu review; and
- Program regularly serves fewer than 200 people per meal; and
- Program is not part of a larger contract for food purchasing coordinated by a City agency.

<sup>7</sup> See page 8 for children's standards and other population-specific exceptions.

<sup>8</sup> Standards are based on USDA's 2010 Dietary Guidelines for Americans.

Available at: [www.cnpp.usda.gov/DGAs2010-PolicyDocument.htm](http://www.cnpp.usda.gov/DGAs2010-PolicyDocument.htm)

<sup>9</sup> Recommend the following daily nutrient standards: Protein 10-35% of total calories, Carbohydrate 45-65% of total calories, Cholesterol\* < 300 mg, Potassium 4,700 mg, Calcium 1,000 mg, Iron > 8 mg (18 mg F; 8 mg M) \* Daily limit, regardless of total calorie intake.



Exempt programs should strive to meet these Nutrient Requirements through thoughtful menu planning. Should exemption be granted, programs must still comply with ALL other requirements of the NYC Food Standards.

## II. Meal Requirements

*The following applies to specific categories of foods for agencies serving meals to adults and children.*

### Fruits and vegetables

- Require**, for sites serving lunch and dinner, a minimum of 2 servings of fruits and vegetables per meal be served.
- Require**, for sites serving breakfast, lunch, and dinner, a minimum of 5 servings of fruits and vegetables per day be served.
- Require**, for sites serving meals 5 days per week or less,  $\geq 3$  servings of non-starchy vegetables weekly per lunch and per dinner be served.<sup>10,11</sup>
- Require**, for sites serving meals 6 or 7 days per week,  $\geq 5$  servings of non-starchy vegetables weekly per lunch and per dinner be served.<sup>11</sup>
- Recommend fresh or frozen fruits and vegetables be served instead of canned.

### Beverages

- Require**, for sites serving adults, beverages contain  $\leq 25$  calories per 8 oz, with the exception of 100% juice or milk.
- Require** water be available at all meals (this can be in addition to or in place of other beverages regularly served). Recommend tap water.
- Require** fruit juice be 100% fruit juice and be limited to portion sizes of  $\leq 6$  oz.
- Require**, if providing meals, 100% fruit juice be served no more than once per day.

## C. Snack Standards

*Snacks should add important nutrients to the overall diet and help curb hunger.*

The following standards apply to sites serving snacks to adults and children. These snack standards are in compliance with the snack pattern requirements of the USDA's Child & Adult Care Food Program (CACFP) and are eligible for reimbursement, with the exception of low-calorie beverage choices for sites serving adults.

### I. Overall Requirements

- Require** all items contain 0 g trans fat.
- Require**, for sites serving adults, beverages contain  $\leq 25$  calories per 8 oz, with the exception of 100% juice or milk.
- Require** water be available at all snack times.
- Recommend foods served be on the list of acceptable choices below or provide equivalent nutrient value (e.g. melon slices can be substituted for a banana for the fruit category).

<sup>10</sup> Standard does not apply to programs serving one or two meals per week.

<sup>11</sup> Starchy vegetables include white potatoes, corn, green peas, and lima beans. Examples of non-starchy vegetables include lettuce, asparagus, broccoli, cucumber, spinach, mushrooms, peppers and tomatoes.

## II. Food Category Requirements

### Fruits and vegetables

- Require** fruit juice be 100% fruit juice and limited to ≤ 6 oz.
- Require**, for sites serving snacks but not meals, juice be served no more than twice per week.
- Examples of acceptable choices: carrot sticks, celery sticks, pepper slices, salads, apples, bananas, pears, oranges, dried fruit, unsweetened applesauce, and canned fruit in unsweetened juice or water.

### Breads and other grains

- Require** sliced sandwich bread contain ≤ 180 mg sodium per serving.
- Require** crackers and salty snacks contain ≤ 200 mg sodium per serving.
- Require** all breads and grains contain ≤ 10 g sugar per serving.
- Require** all breads and grains contain ≥ 2 g fiber per serving.
- Recommend all items served be whole grain.
- Examples of acceptable choices: whole wheat pita triangles, whole grain cereal, whole grain crackers, whole grain bread, popcorn.
- Examples of inappropriate items: doughnuts, pastries, croissants, cake.

### Protein<sup>12</sup>

- Recommend lean, low-sodium protein choices.
- Examples of acceptable choices: hummus, bean dip, cottage cheese, low-fat cheese, hard boiled eggs, low-fat or non-fat yogurt, low-sodium tuna, nuts, nut butters, sunflower seeds, low-sodium turkey slices.

#### Examples of acceptable snack choices, all served with water:

- Peanut butter, whole grain crackers, and apple slices
- A peach and whole grain crackers
- Half of a tuna sandwich on whole wheat bread with lettuce and tomato
- Turkey served with whole wheat pita triangles and carrot sticks
- Milk and whole grain cereal, with fresh berries
- Low-fat yogurt topped with blueberries and granola
- Hummus with whole grain pita and sliced red peppers

## D. Special Occasion Standards for Meals and Snacks

*Special occasion standards apply to trips, parties for major holidays and special events. This also includes food purchased from vendors not routinely used by the agency for normal food service.*

- Require** healthy options be served, such as fresh fruit, leafy green salad, and/or vegetable slices.
- Require** water be served at all special occasions.
- Recommend adopting a policy for special occasion meals and snacks.
- Recommend special occasion meals and snacks be limited (for example, once a month).
- Recommend, if serving sweets/desserts, offer in moderation and in small portions (for example, one small cookie per person).
- Recommend adherence to beverage standards described in Section IB on page 2.
- Recommend eliminating all foods that meet the USDA definition of Foods of Minimal Nutritional Value (FMNV).<sup>13</sup> Examples of FMNV include chewing gum, candy and water ices.

<sup>12</sup> For CACFP programs, this category is referred to as 'meat or meat alternative.'

<sup>13</sup> Definition available at:  
[http://www.ecfr.gov/cgi-bin/text-idx?SID=d5ebbbcadfbd26c84a7c9b14ff28ab06&node=ap7.4.210\\_132.b&rgn=div9](http://www.ecfr.gov/cgi-bin/text-idx?SID=d5ebbbcadfbd26c84a7c9b14ff28ab06&node=ap7.4.210_132.b&rgn=div9)

## Section III. Agency and Population-Specific Standards and Exceptions

### A. Children

*Children have different nutritional needs than adults. This section provides specific nutrition standards and exceptions that apply to agencies that serve children up to and including age 18 years old.*

#### I. Requirements for Purchased Foods

Agencies purchasing food for children (up to and including age 18 years old) are required to follow the standards listed in Section I unless stated otherwise below:

##### All beverages

- Require**, for sites serving a majority of children under 18 years old, beverages contain no artificial or non-nutritive sweeteners.
- Require**, for child care facilities regulated by Article 47 of the New York City Health Code, 100% fruit juice may not be served to children under 2 years of age.
- Require**, for child care facilities regulated by Article 47 of the New York City Health Code, fruit juice be 100% fruit juice and limited to  $\leq 4$  oz per serving.

##### Milk and milk substitutes

- Require**, for child care facilities regulated by Article 47 of the New York City Health Code, milk not contain added sweeteners.
- Require**, for children aged 12 months to under 2 years old, milk be whole and unsweetened.
- Require**, for children aged 2 years and older, milk be 1% or non-fat, and unsweetened (unless milk with a higher fat content is medically required, as documented by a child's medical provider).
- Require**, for children aged 4-18 years old, flavored milk or flavored fluid milk substitutes be  $\leq 130$  calories per serving.
- Recommend that agencies set timeline for phasing out flavored milk and flavored fluid milk substitutes.

#### II. Nutrient Requirements for Meals and Snacks Served<sup>14</sup>

##### Overall Requirements

- Recommend**, for agencies serving a majority of participants up to and including age 18 years old, follow the Institute of Medicine, Food and Nutrition Board's Dietary Reference Intakes for appropriate age groups.<sup>15</sup>

##### Sodium

- Require**, for sites serving a majority of children aged 1-5 years old, sodium be limited to  $\leq 1,700$  mg per day: breakfast:  $\leq 510$  mg; lunch:  $\leq 595$  mg; and dinner:  $\leq 595$  mg.
- Require**, for sites serving a majority of children aged 6-18 years old, sodium be limited to  $\leq 2,200$  mg per day: breakfast:  $\leq 660$  mg; lunch:  $\leq 770$  mg; and dinner:  $\leq 770$  mg.

##### Fiber

- Require**, for sites serving a majority of children aged 1-4 years old,  $\geq 19$  g of fiber per day.
- Require**, for sites serving a majority of children aged 5-18 years old,  $\geq 25$  g of fiber per day.

<sup>14</sup> Please see page 4 for programs that are exempt from this standard.

<sup>15</sup> Institute of Medicine, Food and Nutrition Board's Dietary Reference Intakes (DRI) available at: <http://iom.edu/Reports/2006/Dietary-Reference-Intakes-Essential-Guide-Nutrient-Requirements.aspx>

## Sugar

**Require**, for child care agencies, cereal contain  $\leq 6$  g sugar per serving.

## Calories

Participants of the National School Breakfast and School Lunch Programs may adhere to the calorie requirements provided by this program.

### B. Correctional Population

Agencies serving the correctional population have a majority of young, moderately active women and men who may require a higher than average caloric intake. **Require**  $\leq 2,200$  calories per day for women and  $\leq 2,800$  calories per day for men.

### C. Youth Detention Facilities

Agencies serving the youth detention population have a majority of young, moderately active males who may require a higher than average caloric intake. **Require**  $\leq 2,500$  calories per day for males.

### D. Child Care Services Providers

Home-based child care providers are not required to comply with these Standards.

### E. Patients Under Therapeutic Care

Nutrition requirements consistent with established medical guidelines and diets for patients under therapeutic care replace general nutrition criteria described here. The Patient Bill of Rights allows patients under therapeutic care to request specific food items. These items are considered part of the therapeutic diet and do not need to meet the nutrition criteria.

### F. Populations with Religious or Special Dietary Food Needs

If an agency cannot meet the required purchased food standards in Section I due to a lack of availability of food items that meet specific needs of the population it serves (e.g. packaged kosher foods), the agency is expected to seek suitable replacements in the marketplace as quickly as is feasible. The agency must identify and report these products to the Food Policy Director and the Health Commissioner.

### G. Emergency Food

Agencies that purchase food to be distributed by a third party to emergency food providers, such as soup kitchens and food pantries, are **required** to follow the standards outlined in Section I. This does not include food purchased for the intention of a disaster response outlined in *Exceptions*.

### H. Federal Commodity Food Program

Food provided by the federal government to agencies or agency programs is not required to meet the standards outlined in Section I. However, agencies/programs accepting these foods are **required** to meet the standards outlined in Section II. Agencies/programs are expected to provide documentation upon request to verify which products were obtained through the commodity food program.

### I. Donated Foods

Foods that are donated or provided at no cost to a program are not required to meet the standards outlined in Section I. However, agencies accepting these foods are **required** to meet the nutrition standards outlined in Section II. Programs are not permitted to accept donations of candy or sugar-sweetened beverages for use in meal or snack service.

## J. Foods for Disaster Response

Food purchased by agencies to serve solely for a disaster or crisis response are not restricted by these Standards, recognizing that foods stocked for such purposes intentionally include nutrient-dense products.

## Section IV. Sustainability Recommendations

The Standards for Meals/Snacks Purchased and Served focus on promoting a healthy eating pattern as part of a city-wide strategy to reduce the prevalence of chronic disease, such as obesity, diabetes, and heart disease, and reduce related health disparities among New Yorkers. New York City also recognizes the importance of promoting an economically and environmentally sustainable<sup>16</sup> food system that supports local and regional economies and conserves natural resources, in alignment with long term public health goals.

Agencies are encouraged to consider, when practical and cost effective, procurement practices that prioritize local and regional food producers and manufacturers, and support reductions to the overall environmental impact of the food system.

While New York City does not endorse any single criteria for sustainability, a number of characteristics are associated with products that support the conservation of natural resources that are needed to sustain the food supply over the long term. For example, preferred products may include: (I) fruits and vegetables that are local, seasonal, or are grown by producers using low or no pesticides or an integrated pest management system, (II) dairy products that are local, or (III) seafood that is sustainably raised or harvested.<sup>17</sup>

Agencies are also encouraged to request that their vendors offer fruit, vegetables, dairy products and seafood that is locally and/or regionally grown or produced, as well as food products that are manufactured locally. Agencies are also encouraged to educate their customers about these local and/or sustainably produced foods through labeling or other mechanisms.

These suggestions will continue to be evaluated and updated based on the latest scientific research on nutrition, the relationship between human health and food production methods, the impact of New York City on the food economy, and the sustainability of the food system.

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<sup>16</sup> The federal statutory definition of sustainable agriculture (7 USC 3103) is a guide to the elements to look for in a sustainability program. New York City does not endorse any particular labeling or documentation system or program over another, and recognizes that many agricultural producers practice sustainable agriculture without their products being labeled as such.

<sup>17</sup> For example, seafood that is identified as a “best choice” or “good alternative” on the Monterey Bay Aquarium Seafood Watch list, or similarly certified by other equivalent program.

**Schedule 4**

**Contractor Unit Price Schedule**

# UNIT PRICE TABLE

Vendor Name \_\_\_\_\_

Borough: \_\_\_\_\_

Citywide \_\_\_\_\_

MEAL TYPE	ESTIMATED SERVINGS/DAY	ESTIMATED NUMBER OF SERVING DAYS/YEAR	UNIT PRICE (PER MEAL TYPE)	TOTAL PRICE (Estimated Servings per year) (PER MEAL TYPE)
BREAKFAST	4500	40	\$ _____	\$ _____
LUNCH	4500	40	\$ _____	\$ _____
SNACK	4500	210	\$ _____	\$ _____
SUPPER	5800	210	\$ _____	\$ _____
GRAND TOTAL				\$ _____

Notice to bidders: Complete Column D- Unit Price & Column E- Total Price. Column E must be completed by multiplying Columns B-Estimated Servings/Day and D- Estimated Number of Serving Days/Year. Bidders are asked to submit prices on the meal types indicated in compliance with all terms of the contract and schedules here to, include the estimates described in Schedule A. Pricing shall be on same menu cycle, provided by the SO, submit bids on as set forth in Schedule C and meal requirement set forth in schedule B. All bidders must the same menu cycle provided by SO. Bid price must include price of food, milk (if applicable) according to the quality specifications set forth in Schedule D, packaging and transporting requirements as set forth in the IFB, cost of holding food at proper temperature or reheating and all related costs. Bids shall be submitted on an "all or none" basis.

**Schedule 5**

**Contractor Quality Control Plan**

**\*To be provided by vendor**



**Schedule 6**

**DYCD Sample Invoice & Memorandum**





Bill Chong  
Commissioner

2 Lafayette Street, 19<sup>th</sup> Floor  
New York, NY 10007

646 343 6800 tel

[www.nyc.gov/dycd](http://www.nyc.gov/dycd)

## MEMORANDUM

TO: MARIA RUBIO

FROM:

DATE:

RE: INVOICE—20XX-20XX CHILD CARE AND ADULT CARE FOOD  
PROGRAM

Attached are/is certified invoice(s) from \_\_\_\_\_ for services  
rendered on \_\_\_\_\_. Please do the necessary to  
process the invoice(s) as soon as possible.

INVOICE NUMBER	INVOICE \$AMOUNT

**Exhibit 2**  
**Fiscal Manual**



# **Department of Youth & Community Development**

**123 WILLIAM STREET, 18<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10038**

## **Fiscal Manual**

**BILL DE BLASIO  
MAYOR**

**BILL CHONG  
COMMISSIONER**

**ALAN CHENG  
CHIEF FINANCIAL OFFICER  
BUREAU OF BUDGET AND FINANCE**

**CAFD Help Desk  
646-343-6960  
or  
[CAFDHELP@DYCD.NYC.GOV](mailto:CAFDHELP@DYCD.NYC.GOV)**

**REVISED: 7/1/15**

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## **Index**

### **Appendix of Forms:**

The latest version of the forms and documents listed below are available on the DYCD website at:

<http://www.nyc.gov/html/dycd/html/resources/cbo.shtml>

1. Audit Cost Allocation Form
2. Budget Modification Form
3. Certificate Of Liability Insurance NYCHA/DOE Sample
4. Certificate of Liability Insurance Sample
5. Certification by Broker
6. Consultant Agreement
7. Consultant Agreement Modification Form
8. EFT Enrollment Form (Direct Deposit)
9. Petty Cash Voucher
10. Request for Budget Modification
11. Space Rental Cost Allocation Form
12. Subcontract Agreement
13. Subcontract Agreement For Fiscal Conduit
14. Subcontract Agreement Modification Form
15. Subcontractor Approval Form
16. Title Codes

### **Frequently Used Acronyms:**

**ACCO:** Agency Chief Contracting Officer  
**CAFD:** Contract Agency Finance Department  
**CIP:** Central Insurance Program  
**DYCD:** Department of Youth and Community Development  
**EFT:** Electronic Fund Transfer/Direct Deposit  
**EIN #:** Federal Employer Identification Number  
**FMS:** Financial Management System  
**PERS:** Program Expense Report Summary  
**PS:** Personnel Services  
**OTPS:** Other Than Personnel Services  
**SUI:** State Unemployment Insurance

## **Introduction and Overview**

The Bureau of Budget and Finance (BBF) is responsible for monitoring the fiscal compliance of DYCD's human services contracts. Depending upon the funding stream, there are different regulations which govern the administration and expenditure of program funds. To provide guidance to organizations, DYCD has developed the General, Workforce Investment Act ("WIA") and Fiscal Agent Manuals. All three manuals may be viewed on DYCD's website under the Resources for Providers tab, or at:

[http://www.nyc.gov/html/dycd/html/resources/provider\\_budgets.shtml](http://www.nyc.gov/html/dycd/html/resources/provider_budgets.shtml)

The requirements outlined in this Fiscal Manual must be adhered to by all Community Based Organizations ("Providers") funded by DYCD, including those receiving discretionary awards.

### **Bureau of Budget and Finance Overview**

BBF has four units that interact with Providers. Below is a description of each unit and its functions.

#### **Budget Review Unit:**

The Budget Review Unit is responsible for ensuring that budgets and budget modifications submitted by the funded Providers are in compliance with the City of New York and DYCD rules and regulations regarding budgetary requirements and fiscal accountability. The Budget Review Unit is responsible for the final approval of all budgets and budget modifications.

Budgets and Budget Modifications must first be submitted to the assigned Program or Contract Manager. Once approved, budget and budget modifications will be forwarded to Budget Review for final approval.

#### **Risk Management Unit:**

The Risk Management Unit coordinates New York City's Central Insurance Program (CIP) for Providers that do not have their own general liability insurance. This program includes specific insurance (General Liability, Worker's Compensation and Disability) that pertains to DYCD funded activities.

This Unit is also responsible for collecting and maintaining the general liability insurance certificate of each provider not participating in CIP to ensure compliance with the contract terms.

#### **Program Expense Report Summary (PERS) Payment Unit:**

The Contract Agency Finance Division (CAFD) PERS Payment Unit is responsible for receiving financial reports, analyzing data, issuing payments, and providing assistance and training for the preparation of financial reports. A Fiscal Analyst is assigned to each contract and is responsible for the fiscal management of the contract. The Fiscal Analyst serves as the organization's contact person for payment inquiries.



The cash flow process begins after the registration of the contract with the Comptroller's Office. When the contract is registered, the PERS Payment Unit automatically issues a two month advance. The Program Expense Report Summary (PERS) is the financial tool used to reimburse Providers for contract expenses. The two month advance will be recovered against PERS submitted in the last quarter of the fiscal year.

**NOTE:**

The NYC Department of Finance mandates that all Providers participate in the Electronic Fund Transfer (E.F.T. - Direct Deposit) Program. Payments are deposited directly into the organization's designated bank account. Enrollment forms should be faxed to the NYC Department of Finance at (212) 361-7058.

The PERS Payment Unit offers workshops for Providers in preparing the PERS and understanding DYCD's requirements for reimbursement. You may register by calling the CAFD Helpdesk at 646-343-6960 or sending an email to [CAFDhelp@dycd.nyc.gov](mailto:CAFDhelp@dycd.nyc.gov).

DYCD also contracts with organizations that provide technical assistance services to our funded programs. The assistance provided includes, but is not limited to: accounting, budget development, setting up general ledgers, financial books and records, bank reconciliations, and payroll processing. Organizations interested in receiving these services must contact the assigned Program or Contract Manager, who will make the referral to a technical assistance program.

**Contract Agency Audit Unit:**

The Contract Agency Audit Unit is responsible for conducting Fiscal Field Reviews (FFRs) of funded programs as well as evaluating related audits and reviews performed by independent Certified Public Accountants. This unit also issues Corrective Action Plans, often in conjunction with program staff. Contract Agency Audit Unit staff also provide technical assistance to Providers.

## **SECTION ONE**

# **THE BUDGET**

## **BUDGET OVERVIEW**

After a contract is awarded, a budget is prepared based on the proposed services, funding availability, and contract term. Budgets generally include an allocation for Staff, Non-Staff Services, and Other Than Personnel Services (OTPS).

Below are the categories used by DYCD and the relevant Budget Codes within each category:

### **Personnel Services Categories:**

- 1100 Salaries and Wages
- 1200 Fringe Benefits
- 1300 Central Insurance Program (CIP)

### **Non-Staff Services Categories:**

- 2100 Consultants
- 2200 Subcontractors
- 2300 Stipends
- 2400 Vendors
- 2500 Fiscal Conduit

### **Other Than Personnel Services Categories:**

- 3100 Consumable Supplies
- 3200 Equipment Purchases
- 3300 Equipment Other
- 3400 Space Cost
- 3500 Travel
- 3600 Utilities and Telephone
- 3700 Other Operational Costs
- 3800 Van Maintenance (for DYCD issued vehicles only)
- 3900 Fiscal Agent Services

Completed budgets are submitted to the assigned Program Manager. The budget will be reviewed by program and fiscal staff within DYCD. A final budget, agreed to by DYCD and the organization, is included in the Provider's contract.

## COMPLETING THE DYCD BUDGET

The DYCD Budget Form is an Excel Spreadsheet which uses a series of individual worksheets (see tabs entitled Salary, Fringe, Non-Staff Services and OTPS). The first page (the Budget Summary) will automatically be completed as these worksheets are prepared. Most of the information requested is self-explanatory. Below is some information you should keep in mind as you complete the DYCD budget.

### **General Information**

- A. DYCD ID #, Budget Code #, and Amendment #: This information will be provided to you by DYCD.
- B. State Unemployment Insurance Number: This number appears on all correspondence relating to SUI, and may be obtained by calling the New York State Department of Labor at 1-888-899-8810.
- C. Operating Period: The term of the contract, (start date to end date) may overlap Fiscal Years. The City's Fiscal Year runs from July 1 to June 30. In multi-year contracts or contracts spanning more than one City Fiscal Year, a separate budget must be submitted for each Fiscal Year, indicating the portion of the award spent in each year.
- D. In-Kind Contributions: DYCD recognizes that in some cases the funding received from DYCD does not represent the full amount needed to operate a program. Providers often provide additional funding; in some cases, additional funding is a requirement of the RFP. The dollar value of existing resources from other funders that are allocated to this contract should be reflected as In-Kind Contributions. The equivalent monetary value of volunteer service should be added to the In-Kind Contributions category.
- E. Total provider Budget (all sources): This entry should reflect the total operating budget of the provider, from all sources.
- F. Total DYCD Budget: This column reflects the total amount of DYCD funding allocated to each budget category. This column reflects the sum of the Program Administered and the Centrally Administered columns, described below.
- G. Program Administered: The portion of the budget that will be managed by the provider.
- H. Centrally Administered: Specific items covered and paid by DYCD. **These are non-reimbursable costs, and Providers will not have access to these funds.** These costs include Fiscal Agent Service fees, Van Maintenance, and the Central Insurance Program (CIP). No other items may be included in this column.

**PERSONNEL SERVICES (PS)** refers to programmatic expenses for Salaries and Fringe Benefits. Please keep in mind the following information as you complete the DYCD budget:

- An employee paid with DYCD funds must perform work related to the DYCD contract, directly or indirectly.

For DYCD contracts, a full-time employee is defined as one who works 35 hours or more per week, is paid on a salary or hourly basis and retains a full-time position with the organization. A full-time employee shall not be claimed as a part-time employee because her hours are shared between contracts. For example, if the employee is full-time and is scheduled to work one-fifth of her time on a DYCD contract, she is still considered a full-time employee for DYCD contract and PERS claiming purposes.

A part-time employee is generally defined as an employee who is scheduled to work less than 35 hours per week and/or is paid on an hourly or seasonal basis, and retains a part-time employment status with the organization. A part-time employee shall not be claimed as full-time, simply because he/she only works on a DYCD contract.

The PERS must reflect the correct employment status of each employee as defined above.

- New York State's minimum wage will increase in a series of three annual changes as follows:

Effective Dates	Hourly Rate
December 31, 2013	\$8.00 per hour
December 31, 2014	\$8.75 per hour
December 31, 2015	\$9.00 per hour

- DYCD has developed titles appropriate for the provision of contracted services. No other titles may be used on DYCD budgets. There is a list of approved titles and the respective title codes on DYCD's website.
- The New York City Fiscal Year runs from July 1 through June 30.
- If the contract period overlaps fiscal years, multiple budgets must be prepared. Each budget should reflect the number of months worked in the specific fiscal year to which the budget applies. For example, a 16-month contract starting May 1, 2011 and ending August 31, 2012 would have three budgets (one covering FY 2011 for 2 months, one covering FY2012 for 12 months and one covering FY 2013 for 2 months.)
- An Annual Salary is the amount earned in a consecutive twelve month period, whether or not that is the contract term.
- Some employees work on multiple programs. Estimate the percent of time devoted to each program and allocate only the appropriate amount to each contract. The total of all estimates (including programs not funded by DYCD) cannot exceed 100%.

### **Fringe Benefits**

The maximum rate allowed for fringe benefits is 35%. The rate includes all benefits under the Fringe Benefits category. Fringe Benefits may include FICA, Unemployment Insurance, Workers Compensation, Disability, Life Insurance, Pension, and Medical Benefits. A minimum Fringe Benefit rate of 7.65% for FICA is required for all contracts.

The minimum rate for Providers under the Fiscal Agent is 12.65%. This represents 7.65% (FICA) plus a 5% estimated Unemployment Insurance rate.

### **New York City's Central Insurance Program**

Providers have the option of buying into New York City's Central Insurance Program (CIP). The package offered under this program includes General Liability Insurance, Workers Compensation, and Disability Insurance. This insurance does not cover incidents of child or sexual abuse.

The cost of the CIP Insurance Package is 4.5% of the contract's total budget. CIP cannot be purchased for a portion of the contract term. Entering into the Central Insurance Program covers the provider for the full contract year.

### **Providers That Provide Their Own Insurance**

Providers that choose not to buy into the CIP Insurance Program must provide DYCD with an **original Certificate of General Liability Insurance**, as well as any renewal certificates required during the contract term. Required certificates not presented in a timely manner may result in provider being placed on check hold. Non-compliance will also be reflected in the final VENDEX evaluation of the contract.

Providers are required to have General Liability Insurance in the sum of not less than **one million dollars per occurrence** to protect itself, the City of New York and the Department of Youth and Community Development against claims, losses, or damages. The policy should include theft insurance to guard against loss of equipment as a result of a break-in or robbery. Each provider must be covered for loss due to burglaries, vandalism, fire or floods that affect equipment or furniture that is leased or purchased with DYCD funds. If the equipment is lost or stolen, the provider must obtain a police report detailing the nature of the incident as well as submit a claim to the insurance carrier. In addition, the provider must submit an official report to DYCD. The provider must replace lost or stolen equipment with funds obtained from settlement of the claim.

Insurance must be obtained from a company licensed to do business in the State of New York. **The City of New York must be included as additional insured in the Description Box on the certificate of General Liability. If the contracted program is located in a New York City Housing Authority or Department of Education facility, NYCHA and/or DOE, as the case may be, must also be included as an additional insured.** The Risk Management Unit/CAFD must receive written notification within fifteen (15) days if the policy is cancelled during the contract term.

All other mandatory insurance policies must be made available for inspection by DYCD staff, CPA Auditors, or other authorized agents.

DYCD retains the right to enroll a non-compliant provider in CIP and to withhold 4.5% of the contract.

**Employer's FICA** is budgeted at 7.65% of total salaries. The maximum of wages taxed for the Social Security portion of FICA can be found at [ssa.gov](http://ssa.gov). Please note that these rates and dollar amounts are determined by the Federal government, and are subject to change.

**State Unemployment Insurance (SUI).** For calendar year 2013, SUI is budgeted at the Providers insurance rate for up to and including the first \$8,500 of an employee's salary. As a result of changes in NYS law, the wage bases will be adjusted annually on January 1. The table below lists the wage bases for 2014-2026. **Please note:** Terminated staff as well as new staff hired within the same calendar year must be covered by SUI.

**Wage Base.** The wage base is the amount of an employee's wages used to calculate an employer's Unemployment Insurance contributions. The wage base will be adjusted on January 1 of each year as follows:

January 2014 \$10,300	January 2021 \$11,800
January 2015 \$10,500	January 2022 \$12,000
January 2016 \$10,700	January 2023 \$12,300
January 2017 \$10,900	January 2024 \$12,500
January 2018 \$11,100	January 2025 \$12,800
January 2019 \$11,400	January 2026 \$13,000
January 2020 \$11,600	

After 2026, the wage base will be adjusted on the first day of January each year to 16 percent of the state's average annual wage.

**Medical Benefits, Life Insurance, Pension, Workers Compensation, and Disability** costs are to be calculated based upon the Organization's policies.

#### **Administrative Practices Related to Personnel Services**

Salary increases will be at the discretion of the provider, provided they are within the scope of services and are pre-approved by the Program Operations Unit.

Time sheets for all full-time and part-time employees must be dated and signed by the employee and the employee's supervisor, and are subject to review by DYCD and its designees.

The Executive Director's time sheet must be signed by a member of the Board of Directors. The required director's signature may NOT be replaced by the signature of another member of management (e.g. comptroller or accountant).

#### **Non-Staff Expenditures**

Non-Staff Expenditures refers to the following categories: Consultants, Subcontractors, Stipend, Vendors and Fiscal Conduit.

#### **Consultants**

Consultants are individuals, with specific skills, retained to perform limited programmatic tasks or to complete program related projects on a temporary and/or limited basis, where the tasks or projects cannot be accomplished by the contractor's staff. The services provided by the Consultant must be related to the program work scope described in the contract. All consultants paid by the DYCD contract are required to be an approved item within the budget under line 2100, pursuant to



a consultant agreement (see below). Providers must receive the consent of DYCD to use a consultant, approval of which would be part of the regular budget approval process.

Consultants cannot be salaried employees of the contractor. Consultants are self-employed individuals who maintain their own service and financial records.

For each consultant listed, attach a signed, notarized Consultant Agreement and a resume. (If extra space is required to list the Consultants, please use the tab "Additional Info Page 3" of the Budget Spreadsheet.)

Consultants retained by a provider must enter into a written agreement, detailing the specific tasks to be performed. Consultants will be allowed by DYCD only for those services that cannot be performed by provider staff. If a consultant's services are required for an extended period, such an individual must be hired as an employee. Consultant Agreements and invoices must be maintained by the provider for six (6) years. Consultant invoices must include the following details: rate, hours, type of services, date of service, consultant signature, and approval by the Organization's Executive Director or his/her designee. Consultant services are exempt from bidding requirements.

### **Subcontractors**

Subcontractors are independent entities retained to perform specific programmatic services. A Subcontract Agreement will be governed by the terms of the DYCD contract. Depending on the size of the subcontract, approval of a subcontract may require the completion of VENDEX Vendor and Principal Questionnaires and other information about the entity.

For each Subcontractor listed on the Budget, attach a signed, notarized Subcontract Agreement with the subcontractor's EIN # and a listing of their Board of Directors.

A prime Contractor shall not enter into any subcontract for the performance of its obligations without prior written approval from DYCD. All subcontract agreements submitted for approval must be accompanied with the City of New York Subcontractor Approval Form. Upon approval, DYCD will forward a copy of the approval form to the prime contractor for their records and will also approve the subcontractor in the Payee Information Portal (PIP) system. For more information please visit the PIP system at [www.nyc.gov/pip](http://www.nyc.gov/pip)

The prime Contractor will be required to utilize the City's web based system, PIP, to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Failure of the prime Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the prime contractor in default of the contract and may subject the prime contractor to liquidated damages in the amount of \$100 per day for each day that the prime contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor. Discretionary contractors may, in certain circumstances, be able to subcontract out no more than 35% of the value of the discretionary contract.



### **Stipend**

Stipends are an incentive or allowance that benefits only a participant, client, or volunteer of the program. Stipends may be included as a part of a training program, to assist a client in acquiring the skills necessary to obtain employment and to subsequently retain employment. A stipend is a nominal allowance and may be paid according to hourly, daily or weekly rates. A stipend **may not** be used to displace an employee or position, including partial displacement such as a reduction in hours and wages, to avoid hiring salaried workers, or to perform services that would otherwise be performed by an employee, including an employee who recently resigned or was discharged, an employee who is subject to reduction in workforce, or an employee who is on leave. Stipends may not be used to pay for service being received by the provider or to avoid payment of FICA, Unemployment Insurance, or Worker's Compensation Insurance.

### **Participant Incentives**

All expenses incurred under the contract must be properly supported with documents that validate the expenses. Expenses for participants' incentives (gift cards, digital cameras, metrocards, etc.) must be supported, at the minimum, with the participant signed receipt in addition to the invoice. Other supporting documents may include but are not limited to the organization incentive plan, and participant award letter.

### **Vendors**

Vendors are entities or individuals retained to provide services to the contractor and who do not provide direct program services; examples of services provided by vendors are cleaning, security, accounting, etc. Vendor Agreements should be maintained on file at the provider for a minimum of six (6) years. Providers must follow the purchasing procedures outlined in the Fiscal Manual for the procurement of services from vendors (Section 4).

### **Fiscal Conduit (FOR DISCRETIONARY AWARDS)**

Fiscal Conduits are DYCD contractors acting as financial intermediaries to specific sub-recipients. Each sub-recipient must be listed and have a notarized Subcontract Agreement.

**OTHER THAN PERSONNEL SERVICES (OTPS)** – refers to programmatic expenses other than Salaries, Fringe Benefits or Non-Staff Services. The following is a description of the OTPS categories:

#### **Consumable Supplies**

Consumable supplies are supplies that do not last or are not permanent in nature. Consumable supplies include office and maintenance supplies, such as pens, stationery, chalk, erasers, towels, cleaning supplies, and books.

#### **Equipment Purchase**

Equipment purchases are supplies that are durable or permanent in nature, such as furniture, printers, fax machines, televisions, cameras, and computers, etc. All equipment purchased with DYCD funds must be listed on the budget.

All equipment and/or furniture purchased with DYCD funds is the property of the New York City Department of Youth and Community Development, and must be tagged "Property of DYCD." At the end of the contract, all non-depreciated equipment that still has a useful life and was purchased with DYCD funds must be returned if requested by DYCD. Contact the assigned Contract Manager regarding continued use or other disposition of equipment. DYCD will consider requests for continued use or other recommended disposition of such equipment, upon termination or non-renewal of a contract. Contact the assigned Contract Manager regarding continued use or other disposition of equipment

#### **Equipment-Other**

Costs associated with equipment include rental, lease, licensing fees, computer software, repair and maintenance of office/programmatic equipment used in the performance of the Provider's operation. Maintenance service contracts and payments for equipment repair and maintenance may also be reflected in this category. (Equipment or furniture leased with an option to buy may also become the property of DYCD at the end of the contract.)

#### **Space Cost**

Space costs are those costs associated with paying for the space necessary for program operation. Space Cost is separated into two subcategories:

#### **Public School**

Opening fees and room rentals paid to the Department of Education for school rental costs. provider must complete a Space Cost Allocation Plan and provide the DOE permit.

#### **Space Cost/Other**

All rent, mortgage and other expenses associated with the use of a facility. Along with the budget, the organization will be required to submit a copy of its mortgage, lease, or month-to-month rental agreement. In addition, the organization must submit a completed Space Cost Allocation Form. (Available on the DYCD website) The Agreement will reflect DYCD's allocated portion of the rental or mortgage charges. **No renovation or construction projects may be paid for with DYCD's program funds.** However, some repairs may be allowed, **subject to prior approval by DYCD.**

#### **Travel Costs**

Travel costs refer to costs appropriated for local travel by the employees and, in some instances, participants of the provider, to conduct official business related to the DYCD contract. Travel may be by public transportation, by a Provider's vehicle, or personal automobiles used for provider business. Costs for the use of a personal automobile will be reimbursed at a maximum rate of 28 cents per mile plus tolls. A mileage log must be maintained for both personal and business-owned vehicles used to conduct business related to the funded program.

All participant-related travel expenses, e.g., bus trips and local travel, is to be budgeted under this category. Bus companies must be insured.

Providers should charge expenses for business-owned vehicles such as car maintenance, gasoline, tolls and automobile insurance to this category. Provider-owned vehicles used for DYCD purposes must be co-insured with the City of New York as named beneficiary.

**Tickets for traffic violations may not be paid for with program funds.**

### **Utilities and Telephone**

Utility, telephone, internet and cable service costs related to the DYCD program are allowable for reimbursement. This includes bundled packages of internet, telephone, and/or cable. Costs should be pro-rated over the operating period.

### **Other Operating Costs**

Expenses which do not fall into any of the categories described above are referred to as Other Operating Costs. These expenses are further separated into two subcategories: Operating Costs and Indirect Costs.

#### **Operating Costs**

Costs such as printing, postage, admissions, publications, bank charges, subscription costs, and wiring associated with computer set up are considered operating costs. This category also includes the cost of general liability insurance for Providers not participating in the Central Insurance Program. Participant costs such as refreshments, entrance fees, awards, T-shirts, uniforms, sporting and recreational supplies are included in this category.

#### **Trips**

Expenditures must be incurred during the operating period in which goods and services are received or delivered. Tickets purchased for trips must be used for the participants under the program of that budgeted period. The Provider will not be reimbursed for tickets purchased in one contract year but used for participants of the subsequent contract year.

#### **Audit Fees**

DYCD will reimburse Providers for a portion of their audit fees. If the provider receives funding from other sources besides DYCD, the provider may only include DYCD's proportionate share. The proportionate share should be calculated by dividing the total DYCD budget by the organization's total budget and applying that percentage to the total Audit Cost. Audit fees are to be budgeted and expensed in the contract year in which the audit is performed. For example, an audit for contract year 2010 must be budgeted for in contract year 2011. Providers that are including audit costs in their budget must submit an Audit Cost Allocation Plan with the budget.

### **Indirect Costs**

The Indirect Cost category is used to capture overhead costs incurred by a provider that operates several programs and has administrative costs that cannot be identified as a direct cost to a specific program. Providers with multiple programs where some administrative costs are shared may incur indirect costs. The maximum Indirect Cost rate allowed by DYCD is 10%.

Any of the generally accepted methods of calculating and allocating indirect cost may be used. It is the responsibility of the provider to maintain documentation to justify the percentage and allocation plan used to arrive at the indirect cost rate. This documentation must be made available upon request.

Note: The category "Indirect Cost" cannot be used by Providers administered through the Fiscal Agent since all costs must be itemized.

### **Van Maintenance**

If the provider has been assigned a city-owned van, DYCD will provide maintenance through the Department of Citywide Administrative Services. A total of \$2,000 will automatically be deducted annually from the contract for Van Maintenance. This cost is centrally administered and is not reimbursable.

### **Fiscal Agent Services**

All Providers have the option of purchasing the services of the Fiscal Agent who will:

- Establish financial records
- Maintain and report on available provider budget balance
- Verify invoices
- Provide payroll services and personnel reporting
- Ensure the timely filing and payment of employment-related taxes
- Ensure that Accounts Payable and Ledger system and activities are in accordance with generally accepted accounting practices and procedures
- File Federal Tax Form 941 and 941B
- Prepare W2s, W3s, and 1099s

### **Fiscal Agent Fees**

Fiscal Agent Services will be charged to the organization's budget in accordance with the scale indicated below. Please note this schedule is subject to change:

<b><u>CONTRACT DOLLAR VALUE</u></b>		<b><u>FISCAL AGENT SERVICE FEES</u></b>
\$2,500	- \$25,000	\$400
\$25,001	- \$50,000	\$3,200
\$50,001	- \$100,000	\$4,400
\$100,001	- \$200,000	\$5,500
\$200,001	- \$300,000	\$6,000
\$300,001	- \$400,000	\$6,500
\$400,001	- \$500,000	\$7,500
OVER \$500,000		\$10,000

### **Note:**

A provider that chooses to be placed under, or is mandated to use, the services of the Fiscal Agent **must have all of its non WIA DYCD contracts administered by the Fiscal Agent.** The Fiscal Agent fees are centrally administered costs and are not reimbursable. Those agencies mandated for Fiscal Agent services due to poor fiscal performance (less than a satisfactory rating) will receive written notification from DYCD.

## **SECTION TWO**

# **BUDGET MODIFICATIONS**

## **BUDGET MODIFICATION POLICIES AND PROCEDURES OVERVIEW**

Changes to the approved and registered budget may be submitted only as they relate directly to the accomplishment of services required in the contract. Providers must submit all modifications (both programmatic and budgetary) to the assigned DYCD Contract Manager in Program Operations. Budget modifications must not be implemented prior to approval by CAFD.

Forms to request a contract modification can be accessed through the DYCD website: [http://www.nyc.gov/html/dycd/html/resources/cbo\\_budgets.shtml](http://www.nyc.gov/html/dycd/html/resources/cbo_budgets.shtml)

The number of budget modifications allowed is based on the term of the contract. Providers must plan their programs and budgets carefully, since there is a limit on the number of allowable budget modifications. The number of modifications accepted is based on the contract term, as follows:

<b>Contract Term</b>	<b>Number of Budget Modifications Allowed</b>
3 months or less	1 Modification
4 to 8 months	2 Modifications
9 to 12 months	3 Modifications

Requests are to be submitted to the assigned Contract Manager two weeks prior to their proposed effective date. No budget or programmatic changes may be made without prior written approval from DYCD.

**Please note:** The last day for budget modifications to be submitted is April 30 of the Fiscal Year. Providers with contracts that were registered after mid-March of the fiscal year are exempt from the above deadline.

**Questions regarding the budget modification process should be directed to your DYCD Contract Manager.**

## **SECTION THREE**

# **INTERNAL CONTROLS AND GENERAL ACCOUNTING PROCEDURES**

## **INTERNAL CONTROLS**

Executive and management staffs at Providers are responsible for establishing and maintaining an internal control structure appropriate to the particular provider. Internal controls will vary from one organization to the next, depending on such factors as their size, nature of operations and objectives. However, the need for internal controls remains the same; an organization should find the most efficient and effective way of implementing its needed internal control procedures. DYCD expects all funded providers to be in compliance with the new requirements of the New York Not-for-Profit Corporation Law, as mandated by the Non-Profit Revitalization Act signed into law in New York in 2013. In particular (and without limitation), DYCD expects all funded not for profit providers to maintain and follow a conflict of interest policy, and, if it is an organization with 20 or more employees and annual revenue in excess of \$1,000,000, a whistleblower policy. Please note that compliance with the requirements of the Nonprofit Revitalization Act are subject to verification by DYCD staff and/or DYCD's contracted audit firms. There are many publicly available resources to help organizations understand the new governance requirements of New York law (which go beyond the points highlighted here); DYCD can suggest possible resources, if necessary.

The following are examples of internal control activities:

- **Segregation of Duties**: Duties and responsibilities should be divided among different staff members to reduce the risk of error or fraud. In large organizations there are often different staff members responsible for procurement and for payment.
- **Proper Execution of Transactions and Events**: Transactions and significant events should be authorized only by persons acting within the scope of their authority.
- **Documentation of Transactions**: All transactions need to be clearly documented, and all documents must be readily available for inspection.
- **Secure Physical and Financial Assets**: An organization must safeguard its assets, including cash and equipment. Periodic inventory checks will help prevent loss or unauthorized use of the organization's assets.

### **Retention of Accounting Records**

In accordance with City contract requirements, Providers must retain all contract related financial records, including auditors' reports, for six (6) years after the final invoice of the contract is paid.

### **Bookkeeping Practices and Procedures**

Organizations must maintain separate accounting records for funds received through each contract with DYCD. Accounting records must be established and maintained in accordance with Generally Accepted Accounting Principles. It is essential that the organization maintain accurate, complete and permanent books and records, available for inspection by a DYCD staff member or its designee.

DYCD staff and its representatives will conduct both announced and unannounced site visits to organizations during the contract term to ensure that the books and records are being appropriately maintained.



### **Timesheets**

Timesheets must be completed for all full and part time employees. Each timesheet must be signed and dated by the employee and the employee's supervisor. The Executive Director's timesheet must be reviewed and approved by a member of the Board of Directors.

Electronic timesheets may be maintained if they are certified as accurate by the signature of the Executive Director or a senior level management designee.

### **Cost Allocation**

Cost allocation is the distribution of one cost across multiple funded DYCD's programs. A cost allocation methodology identifies the type of expenses that are being claimed, and establishes a basis for allocating costs to business units or cost centers based on an appropriate allotment of such cost.

#### **❖ Requirement:**

Each provider must develop a cost allocation plan. The plan must include an explanation of its methodology detailing the basis used in allocating cost to its various DYCD programs. Allocation methods and distribution of cost must be based on a generally accepted accounting practice prescribed by OMB Super Circular regulatory guidance and in accordance with Generally Accepted Accounting Practice. Refer to Office of Management and Budget for guidance: 2 CFR Chapters I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and promptly made available to DYCD or its contracted CPA firms.

#### **❖ Approach:**

When allocating cost to a particular contract the following must be considered in determining an appropriate base for allocating costs:

- Allowable direct costs that apply to only one program must be charged directly to that program or contract and cannot be cost allocated.
- Allowable direct costs that can be identified across multiple programs must be pro-rated using a base most appropriate to the particular cost being pro-rated.
- Allowable indirect costs (cost that benefit all programs and cannot be identified to a specific program) are allocated to programs, grants, etc., using a base that results in an equitable distribution.
- A provider is not allowed to charge more than 100% of a cost across programs.

#### **❖ Documentation:**

Regardless of the cost allocation method used, expenses claimed must be supported by documentation of cost distribution showing the ratio of the benefit each program received. All Providers must be aware that approval of a DYCD budget does not constitute approval of an organization's cost allocation plan and method used.

A reasonable cost allocation plan must be presented to show the basis used to allocate the amounts incurred in each of the funded programs. The basis applied cannot be based on the budgeted amount; rather it must be based on the benefit derived by each program from that particular expense, (e.g. time, space, usage, etc.).

❖ Audit:

All expenses submitted for reimbursement are subject to an audit to determine that's it allowable and reasonable based on the cost allocation method used. Unreasonable cost allocations will result in disallowed costs.

**Employees Personnel Files:**

Employees' personnel files must consist of all pertinent documents used in the hiring process. The hiring documents should consist of, at the minimum, the following documents:

- Employment Application
- I-9 Employment Eligibility Verification
- Authorized working papers for individual under 18
- Job Description
- W-4 form
- Resume
- Copy of Educational Degree, Diplomas or Certificate
- Background Check
- Personnel Action Form

**Resigned Employees:**

Employee vacation and sick time accumulated during the course of employment are allowed to be paid to that employee under the DYCD contract upon separation from employment, when such separation occurs during the contract operating period and the organization has a policy allowing for payment for such time. If the employee's time is cost allocated, it must be charged accordingly.

**Invoices**

All invoices maintained as documentation to support a claim (for example, where the provider is using the services of the Fiscal Agent) must be original, and must display the Organization's name as the recipient of the goods/services.

**If invoices do not need to be submitted, they must nevertheless be maintained and made available for review, in accordance with the record keeping requirements of the contract.**

**Bank Accounts**

Providers are not required to maintain separate bank accounts for each contract award. Electronic Funds Transfers (EFT) of the contract award can now be made to a single provider bank account. The EFT Enrollment form can be found on DYCD's Help Desk webpage and via [http://www.nyc.gov/html/dof/downloads/pdf/07pdf/eft-direct\\_depost\\_appl.pdf](http://www.nyc.gov/html/dof/downloads/pdf/07pdf/eft-direct_depost_appl.pdf)

Providers are required to transfer all DYCD funds from the EFT account to the appropriate payroll and general accounts. Bank reconciliation of all accounts must be prepared on a monthly basis, reviewed by upper management, and kept on file for examination by DYCD staff or its designees.

**Signatories**

DYCD requires that an organization have at least two signatures on each check. Every organization is expected to comply with this policy unless it has received prior written authorization from DYCD stating otherwise.

**Cash Flow**

The cash flow process is initiated following registration of the contract with the New York City Comptroller's Office. DYCD is unable to release funds until the contract is registered. DYCD is not permitted to reimburse an organization for any expenses incurred for the provision of services until the contract is registered.

An initial advance equivalent to **two months** of the Provider's approved budget is issued by the Contract Agency Finance Department upon contract registration. (An advance is not available for WIA contracts.) If the contract term is less than four (4) months, the initial advance will be one-half of the budget. Funds are electronically transferred to the accounts of organizations enrolled in the EFT Program.

### **Disbursements**

Disbursements, except those from petty cash funds and payment with the Organization's corporate credit or debit card, should be made by check. Providers should adhere to the following control functions when handling DYCD disbursements

- The function of approving vouchers, preparing checks and recording disbursements should be handled by different employees.
- Employees handling disbursements should not have duties related to cash receipts or the reconciliation of bank accounts.
- Vouchers payable should be established for each payment and recorded promptly.
- Payment should be made only after the original voucher and all copies of pertinent papers have been approved.
- Invoices should be cancelled or stamped "Paid" in order to prevent duplication of payment.
- Confirmation receipts for online purchases must be printed out and retained by Providers.
- A periodic review of vouchers should be made by an authorized person to determine that all processing steps are being followed properly.

If a provider is unable to comply with the control functions described above, comparable reasonable procedures should be developed to allow for proper accountability and segregation of duties in handling disbursements. A written description of these comparable procedures should be sent to your Contract or Program Manager.

### **Unclaimed Funds**

Unclaimed funds are funds that become available in the Provider's bank account due to returned checks or checks that were never cashed by the intended recipient. Undistributed funds remain the property of DYCD and must be reimbursed to DYCD at the end of the fiscal year. The following steps must be taken to account for DYCD unclaimed funds:

- The provider is required to exhaust all efforts to contact the intended recipient, in a timely manner, within 90 days from the check date.
- After the 90 day period, the provider is required to place a stop payment on those checks and return the funds to DYCD within 10 days.
- The provider is required to retain all evidence of the steps used to contact the intended recipients.
- The provider is not allowed, at any time, to submit DYCD unclaimed funds to New York State Office of Unclaimed Funds.

## **SECTION FOUR**

# **PURCHASING PROCEDURES**

## **GENERAL PROCUREMENT POLICIES**

Any procurement of goods and/or services is to be conducted in the Provider's name. The organization is responsible for ordering, receiving, inspecting and accepting merchandise. The name of the Department of Youth and Community Development, its officials, employees, or the City of New York should not be used, under any circumstances, for the purpose of ordering and/or securing goods and services from a vendor. Invoices, bills, receipts, etc., must be issued in the name and address of the organization or its immediate affiliate. All expenditures must comply with applicable laws and contract regulations, and are subject to audit.

### **Purchasing Requirements/Competitive Bidding**

The procurement of goods shall be governed by the competitive bidding requirements described below. The purpose of competitive bidding requirements is to establish a procedure that will secure the best possible price for goods and services while allowing for appropriate competition. The procurement process must be open and competitive (that is, no vendor qualified to provide the goods or services may be restricted from bidding and there must be fair competition among those bidders). These procedures also apply to the rental or leasing of equipment. A procurement shall not be artificially divided in order to meet the requirements of this section. The monetary thresholds identified below refer to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity.

#### **1. Purchases of \$5,000 or less**

For purchases with a value of \$5,000 or less, no competitive bids are required. Documentation of the purchase must be maintained by the organization. This documentation must include the name of the vendor, the item purchased, the date and amount paid.

#### **2. Purchases from \$5,001 - 25,000**

Contractor shall conduct sufficient market research and/or competition to support its determination that the price of such purchased goods, supplies, services or equipment is reasonable. Documentation of the market research and the purchase must be maintained by the organization. This documentation must include the name of the entities contacted, the vendor, and the item purchased, the date and amount paid.

#### **3. Purchases \$25,001 or greater**

A minimum of three (3) written bids must be obtained for the purchase of goods, supplies or services of similar items where the cost can reasonably be expected to be \$25,001 or greater. The bids must contain a description of the item requested, the time, date, place and form of requested responses, and the name of the employee responsible for securing bids. The bids must be maintained by the organization.

### **Sole Source Procurement**

Purchases exceeding \$5,000 where a Provider is purchasing items that are considered to be sole source in nature, do not require bids. Sole source procurements are exceptions to normal

purchasing procedures and are permitted only when there is one, and only one, potential bidder or offer for an item or service.

Examples of circumstances that could justify sole source procurements are:

- Newspaper advertisements
- Health and Liability Insurances, Workers Compensation
- Tickets to sporting events or theme parks
- One-time performances by artists for participants
- Utilities (gas, electricity, telephone)

Note: The selection of Consultants and Subcontractors are not subject to the bidding process, but must demonstrate a reasonable degree of care.

Proof of Delivery Date:

DYCD may require proof of delivery date for goods purchased between June 20<sup>th</sup> and the 30<sup>th</sup>.

#### **Inventory**

Providers must maintain an inventory of all furniture and equipment purchased with DYCD funds. An inventory control decal must be placed on the equipment indicating that it is the property of New York City.

A physical inventory is required every year, and inventory records must include the date of the last physical inventory review.

#### **Relinquishment or Disposal of Furniture and Equipment**

All furniture and equipment purchased with DYCD funds remain the property of the City of New York and must be returned at the end of the contract. Organizations should contact their DCYD Contract Manager to arrange for disposition of equipment.

If it is determined that the equipment bought with DYCD funds is fully depreciated and has no further useful value, please notify the DYCD Assistant Commissioner for Contract Agency Finance, in writing, with a list of the equipment, serial number(s), model number(s) and purchase date. Organizations will receive written notification with specific instructions regarding the disposal of equipment.

Inventory lists must include the method and reasons for disposition and the value of disposed equipment. In cases of loss or theft, property lists must include all pertinent information to support the claim. If appropriate, copies of police reports should be attached.

## **SECTION FIVE**

# **CREDIT/DEBIT CARDS POLICIES AND PROCEDURES**



## **Policies and Procedures Credit/Debit Cards**

Written policies and procedures are necessary to establish an internal control structure for credit/debit card use. A Provider's Board of Directors should first determine whether to approve use of credit or debit cards; once the Provider's Board has approved the use of credit/debit cards, the Board should adopt a comprehensive credit/debit card policy that, at a minimum:

- Identifies all authorized users
- Sets appropriate credit limits
- Establishes custody of the cards when not in use
- Requires proper documentation for all transactions
- Establishes a means to recoup any unauthorized expenditures
- Specifies that the safeguard of, and charges appearing on, each card, are the responsibility of the cardholder
- Prohibits purchases that are personal in nature
- Prohibits use of cards to split orders or otherwise circumvent bidding thresholds
- Limits the use of staff and/or volunteer personal credit cards for organization-related purchases to emergency situations (with emergencies to be defined) where standard procurement methods are unfeasible. Such expenditures, moreover, should be consistent with the organization's purchasing policies and procedures.
- Sets limits on the amount that can be purchased in any individual transaction; and requires preapproval for purchases over that limit
- Limits cash withdrawals/advances to emergency situations (with emergencies to be defined), and requires such withdrawals to be governed by the following rules:
  - Amount may not exceed \$200 per ATM withdrawal.
  - The Provider's Executive Director or a designee must authorize cash withdrawals. If the Provider's Executive Director is the individual making such cash withdrawals, the Provider's Executive Director must receive authorization from the Provider Board Chairperson.
  - When a payment is made with cash from an ATM withdrawal a receipt from the transaction is filed and maintained in an ATM transaction and cash box (this should be a box kept separate and apart from the petty cash box).

- Any cash withdrawn from a credit/debit account that is not utilized in a purchase should be deposited in the ATM transaction and cash box or re-deposited in the agency credit/debit account.
- Each expense emanating from an ATM withdrawal should be recorded in the organization's general ledger to its corresponding expense account, with an offsetting entry to the credit account associated with the credit/debit card. A monthly reconciliation of the ATM transaction box and the credit/debit general ledger account must be performed.
- The Provider is not allowed to comingle DYCD funds from cash balances related to ATM withdrawals with Non-DYCD funding streams. Separate general ledger accounts must be established to account for DYCD cash balances related to ATM withdrawals.

The CFO or Comptroller should ensure that a proper review of claims is performed prior to the payment of each credit card statement. This includes requiring that itemized receipts or other similar documents signed by the individual making the purchase adequately support all charges on the statements. In the case of debit card usage, bank statements should be regularly and timely reviewed and checked against supporting documentation.

## **SECTION SIX**

# **PETTY CASH POLICY**

#### **A. PETTY CASH FUND ESTABLISHMENT**

To facilitate the payment of certain minimal charges that cannot be handled by check, Providers may establish a Petty Cash Fund for up to \$1,000.00. It is important to remember that items purchased with Petty Cash Funds are subject to the same regulations and accounting practices as expenses paid by check.

**The Petty Cash Fund must be maintained in a secure place to safeguard against loss from unauthorized use or disposition. In the event of loss due to theft or fire, the Provider will NOT be reimbursed for loss of the Petty Cash Fund.**

#### **B. PETTY CASH FUND USE**

A Petty Cash Fund shall be governed by the following rules:

1. A Petty Cash Expense may not exceed **\$200 dollars per total purchase.**
2. The Provider Executive Director or a designee must authorize petty cash expenses.
3. When a cash payment is made from the Petty Cash Fund, a Petty Cash Voucher (**on DYCD's website**) together with receipt is placed in the petty cash box.
4. Therefore, the total of cash remaining in the box plus the total amount of vouchers therein should equal the petty cash fund amount.
5. Each voucher must be supported with a receipt or invoice which shows the date of purchase, item purchased, the cost, and who made the purchase. Attach each receipt to its proper invoice.
6. Each expense from the petty cash voucher should be journaled in the organization's general ledger to the appropriate expense account with an offsetting entry to the petty cash account.
7. Periodically, when the amount of cash remaining in the box requires replenishment, a check is drawn for the amount of all vouchers in the box. Cash from the check is placed in the petty cash box to replenish the Petty Cash Fund to its full amount. The reimbursement check amount is to be credited to the applicable operating cash account with an offsetting debit to the petty cash general ledger account. A separate Petty Cash Voucher Form must be used for the replenishment of the Petty Cash Fund.
8. A monthly reconciliation of Petty Cash funds with the petty cash general ledger account must be performed.
9. The Provider is not allowed to commingle DYCD funds used for petty cash. A separate general ledger account must be established to account for DYCD petty cash.

**Examples of reimbursable expenses for which use of petty cash may be appropriate:**

- a. Local travel by public transportation
- b. Programmatic supplies
- c. Postage (The purchase of one hundred stamps will be allowed through petty cash.)

Examples of non-reimbursable expenses are:

- a. personal expenses
- b. alcoholic beverages for a staff party

## **SECTION SEVEN**

# **GENERATED INCOME**

## **OVERVIEW OF GENERATED INCOME**

Income derived by a Provider as a result of resources paid for by the Department of Youth and Community Development funds is considered Generated Income. Providers engaged in such income generating activities must maintain a monthly report of those activities. These reports must be made available to DYCD for review upon request.

Providers with income generating activities must adhere to the following bookkeeping standards:

- A separate bank account must be established;

- All bank documents, such as deposit slips, reconciliations, statements, canceled checks;

- Signature cards must be properly maintained on file;

- A separate cash receipts journal must be established to record cash receipts generated;

- A separate cash disbursement journal must be maintained to record cash expenditures (the cash disbursement journal must be established in a form that reflects the nature of the expense);

- Supporting documentation for each disbursement recorded in the cash disbursement journal must be properly maintained on file;

- If appropriate, a general ledger must be maintained in order to summarize monthly transactions;

- A monthly trial balance must be taken; and

- All financial and accounting records relating to income-generating activities must be available for examination and audit by DYCD or its designees upon request.

Grants that a Provider receives from other government sources or foundations are not considered generated income.

## **SECTION EIGHT**

# **PROGRAM EXPENSE REPORT SUMMARY (PERS)**



## **PROGRAM EXPENSE REPORT SUMMARY (PERS) OVERVIEW<sup>1</sup>**

DYCD uses a document called the "Program Expense Report Summary (PERS)" to reimburse Providers for program expenditures. A Fiscal Analyst analyzes the information listed on the PERS to determine whether the expenses submitted are appropriate for its contracted services and comply with the approved budget. From this analysis, DYCD determines the reimbursement amount.

DYCD PERS must be prepared on a cash basis. Expenses should be reported on the PERS for the month in which the check was issued or, in the case of credit or debit cards, the month in which the payment was made. For example, a PERS submitted for the month of October should reflect checks issued in October.

There are circumstances where checks are allowed outside the PERS submission period. During the year end close out, a Provider may have a payroll service period or invoice service period that runs across a Fiscal Year. The prorated portion of that check may be charged to the appropriate Fiscal Year (or budget operating period if the budget ends prior to June 30<sup>th</sup>). An example of this would be a payroll issued 07/06/09 with a payroll service period of 06/28/09 through 07/05/09. Only June 28, 29, and 30<sup>th</sup> may be reflected on the June-Final PERS. The remainder of the payroll would be reflected on the July PERS. Please indicate that the amount was prorated with a footnote on the PERS.

The PERS submission is required once the contract has been registered.

### **Annual Contracts of \$50,000 or greater**

A monthly PERS is required for contracts with annual budgets of \$50,000 or greater. Providers must submit their PERS listing the expenditures made during the month by the 10th day of the following month. PERS received after the 15th of the following month are considered late and may result in a negative contract performance rating.

### **Annual Contracts \$10,001 - \$50,000**

Contracts in this range have the option of submitting PERS monthly or quarterly. Quarterly reports are due as follows:

July-September	Submission Date October 10
October-December	Submission Date January 10
January-March	Submission Date April 10
April-June	Submission Date July 10
Final PERS	Submission Date due August 31

### **Annual Contracts of \$10,000 or less**

A Provider with a contract of \$10,000 or less has the option of submitting PERS monthly, quarterly or one PERS for the full amount.

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<sup>1</sup> WIA CONTRACTS DO NOT USE THE PERS FORM.

### **Payment Information Tracking**

Providers have two tracking methods to trace all payments against their DYCD contracts. Both methods require on line registration. Registration for both can be arranged through the DYCD website: [www.nyc.gov/dycd](http://www.nyc.gov/dycd)

DYCD offers consolidated Expense and Payment History Reports to all providers for all contracts. They are generated and emailed the third week of every month. (This service is not available for contracts under the Fiscal Agent.)

The City of New York offers the Payee Information Portal (PIP) that allows Providers to track all payments made through Department of Finance by any NYC Agency. It also allows a Provider to perform vendor maintenance on their records (address, telephone updates, etc.). The PIP website address is: <https://a127-pip.nyc.gov>.

### **Reimbursement of PERS**

Reimbursement for a properly prepared PERS should be received within 20-25 days of submission to DYCD.

### **Blank PERS**

The latest PERS form and instructions are available via email at [PERS@dycd.nyc.gov](mailto:PERS@dycd.nyc.gov). Do not correspond with this email address. It is an automatic reply and unmonitored inbox. The form and instructions are also available on DYCD's website.

A PERS must be submitted with two original signatures. Providers may develop their own PERS as long as it mirrors DYCD's PERS format. If the required fields are not on the Provider-created PERS, the Fiscal Analyst may reject the PERS and require resubmission in the correct format.

### **OVERVIEW PROCESSING OF THE PERS BY DYCD**

The Fiscal Analyst reviews the PERS to determine whether expenses are appropriate, are within the scope of the contract, and are in compliance with DYCD's policy and procedures. If the PERS do not meet these requirements, the expenses are not eligible for reimbursement and are "*disallowed*."

If expenses are disallowed, a Status Report letter is sent to the Provider notifying them of the disallowance(s) and the reason. When the discrepancy has been corrected, Providers may resubmit the expense on the next upcoming PERS.

PERS with substantial errors or omissions will be rejected by the Fiscal Analyst and returned to the Provider for correction.

**Important note:** Each organization is rated on VENDEX based on the timeliness and accuracy of PERS submissions. Four or more status letters with major discrepancies may result in an overall "Poor" or "Unsatisfactory" rating.

A payment voucher is processed, once DYCD approves the submitted PERS. It can take approximately 5-7 business days for an Electronic Funds Transfer (EFT) or check to be issued once the payment voucher is processed.

An initial advance is issued when a contract is registered. Generally, advances will be recovered in the last quarter of the operating budget period (approximately 1/3rd each month). However, DYCD has the option to recover advances earlier, based on the actual spending rate.

In some instances a Provider will be placed on "Check Hold." Among the reasons an organization might be placed on check hold are: missing or expired insurance; a corrective action plan associated with the contract; funds due to DYCD from the Provider; or late submission of financial or program reports to DYCD.

If a Provider is on Check Hold, a submitted PERS will be reviewed, but not paid until the deficiency or discrepancy is rectified.

### **DISALLOWANCES**

Expenditures for items neither budgeted nor allowable under DYCD Federal, State and City guidelines will not be reimbursed. A Status Report Letter will serve as notification to a provider of disallowed expenses. The status letter will detail the reasons for the disallowance and will reflect the adjusted approved expenses for the PERS processed.

The following are the types of expenses that will not be reimbursed by DYCD:

- Purchase of land and buildings.
- Taxes from which municipalities are exempt (Sales Tax, NYS Franchise Tax, Federal Unemployment Tax (FUTA).
- Capital improvements, which are defined to mean the erection of substantial structures which are capital in nature, or the valuable additions to or valuable modifications of real estate; this includes expenditures for hard surfacing, cement installations, substantial repairs to a building, basic heating, lighting or sanitary equipment and installation, permanent outdoor lighting systems, fencing (except for partial fencing justified as a safety device), swimming and wading pools and tennis courts;
- Personal membership fees in clubs or professional organizations and associations.
- League franchise fees.
- Interest and penalty costs.
- Activities for which a fee is charged.
- Activities that are normally considered a part of the regular school curriculum.
- Activities of a commercial nature.
- Expenditures for pre-paid payroll or consulting services. The date on the check (pay date) must be on or after the period of service.
- Expenditure for fund raising activities.
- Expenditures for stipends when used to replace existing staff and/or for the primary purpose of saving money by using low cost labor, and to avoid paying fringe benefits, or to replace other funding. Special exceptions may be made in advance with approval from DYCD and Office of Children and Family Services, when no other sources are available and stipends are critical for the implementation of the program model.

- Prizes other than inexpensive awards such as trophies, medals or ribbons.
- Medical liability insurance and fire insurance on capital structures.
- Security Deposits.
- Bonuses
- Severance payment

Questions regarding acceptability of specific items may be emailed to your Fiscal Analyst or CAFDhelp@dycd.nyc.gov.

### **General Information to Avoid Disallowance**

- Contract amendments (budget increases) pending registration should not be included on your PERS until the amendment is registered. You may submit expenses on the next upcoming PERS once registered.
- Title codes and position title must match DYCD's approved budget.
- Salaries reported on the PERS include all withholding taxes
- The maximum FICA amount allowed on a PERS is 7.65% of salaries.
- Indirect Cost may be claimed monthly or quarterly by prorating the amount based on your budget allocation and budget operating period. No payment details are required.
- You should not submit expenses on categories modified through a budget modification until the modification is approved.
- Equipment purchase must be listed with an item description, equipment cost, DYCD cost, model number, manufacturer and serial number for equipment \$500 or more. Purchases under \$500 will require an item description, Equipment Cost and DYCD cost only. All equipment purchased shall be itemized in the equipment inventory list page available on the PERS.
- DYCD may require proof of delivery date for goods purchased between June 20th and the 30th.

### **Special Conditions for Reimbursement of PERS**

- **Payment Process**

DYCD reserves the right to retain a percentage of the annual budget based on the specifications of the RFP and contract.

## **SECTION NINE**

# **YEAR END CLOSE OUT**

## **YEAR END CLOSE OUT**

### **Contract Term**

The Provider must perform all contract services and receive all goods and vendor services by the last day of the contracted operating period. Employer's FICA and New York State Unemployment Insurance (SUI) expenses applicable to salary expenditures incurred and paid through the last day of the contract period must be included. Any expenditure made for goods and services which are received after the last day of the contract/budget period will NOT be accepted as an authorized expenditure. There are no exceptions to this rule.

### **Deadline for Submission of Final PERS**

The deadline for submission of a FINAL PERS is no later than (60) sixty days after the end date of the budget operating period. Budgets ending June 30<sup>th</sup> have a deadline of August 31<sup>st</sup>.

NOTE: Failure to meet this deadline will result in the rejection and disallowance of all expenses reported on the PERS.

### **Unpaid PERS**

An Unpaid PERS is a document used to reflect expenses not paid due to insufficient funds. An Unpaid PERS is filled out on a regular PERS form. "UNPAID PERS" should be reflected in the month field. This report should only reflect bills that have not been paid. Do not include paid expenditures in this document. This "UNPAID PERS" will be reviewed by the fiscal analyst and if warranted will generate an advance.

Once the bills are paid by the Provider, a PERS must be submitted with the check numbers and all the required documentation for expenses previously reported on the "UNPAID PERS". If a PERS is not submitted, the advance will become a refund due DYCD.

### **Refunds Due**

Any balance of funds issued by DYCD and not accounted for by an approved expenditure is a refund due to DYCD. Providers should make a refund due check payable to the NYC Department of Youth and Community Development. The check should be sent to: DYCD/CAFD 123 William Street, 18th Floor, New York, NY 10038-2609.

### **Annual Close Out Letter and Financial Recap Form**

When all PERS have been processed, a fiscal analyst will officially close out the contract. A Close Out Letter and Financial Recap Form reflecting approved expenditures for each month and all payments issued from DYCD will be mailed to the Provider. It is extremely important that the Provider verify its expenditures and payments against the Financial Recap Form.

The Close Out Letter will inform the organization of any amount owed to DYCD. A check for the refund due amount must be issued to DYCD within ten (10) days of receipt of the year end Close Out Letter. If the refund due amount is not received by that date, the organization will automatically be placed on Check Hold for all future payments from DYCD.

If a check issued by DYCD is reflected on the financial recap but has not been received, notify the Providers Fiscal Analyst immediately by telephone, or e-mail the CAFD Help Desk at [Cafdhelpp@dycd.nyc.gov](mailto:Cafdhelpp@dycd.nyc.gov). A stop payment request will be made to the Department of Finance and a new check will be issued.

Any discrepancy in expenditures must be explained in writing to DYCD's Contract Agency Finance Division, 123 William Street 18<sup>th</sup> floor, NY, NY 10038 (attach a Final PERS with the expenditures in question).

#### **Refund Due - Non-Responsive Letter**

If a refund check or Final PERS is not submitted in response to the Close Out Letter, your organization will be referred to DYCD's Office of Legal Affairs for collection. Nonpayment may also result in the Provider being referred for a Caution Rating in the VENDEX system. This rating may have a negative impact upon the Organization's ability to secure future funding with DYCD or other City agencies. Providers having a poor VENDEX rating may also be mandated to use the services of DYCD's Fiscal Agent.

#### **Recoupment Procedures**

DYCD reserves the right to offset against another contract the amount of an unpaid refund due.

#### **Close Out Procedures for Terminated Providers**

Upon receipt of a termination notice and effective date of termination, the Provider shall comply with all applicable DYCD closeout procedures, which include, but are not limited to the following:

- Submit PERS accounting for expenditures prior to termination date

- Any balance of funds not accounted for by an approved expenditure is to be refunded to DYCD.

- Comply with guidelines outlined in Section Four of this manual pertaining to Relinquishment of Equipment.

- If assigned a DYCD Van, a Provider will immediately surrender the Van to DYCD pursuant to Paragraph 12(C) of the Van License agreement.

#### **VENDEX Evaluation**

DYCD will conduct on-going assessments of Providers' fiscal and programmatic performance. This assessment will be reported on the City of New York's VENDEX System. The Financial portion of each rating is based upon an Organization's ability to submit timely and accurate monthly expenditure reports (PERS); the organization's ability to maintain financial books and records in accordance with generally accepted accounting procedures; and the organization's capacity to maintain an internal control structure with reasonable assurances that its assets are safeguarded against loss or misuse.

Providers found to be deficient in the conduct of their financial duties may receive poor VENDEX ratings and be mandated to use the services of the Fiscal Agent.

## **SECTION TEN**

# **CENTRAL INSURANCE PROGRAM (CIP) FOR PARTICIPATING PROVIDERS**



## **CENTRAL INSURANCE PROGRAM (CIP)**

The Central Insurance Program (CIP) serves the insurance needs of not-for-profit contractors who do business with human services agencies in the City.

CIP provides comprehensive general liability, workers' compensation, and disability benefit programs to these vendor agencies. The Central Insurance Program is operated by the Mayor's Office.

DYCD will deduct 4.5% of a contract's total budget to cover the cost of the insurance. The 4.5% is non-reimbursable.

### **General Liability Insurance**

General Liability Insurance is automatically assigned to Providers that opt to participate in the CIP.

The General Liability policy provides coverage limited to \$1 million dollars per occurrence for incidents that occur in connection with program activities described in the Provider's contract with DYCD. The General Liability policy also provides coverage for the costs of defending claims or suits resulting from bodily injury or property damage.

The policy also provides coverage for verifiable medical expenditures for authorized participants injured in the program. All injuries, however slight, to any program participant, volunteer, visitor, or others must be reported on a DYCD Incident Report Form. The Incident Report Form must be on file with DYCD before submission of related medical bills.

Original medical and dental bills must be submitted with a second copy of the Incident Report Form.

### **Workers' Compensation and Disability Insurance**

Workers' Compensation covers injuries suffered by employees while on the job. This coverage only pertains to employees listed on the DYCD budget.

Disability benefits to employees listed on the DYCD budget are provided in case of a non-work related illness or injury causing disability.

The Provider must submit the Employer's Report of Injury (C-2 Form) and/or the Form for Disability to the CIP Program.

**Staff Changes made in contracts with CIP**

When new staff is hired, the Provider must submit an Individual Enrollment Form to DYCD. When an employee is terminated or resigns, the Provider must submit a Termination Roster. The completion of this roster will ensure that the name(s) of former employees are removed from the Central Insurance Program. In both instances, the forms are to be returned to DYCD.

**Exclusions**

CIP insurance does not include coverage for allegations of child or sexual abuse. The Provider must immediately notify DYCD of any incident or allegation of abuse of a program participant by any of the Contract's administrators or staff, including both paid staff and volunteers. Written notification is to be submitted on DYCD's Incident Report Form.

The term "abuse" refers to any physical, sexual, emotional or verbal abuse, or any other maltreatment of a program participant. Compliance with this reporting requirement does not satisfy any other legally mandated reporting of abuse, such as notifying the law enforcement officials or notifying the NYS Central Register of Child Abuse and Maltreatment.

**The CIP coverage terminates at the end of each fiscal year.**

**Forms and additional information related to CIP may be obtained from the Central Insurance Program.**

Mayor's Office of Operations  
Central Insurance Program  
253 Broadway – 5<sup>th</sup> Floor  
New York, New York 10007  
Tel: (212) 788-7600

## **SECTION ELEVEN**

# **AUDIT**

## Reporting and Audit Requirements

Not-for-Profit Organizations that contract with DYCD are required to comply with all applicable state and federal laws with respect to required filings. For federal reporting purposes, Not-for-Profit Organizations may be required to file an information return (e.g. the I.R.S. Form 990). In accordance with New York law, organizations may be required to register with the Charities Bureau of the New York State Attorney General's Office; in addition, organizations that solicit from the public are required to file with the NYS Attorney General's Office financial forms that vary depending on the organization's gross revenues.

The following chart summarizes the requirements of the Nonprofit Revitalization Act of 2013:

Effective Dates	Level of Gross Revenues	CPA Audit or CPA Review
July 1, 2014 through June 30, 2017	Less than \$250,000	No CPA Audit or CPA Review required, but must file an unaudited financial report on form provided by the Attorney General
	At least \$250,000 but not more than \$500,000	CPA Review
	More than \$500,000	CPA Audit
July 1, 2017 through June 30, 2021	The \$500,000 threshold increases to \$750,000; the \$250,000 threshold remains constant.	See above- CPA audit required for organizations with gross revenues in excess of \$750,000
July 21, 2021 and forward	The \$750,000 threshold increases to \$1,000,000; the \$250,000 threshold remains constant.	See above- CPA audit required for organizations with gross revenues in excess of \$1,000,000

Regardless of the size or type of a not-for-profit organization, an annual audit can help to improve operations and provide proper accountability for public and private resources.

In addition, DYCD funded organizations are subject to the following requirements:

### **Contracts with DYCD Funding Greater Than \$75,000**

Providers with aggregate DYCD funding greater than \$75,000 will be audited by a CPA firm under contract to DYCD. The Auditor will perform random verification checks of the expenditures claimed on the PERS. The audit is performed after the fiscal year is completed and relates only to DYCD contracts. The Provider will be notified of the findings and questioned costs. Unresolved questioned cost(s) may have to be reimbursed to DYCD.

### **Contracts with DYCD Funding Between \$25,000 and \$75,000**

Providers with aggregate DYCD funding between \$25,000 and \$75,000 are subject to fiscal field reviews (“FFR”). A FFR evaluates a Provider’s system of internal accounting and administrative controls. The objective of the FFR is to ensure that Providers adhere to the procedures and requirements cited in the Fiscal Manual and the contract. The FFR notes both administrative and fiscal findings. FFRs are performed either by DYCD Audit staff or CPA firms under contract to DYCD.

#### **Audit: Federal Requirements**

Providers expending \$500,000 or more in total federal funds per fiscal year are required to have an audit performed in accordance with U.S. Office of Management and Budget Circular Number A-133. For Providers with fiscal years beginning on or after December 26, 2014, the \$500,000 limit will rise to \$750,000 as set forth in “The Super Circular”, 2 C.F.R. Part 200 governing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

#### **Technical Assistance**

DYCD may be able to provide technical assistance to a Provider in matters that may affect contract performance, such as compliance with applicable laws and regulations, preparation of required reports, and dissemination of information necessary to keep the Provider abreast of changes that may affect the program operation and reporting requirements. The Provider should at all times feel free to contact DYCD with questions about applicable fiscal procedures.

## **Appendix B**

### **DYCD Child and Adult Care Food Program Invitation for Bid**

## **Notice of Award**

## **Purchase Order(s)**



## **ATTACHMENT 2**

### **Notice to Bidders**

## NOTICE TO BIDDERS

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

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

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

Contractor hereby agrees to these provisions.

## **NOTICE TO BIDDERS**

Please note that, effective January 1, 2008, payments from the City of New York will be made by electronic funds transfer (EFT) as per the attached Electronic Funds Transfer memo. You are to complete the bottom section of the memo and return it with your bid response. The EFT Vendor Payment Enrollment Form is to be sent to:

NYC Department of Finance, Treasury Division, 66 John Street, 12<sup>th</sup> Floor New York, NY 10038 Attention: EFT

or 646-500-7152

Fax to: EFT at 212-361-7063.

Do **NOT** return the EFT Vendor Payment Enrollment Form with your bid response.

## ELECTRONIC FUNDS TRANSFER MEMO

In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. And 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 first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for 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.

☐ I agree to accept EFT and have forwarded a completed EFT Vendor Payment Enrollment Form to the Department of Finance, Treasury Division, 66 John Street, 12<sup>th</sup> Floor, New York, NY 10038 – Attention EFT.

Please Note: EFT Vendor Payment Enrollment Forms are **NOT** to be submitted with your bid.

☐ I already receive payments via EFT.

Name of Firm: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title & Date: \_\_\_\_\_

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

**Mail to:** NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or  
**Fax to:** EFT at 646-500-7152



ENROLLMENT



MODIFICATION

**IMPORTANT: You must provide ONE of the four following items!!!**

VOIDED CHECK

CURRENT BANK STATEMENT

ENCODED DEPOSIT SLIP

LETTER FROM YOUR BANK\*

\*The bank letter should identify your name (or company name) entire bank account and routing number AND MUST HAVE the signature of a bank representative along with his/her printed name and contact number. Please note your application for EFT will not be processed without one of the four forms of account verification.

**SECTION I - VENDOR INFORMATION**

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

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

3. VENDOR'S ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. VENDOR'S TELEPHONE NUMBER:

**SECTION II - BANK INFORMATION**

1. BANK ACCOUNT NUMBER:

2. NAME AS IT APPEARS ON ACCOUNT:

3. BANK NAME:

4. BANK 9-DIGIT ROUTING NUMBER:  
(LOCATED AT THE BOTTOM OF CHECK)

5. ACCOUNT TYPE - MUST BE EITHER CHECKING OR SAVINGS:  
(CHECK ONE BOX ONLY)



CHECKING



SAVINGS

6. BANK REPRESENTATIVE'S NAME:

7. TELEPHONE NUMBER:

**SECTION III - VENDOR SIGNATURE AND AUTHORIZATION**

I, hereby confirm my authority, as an authorized signer of the above-referenced bank account ("Account"), to issue this instruction to credit and debit, via the Automated Clearinghouse, the Account. I authorize the City of New York to deposit, via Automated Clearinghouse credit entry, all entitled payments to the Account and to initiate, as necessary, Automated Clearinghouse debit entries to adjust any Automated Clearinghouse credit (i) made in error (ii) deposited for an incorrect amount, or (iii) that is a duplicate of a correct payment. The City of New York will make a reasonable effort to communicate with me to notify me of a debit entry that will be made to the Account.

I understand that this authorization will remain in effect until a written instruction, properly executed by me, authorizing cancellation is submitted to the fax number(s) above.

1. VENDOR OR AUTHORIZED PERSON'S SIGNATURE

2. PLEASE PRINT NAME

3. DATE - MM/DD/YYYY



## **ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT THE NEW YORK CITY DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) FOR CITY VENDORS**

### **1. WHAT ARE THE BENEFITS OF DIRECT DEPOSIT?**

There are several advantages to direct deposit:

- Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your account is more secure.
- Payments arrive sooner – You don't have to wait for a check to arrive in the mail. Electronic payments are deposited directly into your bank account, saving days of waiting for checks to clear.
- You save time – Money deposited into your bank account is automatic. You save the time you used to spend at the bank depositing the check.

### **2. WHO SHOULD ENROLL?**

In accordance with Local Law 43 enacted by City Council in 2007, all vendors with City contracts over \$25,000 are required to enroll in the payment Direct Deposit program. In addition, vendors who choose **not** to enroll, may be assessed a \$3.50 per check fee. All vendors are encouraged to enroll in the program.

### **3. CAN FOREIGN COMPANIES ENROLL?**

Yes, however foreign vendors *must enroll with a U.S. based bank.*

### **4. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?**

Payments are deposited two business days after the date of issuance.

### **5. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT?**

The Payee Information Portal (PIP) is a service that allows you, as a payee/vendor for the City of New York, to manage your own account information, view your financial transactions with the City of New York, and much more. You may enroll in PIP by going to [nyc.gov/eft](http://nyc.gov/eft) and clicking on the payee information portal hyperlink.

In addition, you may contact your bank directly or use online banking, mobile applications, and regular bank statements to confirm the deposit.

### **6. HOW WILL I KNOW WHAT THE PAYMENT IS FOR?**

All payment information is transferred electronically to your bank account from Citibank. The City of New York now offers vendor access to the Payee Information Portal (PIP), which permits you to track up to three years of issued payments, as well as all scheduled payments. Direct deposits may reflect several invoices from one or more agencies, but the Payee Information Portal will provide information about each and every payment.

### **7. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT WE REQUESTED AND THE AMOUNT WE RECEIVED?**

Please contact your agency representative.

### **8. CAN DIRECT DEPOSITS BE CREDITED TO THE WRONG ACCOUNT? IF THAT HAPPENS, WHO IS RESPONSIBLE?**

The vendor is responsible for submitting to the Department of Finance correct information for the proper bank account to which it wishes to receive payments. The Department of Finance will not be able to ascertain if the vendor has supplied information for the wrong bank account.

However, if the bank account information that has been submitted is inconsistent and/or incorrect, the receiving bank will reject the payment and the Department of Finance will be notified. Finance will notify the agency and/or vendor and together we will do whatever is necessary to correct the problem. In order not to delay your payment, we will issue check(s) for your payment until the problem is resolved.

**9. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?**

Whenever you change any information, you must submit a new EFT Enrollment Form to the Finance Treasury Division indicating the type of change you are requesting. A copy of an imprinted voided check, imprinted encoded deposit slip, bank statement or bank letter with the new account information must be included with your EFT Enrollment Form. Mail correspondence to: Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, New York 10038, Att: Direct Deposit/EFT or fax to 646-500-7152.

It is important that you do not close the account that is linked to your direct deposits until the new account has been established and payments are being credited to your new account. When the change is complete, you may then close the old account.

**10. CAN I CANCEL MY DIRECT DEPOSIT ENROLLMENT?**

If you have a contract with the City for more than \$25,000 the law requires that you receive your payments by direct deposit. Vendors may request a cancellation by clicking the "Contact us" hyperlink at [nyc.gov/efit](http://nyc.gov/efit). Vendors that are **not** enrolled in EFT will be subject to the \$3.50 per check fee.

**11. DO I NEED TO SEND SEPARATE DIRECT DEPOSIT ENROLLMENT FORMS FOR EACH CITY AGENCY WITH WHICH I DO BUSINESS?**

No. One enrollment form is sufficient.

**12. WHAT IF MY NAME, ADDRESS OR TAX ID # CHANGES? HOW DOES THIS AFFECT MY DIRECT DEPOSIT? WHO SHOULD BE NOTIFIED?**

If your name, address or Tax ID # change, you must contact your paying agency and work with them to correct this information in the City's Financial Management System (FMS).

If only your address needs changing, you do **not** need to submit a new EFT Enrollment Form. You **will** need to submit a new form if your name or Tax ID # change.

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

## **GENERAL INSTRUCTIONS**

Complete the EFT application form online along with one of the four types of account documentation.  
Fax the form and backup to 646-500-7152 or mail them directly to:

NYC Department of Finance  
Treasury Division  
66 John Street, 12th Floor  
New York, NY 10038  
Attention: EFT

**Please type this form and save to your computer to retain a copy for your records.**

## **SECTION I - VENDOR INFORMATION**

1. Enter the vendor's social security number or taxpayer ID, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's email address, if it has one.
5. Provide the vendor's telephone number.

## **SECTION II - BANK INFORMATION**

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Bank name
4. Indicate 9-digit routing (ABA) transit number (located at the bottom of vendor's check).
5. Indicate type of account. Account must be designated as either checking or savings.  
(Check one box only).
6. List name and telephone number of the bank's representative.

## **SECTION III - VENDOR SIGNATURE AND AUTHORIZATION**

**Sign and print vendor or authorized person's name and indicate the date.**



**ATTACHMENT 3**

**Bid Book Coversheet/Verification and Affirmation Form**

BID BOOK

CITY OF NEW YORK  
DEPARTMENT OF YOUTH AND COMMUNITY DEVELOPMENT  
2 LAFAYETTE STREET, 14<sup>TH</sup> FLOOR  
NEW YORK NEW YORK 10007

INVITATION FOR BIDS

BID TITLE: 2017-18 CHILD AND ADULT CARE PROGRAM AT VARIOUS COMMUNITY CENTERS  
THROUGHOUT NEW YORK CITY

BID NO.: 26016B0001

SBUMIT BIDS BEFORE

BID OPENING TIME TO: 2 LAFAYETTE STREET, 14<sup>TH</sup> FLOOR; ROOM 1426

BID OPENING DATE AND HOUR: May 2, 2017 AT: 10:00 AM

BID QUESTIONS: All questions concerning the bid must be submitted in writing no later than three business days (72 hours) before the bid opening date and time. Questions may be submitted in person or via email to [BIDQUESTIONS@dycd.nyc.gov](mailto:BIDQUESTIONS@dycd.nyc.gov).

VERIFICATION BY OATH AND SIGNATURE OF BIDDER:

That being duly sworn, I depose and say: that I have knowledge of the several matters herein stated and they are in all respects true and that I have been authorized to execute the foregoing bid on behalf of said corporation, partnership or firm.

\_\_\_\_\_  
Full Name of Bidder (Company)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Federal Tax Identification No. (EIN No.)

\_\_\_\_\_  
Telephone No.

☐ Corporation

☐ Partnership

☐ Individual

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Fax No.

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

Subscribed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

Commission Expires \_\_\_\_\_, 20\_\_\_\_

## **AFFIRMATIONS**

### **1. BIDDER AFFIRMATION**

Bidder affirms that it is not in arrears to the City of New York upon debt or contract, or taxes, and is not a defaulter as surely 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 or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Bidder to receive public contracts.

OR

Bidder is unable to declare as above because of the following:

---

---

---

---

☐ I AFFIRM.

☐ I CANNOT AFFIRM FOR THE REASONS STATED ABOVE.

### **2. MACBRIDE PROVISIONS**

Bidder by checking the "Yes" box and signing this bid, agrees to the MacBride provisions contained in the Purchase Contract at pages 36-38. See the provisions for the effect of non-agreement on your bid.

**MacBride Provisions:**      ☐ Yes      ☐ No

### **3. SIGNATURE OF BID**

By signing the cover page, bidder agrees to be bound by all the terms and conditions of the bid documents supplied with the bid and documents referenced in the bid documents including but not limited to: Bid Book, Invitation for Bid, Contract Specific Terms and Conditions, Specifications, Schedule of Quantities and Prices, and the Purchase Contract. All documents, including references documents may be obtained from the Department of Youth and Community Development, at 2 Lafayette Street, 14<sup>th</sup> Floor, New York, NY 10007.

**ATTACHMENT 4**

**Blank Unit Price Schedule**

# UNIT PRICE TABLE

Vendor Name \_\_\_\_\_

Borough: Citywide

MEAL TYPE	ESTIMATED SERVINGS/DAY	ESTIMATED NUMBER OF SERVING DAYS/YEAR	UNIT PRICE (PER MEAL TYPE)	TOTAL PRICE (Estimated Servings per year) (PER MEAL TYPE)
BREAKFAST	4500	40	\$ _____	\$ _____
LUNCH	4500	40	\$ _____	\$ _____
SNACK	4500	210	\$ _____	\$ _____
SUPPER	5800	210	\$ _____	\$ _____
GRAND TOTAL				\$ _____

Notice to bidders: Complete Column D- Unit Price & Column E- Total Price. Column E must be completed by multiplying Columns B-Estimated Servings/Day and D- Estimated Number of Serving Days/Year. Bidders are asked to submit prices on the meal types indicated in compliance with all terms of the contract and schedules here to, include the estimates described in Schedule A. Pricing shall be on same menu cycle, provided by the SO, submit bids on as set forth in Schedule C and meal requirement set forth in Schedule B. All bidders must the same menu cycle provided by SO. Bid price must include price of food, milk (if applicable) according to the quality specifications set forth in Schedule D, packaging and transporting requirements as set forth in the IFB, cost of holding food at proper temperature or reheating and all related costs. Bids shall be submitted on an "all or none" basis.

**ATTACHMENT 5**

**Doing Business Data Form**



## Doing Business Data Form

To be completed by the City Agency prior to distribution

Agency: \_\_\_\_\_ Transaction ID: \_\_\_\_\_

Check One:

☐ Proposal

☐ Award

Transaction Type (check one):

☐ Concession

☐ Contract

☐ Economic Development  
Agreement

☐ Franchise

☐ Grant

☐ Pension Investment  
Contract

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

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

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

### Section 1: Entity Information

Entity Name: \_\_\_\_\_

Entity EIN/TIN: \_\_\_\_\_

#### Entity Filing Status (select one):

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

Entity is a Non-Profit: ☐ Yes ☐ No

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

**Section 2: Principal Officers**

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

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

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

☐ This person replaced former CEO: \_\_\_\_\_ on date: \_\_\_\_\_

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

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

☐ This person replaced former CFO: \_\_\_\_\_ on date: \_\_\_\_\_

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

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

☐ This person replaced former COO: \_\_\_\_\_ on date: \_\_\_\_\_



**Section 3: Principal Owners**

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

**There are no owners listed because (select one):**

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

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Section 4: Senior Managers**

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

**Senior Managers:**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

**Remove the following previously-reported Senior Managers:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Certification**

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

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Entity Name: \_\_\_\_\_

Title: \_\_\_\_\_ Work Phone #: \_\_\_\_\_

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

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



**ATTACHMENT 6**

**Iran Divestment Act Compliance Rider for  
New York City Contractors**

**ATTACHMENT 6—IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR**  
**NEW YORK CITY CONTRACTORS**

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

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

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

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

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

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

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH  
IRAN DIVESTMENT ACT**

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

*[Please Check One]*

**BIDDER'S CERTIFICATION**

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

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

**ATTACHMENT 7**

**Bid Form for Secured Transactions**

## ATTACHMENT 7

### **BID FORM FOR SECURED TRANSACTIONS**

1. Are any of the goods and/or services to be provided by bidder pursuant to this solicitation currently the subject of a security agreement, i.e. an agreement that creates or provides a security interest for a third-party?

Yes \_\_\_\_ No \_\_\_\_

2. If the answer to question 1 above is yes, the bidder shall provide below the name and address of the third-party with which it has entered into the security agreement as well as the name and telephone number of an authorized representative of that third-party solely for the purpose of the City informing that authorized representative to whom it should direct any notifications it may send to the City in furtherance of its security interest.

Name of Entity: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Auth. Rep. Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

3. Bidder hereby agrees that it shall immediately inform DYCD and provide the information required in paragraph 2 above if at any time after the execution of this document, any of the goods and/or services to be provided by bidder pursuant to this solicitation become subject to a security agreement.

4. Bidder hereby agrees that it shall promptly notify DYCD if any amount due or to become due to the bidder has been assigned to a third-party holding a security interest. Such notice shall be sent to the Agency Chief Contracting Officer with a copy to the General Counsel at the addresses listed below.

Department of Youth and Community Development  
2 Lafayette Street, 14th Floor  
New York, NY 10007  
Attn: Agency Chief Contracting Officer

and

Department of Youth and Community Development  
2 Lafayette Street, 21<sup>st</sup> Floor  
New York, NY 10007  
Attn: General Counsel

Such notice shall contain the following:

Name of Entity: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Auth. Rep. Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

5. Bidder hereby acknowledges and agrees that this form shall be incorporated into any agreement it may be awarded pursuant to this solicitation and it shall remain in compliance with all of the requirements of this form so long as any payments are owed to bidder including payments that are owed after the expiration of the term of the agreement. Failure to comply with the requirements of this form shall be a breach of a material term of the agreement.

BIDDER NAME: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

\_\_\_\_\_

FED. EMPLOYER I.D. NO. OR SOC. SEC. NO.

DATE: \_\_\_\_\_



STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say  
that s/he resides at \_\_\_\_\_, that s/he is the  
\_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the above instrument; that s/he knows the seal of said  
corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by  
order of the Board of Directors of said corporation; and that s/he signed her/his name thereto by like  
order.

\_\_\_\_\_  
NOTARY PUBLIC

## **ATTACHMENT 8**

### **Bidder Checklist**

## **Attachment 8 Bidder Check List**

**FOR YOUR CONVENIENCE IN PUTTING BID TOGETHER  
NOT TO BE SUBMITTED WITH YOUR BID**

### **Document Description**

- ☐ All released bid documents Submitted Intact with all pages in original sequence (i.e., notices, bid book, forms, addendums, etc.)
- ☐ Completed Bid Book Coversheet/Verification and Affirmation form  
signed and notarized
- ☐ Completed Unit Price Schedule
- ☐ Completed Doing Business Data Form
- ☐ Signed and notarized Iran Divestment Act Compliance Rider for  
New York City Contractors
- ☐ Bid Form for Secured Transactions signed and notarized
- ☐ Certificates of Insurance along with Certification by Insurance Broker or Agent  
Completed and notarized
- ☐ Copy of current State or local health permit or certification for food preparation
- ☐ One reference
- ☐ Copy of current quality control plan
- ☐ Copy of proper licenses and or registration to conduct business within New York State
- ☐ Department of labor service supply and service report
- ☐ One bid document marked original and two copies of the above completed documents

The above checklist is included for your convenience only and may not constitute all of the requirements set forth in the bid solicitation documents. It is the vendor's responsibility to verify and ensure all of the requirements set forth in the bid solicitation documents are submitted. Failure to comply may render your bid non-responsive.