

## AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_ (the “Agreement”), by and between the City of New York (the “City”) acting by and through the Mayor’s Office of Housing Recovery Operations (the “Agency” or “HRO”) located at 250 Broadway, 24<sup>th</sup> Floor, New York, NY 10007 and \_\_\_\_\_ (the “Contractor”), located at \_\_\_\_\_.  
(The City and the Contractor may be referred to collectively as the “Parties” and singularly as a “Party”).

### ARTICLE 1: BACKGROUND

- A. The City desires to award contracts in advance for emergency service contracts to support the City’s needs to respond to natural or man-made disasters that impact any borough or section of New York City.
- B. In 2016, the City established the On-Call Emergency Contract Program to procure construction-related task-order contracts for disaster recovery and such contracts are scheduled to expire in November 2020.
- C. The City desires to expand the On-Call Emergency Contract Program in 2020 to engage contractors to provide the following goods, services, and construction on a requirements basis:
- Category #1: Critical Public Building Restoration;
  - Category #2: Construction Services for Temporary Restoration of Housing;
  - Category #3: Construction Support for Urban Search and Rescue;
  - Category #4 and #5: Debris Removal, including Marine Transportation;
  - Category #6: Medical Space and Sheltering;
  - Category #7: Emergency Citywide Information Technology (IT) Support and Geographic Information Systems (GIS) Services;
  - Category #8: Environmental Testing Services;
  - Category #9: Supervision, Management and Administrative Services;
  - Category #10: Building Demolition;
  - Category #11: Building Assessment Teams;
  - Category #12: Emergency Transportation Contracts;
  - Category #13: Ground Support;
  - Category #14: Base Camp;
  - Category #15: Temporary Laborers – Disaster Response Unskilled Labor;
  - Category #16: Environmental Remediation Services; and

- Category #17: Construction Services for Temporary Restoration of Housing - Multifamily

- D. New York City Emergency Management (“NYCEM”) is coordinating the City’s On-Call Emergency Contract Program.
- E. The On-Call Emergency Contract Program contracts are part of the City’s ability to respond quickly and effectively, but the City may use any number of methods to provide necessary and essential services in the event of an emergency.
- F. The Agency issued a request for proposals for a multiple-award task order contract in accordance with New York City Procurement Policy Board (“PPB”) Rule § 3-03(j) and the City Chief Procurement Officer approved a total contract term in excess of three years in accordance with PPB Rule § 3-03(j)(3).
- G. Such solicitation sought contractors with scalable capability and resources (e.g., facilities, labor, management, equipment, logistics, etc.) to manage all types of emergencies.
- H. The Agency awarded the Agreement to the Contractor based upon, and in consideration, among other things, of its representation that it will perform the required services in a timely manner and in compliance with federal funding requirements.

## ARTICLE 2: TERM

- A. *Registration.* This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328. Such registration requirement shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of funds by the City.
- B. *Commencement Date.* This Agreement shall commence upon April 1, 2021; this date shall be known as the “Commencement Date.”
- C. *Initial Term.* The Agreement’s initial term shall expire two years after the Commencement Date, unless earlier terminated in accordance with the terms of this Agreement.
- D. *Options to Renew.* The City has the right to renew this Agreement for up to three, one-year terms, in accordance with PPB Rule § 4-04 upon substantially the same terms as contained in this Agreement.

- E. *Effect of Open Task Order on Term.* If Work on a Task Order for Emergency Response Work commences prior to the Agreement's expiration (including, on the last Day of this Agreement), the Contractor shall continue Work on the Task Order (including any Supplementary Task Orders relating thereto) for Emergency Response Work and all the terms of this Agreement shall apply.
- F. *Definition of "Term".* The initial term, along with any renewal terms described in Article 2(C), shall be known as the "Term."
- G. *Extensions of Time for Performance.* PPB Rule section 4-03 shall govern extensions of time for performance in addition to provisions elsewhere in this Agreement.

ARTICLE 3: SCOPE OF WORK;  
DISASTER READINESS AND MOBILIZATION PLAN

- A. *Scope of Work.* The Contractor shall perform the Scope of Work set forth in Exhibit A and as further described in any Task Orders.
- B. *Task Order #1.* Upon the Agency's issuance of Task Order #1 the Contractor shall prepare and submit a Disaster Readiness and Mobilization Plan (DRMP) to the Agency within the time set forth in the Task Order. Work under Task Order #1 will also include attendance at up to four planning meetings per year, attendance at one table top exercise per year, up to four mobilization/readiness calls per year, and monthly "Score Card" updates. Payment for such Work is set forth in Exhibit B and additional details about the requirements will be provided in Task Order #1 itself. The City anticipates that Task Order #1 will be the first Task Order issued. However, it is possible that an emergency will arise prior to the issuance of Task Order #1 and, therefore, the City may issue a Task Order for Emergency Response Work that precedes Task Order #1.
- C. *Contents of Disaster Readiness and Mobilization Plan.* The DRMP shall describe the Contractor's proposed course of action if the City issues it a Task Order for Emergency Response Work to perform Work described in Exhibit A. Contractors are expected to be as self-sufficient as possible including, but not limited to, providing for the identification, scheduling, transportation, lodging, and feeding of their personnel, Subcontractors, and agents, and securing and maintaining their own supply chain, staging areas, and permits. The DRMP shall include the following at a minimum:
  - 1. A list and brief description of assets and staffing for emergencies for which the City has notice (e.g., a hurricane) and for which the City has no notice (e.g., a terrorist attack) that could trigger a need for the Work described in Exhibit A. For notice

events, the Contractor shall provide such list and description for intervals of 96, 72, 48, 24, 12, 8, and 4 hours to the Agency.

2. A list of potential Subcontractors, with the information required in Article 9(C), below, to the extent that it is available on the date that Task Order #1 is issued.
3. A proposed response to each of the listed disaster scenarios that includes:
  - a. A description of the Contractor's recovery protocols;
  - b. A list of points of contact;
  - c. The Contractor's staffing plan, including requirements for each staff member (e.g., housing and travel);
  - d. A list of the equipment and materials needed and the potential source of such equipment and materials, in addition to potential obstacles to obtaining such equipment and materials in emergency circumstances; and
  - e. The Contractor's protocols with respect to risk management and the insurance that it maintains (e.g., for Categories #1-5, #10, and #16, how will it comply with the requirement that the aggregate of Commercial General Liability insurance be provided on a per project basis; what insurance coverage does it expect its Subcontractors to maintain).
4. A list of existing contracts with the City that indicates for each contract the start and end date, the owning agency, the dollar amount and the scope of work.
5. If the Contractor's Scope of Work for this Agreement includes construction Work, a sample Noise Mitigation Plan.

D. *Review and Approval of DRMP.* The DRMP shall be subject to the approval of the Agency. The Agency may consult with a Category 9 Contractor about the approval or requests for revision. If directed by the Agency, the Contractor shall cooperate with the Category 9 Contractor with respect to its review of the DRMP. The City intends to consult with the Category 9 Contractor on DRMPs on the following categories of Work: Category #1, #2, #3, #4, #5, #8, #10, #11, #13, #16, and #17, but the City may consult with the Category 9 Contractor on additional categories of Work.

E. *Revisions and Updates to DRMP.* The City may require the Contractor to revise the DRMP as a condition of approval of the DRMP. The Contractor shall notify the Agency and NYCEM within 48 hours when a point of contact changes. During the Term of this Agreement, if the Contractor enters into any other contracts with other City agencies that were not listed in the DRMP, the Contractor shall notify the Agency promptly after the Comptroller registers any such contract. Nothing in this Agreement shall prevent the Contractor from bidding on other contracts with the City.

- F. *Review by Category 9 Contractors.* The following provision applies only to Category 9 Contractors. The Contractor shall be required to review, recommend for approval or disapproval, and provide any other services necessary for the City in evaluating DRMP submissions.

#### ARTICLE 4: PAYMENT

##### *A. Payment for DRMP:*

1. Prior to issuing Task Order #1, the Agency shall issue to the Contractor a request for proposal for the preparation and annual updates of the DRMP. Within two weeks of the Agency's issuance of the request for proposal, the Contractor shall submit to the Agency a proposal, which shall include at a minimum:
  - a. Description of the Contractor's current disaster and readiness and mobilization plan, if any.
  - b. The Contractor's proposed approach to develop the DRMP (or tailor Contractor's existing disaster readiness and mobilization plan) according to the Scope of Work described in Exhibit A.
  - c. Applicable only to Category 9 Contractors: The timeline and fixed fee for reviewing other DRMPs as assigned by the City.
  - d. The Contractor's estimated time for preparing and submitting the DRMP to the Agency for its review.
2. Upon the City's approval of the DRMP, the Contractor shall invoice the City for the agreed upon fixed fee.

- B. *Payment for Emergency Response Work.* The City shall pay for the Contractor's satisfactory Emergency Response Work in accordance with Exhibit B.

##### *C. Prompt Payment*

1. The prompt payment provisions of Procurement Policy Board (PPB) Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.
2. The Contractor shall submit a proper invoice to the Agency to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

3. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

*D. Economic Price Adjustment.* For the formula for economic price adjustments, please see Exhibit B.

*E. Electronic Funds Transfer*

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 Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the “EFT Vendor Payment Enrollment Form” available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.
2. The Agency may waive the application of the requirements of this Article 4(E) 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 the preceding paragraph 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.

*F. Reductions in Federal, State, or City Funding*

1. Task Orders may be funded in whole or in part by funds secured from the federal, State or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State or City governments, the City shall have, in its

sole discretion, the right to terminate this Agreement or an individual Task Order in whole or in part, or to reduce the funding or level of services in a Task Order caused by such action by the federal, State, or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of elements of the Work.

2. In the case of the reduction option referred to in Article 4(F)(1), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Agency shall afford the Contractor an opportunity to make, within seven Days, suggestions it may have as to which elements of the Work might be reduced or eliminated. The Agency shall not be bound to utilize the Contractor's suggestions and the Agency shall have sole discretion as how to effectuate the reductions or eliminations.
3. If the City reduces funding pursuant to this Article 4(F), the City shall pay for satisfactory Work performed prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of a Task Order prior to receipt of notices of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event, shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

#### ARTICLE 5: CONTRACTOR SELECTION FOR EMERGENCY RESPONSE WORK AND TASK ORDER PROCESS

##### *A. Conditions Precedent to Issuing a Task Order for Emergency Response Work*

1. The Agency may issue a Task Order for Emergency Response Work when the following conditions are met:
  - a. A Qualifying Event exists, as that term is defined below;
  - b. The Agency determines, in consultation with NYCEM, that there is an unforeseen danger to life, safety, property, or a necessary service due to an impending emergency and the existence of such condition creates an immediate and serious need for the goods, services, or construction described in Exhibit A that cannot be met through normal procurement methods; and
  - c. The Agency has obtained written approval, which may be provided electronically, from the Comptroller and the Corporation Counsel for an emergency procurement; and

- d. The Agency determines in consultation with NYCCEM that a public exigency or emergency for the requirement for goods, services, or construction will not permit a delay resulting from a competitive solicitation using a different procurement method.
2. For the purposes of issuing Task Orders under this Agreement, a “Qualifying Event” exists when either (i) an Emergency Declaration is in effect, or (ii) based on the circumstances, and in consultation with the Mayor’s Office and any relevant subject matter experts, the Commissioner of NYCCEM has communicated to the Agency that an Emergency Declaration is expected to be issued within the next 48 hours. If the Agency issues a Task Order where the Qualifying Event is established under subsection (ii), the Agency, in consultation with NYCCEM, must reassess the circumstances at least every 24 hours to determine if a Qualifying Event still exists and, in no case, shall a Qualifying Event established under subsection (ii) exist for a period of time longer than 120 hours from the first communication issued by the Commissioner of NYCCEM.
3. If the Agency issues a Task Order and a Qualifying Event ceases to exist with respect to that Task Order, the Agency must notify NYCCEM and must terminate such Task Order as soon as is reasonably practicable.

*B. Contractor Selection Process*

1. The Agency intends to award up to three contracts for the scope of Work described in Exhibit A. When the conditions in Article 5(A) have been met, the Agency may award a Task Order for Emergency Response Work to one or more contractors awarded a contract, including Contractor. The selection of a contractor shall be in accordance with the process set forth below.
2. The City reserves the right not to issue any Task Orders for Emergency Response Work and to proceed with an emergency procurement for the required services or to have the services performed by City employees or another contractor if the City determines it would be in its best interest to do so.
3. The City will endeavor to notify each contractor holding a contract for the scope of Work described in Exhibit A when there is a need for the Work described in Exhibit A. If the public exigency or emergency for the required services will not permit a delay, the City may contact fewer than all of the contractors awarded a contract for the scope of work described in Exhibit A. Such notification may be by telephone, email, or any other available method.
4. Such notification, which may be provided orally or in writing, shall include a description of the required Work, the date and time a representative of a contractor



must be on-site if awarded a Task Order for Emergency Response Work, and a request for proposals.

5. Upon such notification, the Contractor shall promptly provide a proposal, orally or in writing, as directed by the Agency. The Contractor must respond to every request that it receives. The Agency may declare that the Contractor is in default if it fails to provide a response. The Agency may reject any proposal that fails to meet the submission requirements.
6. To the extent possible, the Contractor's proposal shall include:
  - a. The Contractor's price and basis for such pricing to perform the Task Order for Emergency Response Work;
  - b. The identity of proposed Subcontractors, to the extent they are known; and
  - c. The Contractor's estimated time for performance.

If the Contractor's proposal (attached as Exhibit J) for the award of the On-Call Emergency Contract included unit prices, such unit prices shall be the basis for the price proposal to the extent they are applicable. To the extent possible, the Contractor's proposal shall follow its DRMP.

7. The City shall award the Task Order(s) for Emergency Response Work to the contractor(s) based on price or a combination of other factors, including capacity, contractor's time needed to get to the Site (if on-site Work is required), and experience. If awarded a Task Order for Emergency Response Work, the City may direct the Contractor to provide Work in any of the five boroughs and nearby, if specified in the Scope of Work. The City may select multiple contractors to provide services in the same general location. The City reserves the right not to issue a Task Order for Emergency Response Work to the Contractor if, in its sole opinion, the Contractor may be unable to provide the required services in a satisfactory and timely manner.
8. The Contractor may not begin Work under the terms of this Agreement without an authorized Task Order for Emergency Response Work. A Task Order for Emergency Response Work may initially be verbal. As soon as possible, but no later than 72 hours after the initial notification of award of the Task Order for Emergency Response Work, the Contractor and the Agency shall agree on a scope of work to be turned into a written Task Order for Emergency Response Work that will include the services, the pricing, and other relevant information (e.g., staffing).
9. If the Contractor is awarded a Task Order for Emergency Response Work and the Contractor is unable to perform the services on such Task Order for Emergency

Response Work because of lack of capacity or conflict of interest, the Agency may disqualify the Contractor for the purposes of that Task Order for Emergency Response Work and select another contractor.

*C. Preparation of Task Order for Emergency Response Work*

1. The Agency will define the Work to be done under a Task Order for Emergency Response Work. The Agency may provide only general direction for accomplishing the Work, and it may defer to the Contractor to select the means and methods to be used. Depending on the nature of the emergency, the Parties will work closely together on accomplishing the Work and, if the police, fire or emergency services agencies are involved, the Parties will cooperate with such emergency services agencies while performing a Task Order for Emergency Response Work.
2. After approval by the Agency of the Contractor's proposal for the Task Order for Emergency Response Work, the Contractor shall promptly obtain the resources, such as staffing, Subcontractors, materials, equipment, and supplies needed to accomplish the Work.

*D. Substance of Task Order for Emergency Response Work*

1. The Task Order for Emergency Response Work shall include investigation, planning, management, performance, supervision, and coordination of all Work necessary for any Task Order for Emergency Response Work assigned to effectuate its timely completion. The Contractor may be expected to provide services on a 24-hours-a-day, 7-days-a-week basis.
2. The Contractor and the City will meet regularly at the Site(s) or elsewhere, as specified by the City. More than one meeting per day may be required if necessary, in the discretion of the City.
3. The Contractor shall cooperate with the City and any auditors as its Work and documentation relating to such Work is reviewed.
4. If directed to by the Agency, the Contractor shall work with the City to draft a recovery plan and provide professional advice on the most practical and efficient options for recovery.
5. If directed to by the Agency or NYCEM, the Contractor shall provide staffing (potentially 24-hours-a-day, 7-days-a-week) to the City's Emergency Operations Center, Logistics Center, or similarly situated coordination center for the purposes of interfacing with City emergency personnel.

#### *E. Task Order Completion Times*

1. The completion time for Work under a Task Order for Emergency Response Work may not be known until after the Work has begun. If the completion time is known at the time the written Task Order for Emergency Response Work is issued, the Task Order for Emergency Response Work will specify the date for final completion or, if applicable, Substantial Completion as defined in the Task Order. If the completion time under a Task Order for Emergency Response Work is not known at the time the written Task Order for Emergency Response Work is issued, the Parties will work together to determine a mutually acceptable date for final completion or, if applicable, Substantial Completion and shall issue a Supplemental Task Order that contains the agreed upon date. The Task Order for Emergency Response Work may provide for liquidated damages or other remedies for failure to meet deadlines and other performance requirements.
2. The Contractor shall work in good faith to complete the Work under a Task Order for Emergency Response Work in a timely manner under the circumstances. In performing the Work under a Task Order for Emergency Response Work, the Contractor and the Agency shall emphasize techniques and strategies that will aid in expediting the completion of the emergency services required under a Task Order for Emergency Response Work. The Contractor agrees to use all resources at its command so that each Task Order for Emergency Response Work is completed in a timely manner by itself and, if applicable, by its Subcontractors.
3. The Contractor and the City acknowledge that time will be of the essence for each Task Order for Emergency Response Work and will use their best efforts to prevent delays. If a situation that may cause a delay cannot be resolved, the Contractor shall bring it to the immediate attention of the Agency. The Contractor must notify the NYC Emergency Operations Center (EOC) and Logistics Center (LC) if problems concerning the supply chain arise.

#### ARTICLE 6: AMENDMENTS TO AGREEMENT AND TASK ORDERS

*A. Changes to the Agreement.* Changes to this Agreement may be made only as duly authorized by the ACCO of the Agency or his or her designee and in accordance with the PPB Rules. Any change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties.

*B. Changes to a Task Order*

1. Changes to a Task Order may be made only as duly authorized by the ACCO of the Agency or his or her designee and in accordance with the PPB Rules. A change to a Task Order will be made by a Supplemental Task Order. A change to a Task Order shall not be valid unless made in writing and signed by authorized representatives of both parties.
2. Supplemental Task Orders will be issued for Extra Work necessary to complete the Work included in the original scope of a Task Order or for changes to the scope of such Task Order deemed necessary to respond to the Qualifying Event by the Commissioner of the Agency.
3. Prices for Extra Work added by a Supplemental Task Order will be determined as follows:
  - a. If the Agreement or Task Order includes unit prices that cover all or some of the Supplemental Task Order Work, such unit prices shall apply to the extent they cover such Work.
  - b. If the Agreement or Task Order includes prices for labor or materials that covers the employees or materials necessary to accomplish Supplemental Task Order Work provided on a time and materials basis, such prices shall apply to the extent they cover such Work.
  - c. To the extent that (a) and (b) of this Article 6(B)(3) do not apply, the price of such Supplemental Task Order Work shall be paid by agreement of a fixed price or in any other manner approved by the CCPO.
  - d. For Categories #1, #2, #3 and #17, Article 26 of Exhibit F shall govern prices for Extra Work added by Supplemental Task Order.
  - e. For Categories #4, #5, #8, and #16, Article 21 of Exhibit F shall govern prices for Extra Work added by Supplemental Task Order.

C. *Changes Through Fault of Contractor.* If any change is required to the Work to be provided under a Task Order because of the negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

#### ARTICLE 7: CONTRACTOR DEFAULT

A. *Grounds for Default.* In addition to those instances specifically referred to in other provisions of this Agreement, including a Task Order, the Commissioner shall have the right to declare the Contractor in default of this Agreement or any Task Order issued hereunder if:

1. The Contractor breaches a material term or condition of the Agreement, including a Task Order, including unsatisfactory performance of Work; or if
2. The Contractor fails to respond to a request for a proposal for Emergency Response Work; or if
3. The Contractor fails to commence Work when notified to do so by the Agency; or if
4. The Contractor abandons the Work; or if
5. The Contractor shall refuse to proceed with the Work when and as directed by the Commissioner; or if
6. The Contractor, without just cause, reduces its working force to a number that, if maintained, would be insufficient, in the opinion of the Commissioner, to complete the Work in accordance with the progress schedule (if applicable) or within the time set forth in the Task Order; or if
7. The Contractor fails or refuses to increase sufficiently such working force when ordered to do so by the Commissioner; or if
8. The Contractor sublets, assigns, transfers, converts or otherwise disposes of this Agreement other than as herein specified; or sells or assigns a majority interest in the Contractor; or if
9. The Contractor fails to secure and maintain all required insurance or fails to cause its Subcontractors to secure and maintain all required insurance (if applicable); or if
10. The Contractor is unable to perform Work due to a lack of capacity or conflict of interest; or if
11. The Contractor is insolvent or proceedings by or against the Contractor, either voluntarily or involuntarily, are commenced under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors; or if
12. The Commissioner shall be of the opinion that the Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if

13. 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 Agreement, including a Task Order; or if
14. The Commissioner shall be of the opinion that the Work cannot be completed within the time set forth in the Task Order 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
15. The Work is not completed within the time set forth in the Task Order or within the time to which the Contractor may be entitled to have such completion extended; or if
16. Any statement or representation of the Contractor in the Agreement or in any document submitted by the Contractor with respect to the Work, the Task Order, or the Agreement (or for purposes of securing the Agreement, including a Task Order) was untrue or incorrect when made; or if
17. The Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:
  - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
  - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
  - c. a criminal violation of any state or federal antitrust law;
  - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 et seq., or the Mail Fraud Act, 18 U.S.C. §§ 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
  - e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
  - f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

- B. *Opportunity to be Heard.* Before the Commissioner shall exercise his/her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard in person or in writing, upon not less than two Days' notice or a longer period set forth in the notice. The Commissioner may, in his or her discretion, offer the Contractor an opportunity to cure the default. The Commissioner may temporarily suspend Work under the Agreement pending the outcome of the default proceedings pursuant to this Article 7.
- C. *Notice of Default.* The right to declare the Contractor in default for any of the grounds specified above or elsewhere in this Agreement or in the applicable Task Order shall be exercised by sending the Contractor a notice, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (hereinafter referred to as a "Notice of Default").
- D. *Partial Default.* The Commissioner shall have the right to declare the Contractor in default as to a part of the Work only. In such a case, the Contractor shall discontinue such part, shall continue performing the remainder of the Work in strict conformity with the terms of the Agreement and applicable Task Order, and shall in no way hinder or interfere with any Other Contractor(s) or persons whom the Commissioner may engage to complete the Work as to which the Contractor was declared in default. If the Commissioner declares the Contractor in partial default, the City shall be entitled to utilize for completion of the part of the Work as to which the Contractor was declared in default only such plant, materials, equipment, tools, and supplies as had been previously used by the Contractor on such part.
- E. *Finality.* 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 Agreement. 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 New York Civil Practice Law and Rules.
- F. *Completion of the Work*
1. The Commissioner, after declaring the Contractor in default on a Task Order for Emergency Response Work, may then have the Work 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 the applicable PPB Rules.
  2. For the purpose of completing the Work, the Agency may utilize such of the Contractor's plant, materials, equipment, tools, and supplies remaining on the Site, and also such Subcontractors, as he or she may deem advisable.
  3. After such completion, the Commissioner shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages (at the rate provided for in the Task

Order for Emergency Response Work) from the date when the Work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the Work. Such certificate shall be binding and conclusive upon the Contractor, its sureties (if applicable), and any person claiming under the Contractor, as to the amount thereof.

4. The 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, shall be charged against and deducted out of monies which are earned by the Contractor prior to the date of default. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Task Order for Emergency Response Work if it had been completed by the Contractor, any excess shall be paid by the Contractor.

#### ARTICLE 8: TERMINATION, SUSPENSION, AND LIQUIDATED DAMAGES

A. *Termination without Cause.* The Agency shall have the right to terminate or suspend the Agreement, a Task Order, or part of the Work without cause in accordance with the procedures set forth in this Article 8. Payment for terminated Work shall be made in accordance with as follows:

1. The City shall not incur or pay any further obligation pursuant to the Agreement beyond the termination date set by the Agency. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

B. *Termination for Cause.* The Agency shall have the right to terminate or suspend the Agreement, a Task Order, or part of the Work for cause for any of the reasons set forth in Article 7 of this Agreement in accordance with the procedures in Article 7 and this Article 8. Payment for such terminated Work shall be made in accordance with Article 8(A)(1).

C. *Procedures for Termination*

1. The Agency shall give the Contractor written notice of any termination of this Agreement, a Task Order, or part of the Work. Such notice shall specify the



applicable provision(s) under which the Agreement, Task Order, or part of the Work is terminated and the effective date of the termination.

2. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope.
3. For termination for cause, the effective date of the termination shall be the date that the Agency declares the Contractor in default in accordance with Article 7, above, unless the Agency sets a different date.
4. The Contractor shall, upon receipt of notice of termination, unless otherwise directed by the Commissioner:
  - a. Stop Work on the date specified in the notice of termination;
  - b. Take such action as may be necessary for the protection and preservation of the City's materials and property;
  - c. Cancel all cancelable orders for material and equipment
  - d. As directed by the Agency either: (i) assign to the City and deliver to the Site or another location designated by the Commissioner, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Agreement and has been specifically fabricated for the sole purpose of this Agreement and not incorporated into the Work or (ii) furnish, within 45 Days, an inventory to the Agency of material and equipment purchased through or provided under this Agreement and carry out any Agency directive concerning the disposition of such material and equipment;
  - e. Take no action that will increase the amounts payable by the City under this Agreement;
  - f. Provide reasonable assistance to the Agency in the transition, if any, to a new contractor;

- g. Account for and refund to the Agency, within 45 Days, any unexpended funds that the Agency advanced to the Contractor pursuant to a Task Order;
  - h. If and as requested by the Agency, turn over to the Agency or its designees all books, records, and documents specifically relating to this Agreement or a Task Order;
  - i. Furnishing to the Agency, within 30 Days, an inventory of all equipment, appurtenances, and property purchased through or provided under this Agreement, and carrying out any Agency directive concerning the disposition thereof; and
- D. *Suspension.* In addition to any other powers set forth in this Agreement or by operation of Law, the Commissioner may suspend, in whole or in part, any part of the services to be provided under a Task Order for Emergency Response Work whenever such suspension is in the best interest of the City in his or her judgment. The City shall pay for satisfactory Work performed prior to the suspension date that is specified in a written notice of suspension provided by the Agency to the Contractor. In addition, any obligation necessarily incurred by the Contractor on account of a Task Order for Emergency Response Work prior to receipt of notice of suspension and falling due after the suspension date shall be paid by the City in accordance with the terms of this Agreement.
- E. *Liquidated Damages.* If this Agreement or a Task Order includes liquidated damages for a failure to comply with a provision of this Agreement or a Task Order, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.
- F. *Miscellaneous.* Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement or a Task Order, 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.
- G. *No Limitation.* The rights and remedies of the City provided in this Article 8 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

## ARTICLE 9: SUBCONTRACTORS

- A. *Maximum Value of Subcontracts.* The Contractor shall not make subcontracts totaling an amount more than sixty percent of the total value of each Task Order for Emergency Response Work without prior approval from the Agency.
- B. *Employer-Employee Contracts.* Individual employer-employee contracts are not subcontracts subject to this Article 9.
- C. *Agency Approval of Subcontracts.* In accordance with PPB Rule § 4-13, all Subcontractors must be approved by the Agency prior to commencing Work under a subcontract. For determining the value of a subcontract, all subcontracts with the same Subcontractor or proposed Subcontractor shall be aggregated. If the Subcontractor was not previously approved in the DRMP, the following procedures apply:
1. *Approval when a subcontract is \$20,000 or less.* The Agency hereby grants approval of all Subcontractors providing services covered by this Agreement pursuant to a subcontract that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Agency listing all such Subcontractors and shall list the Subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)).
  2. *Approval when a subcontract is greater than \$20,000.*
    - a. The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval of the Agency of the proposed Subcontractor.
    - b. Prior to entering into any subcontract for an amount greater than \$20,000.00, the Contractor shall submit a written request for the approval of the proposed Subcontractor to the Agency. Such request shall include the following information, in addition to other information that may be requested by the Agency tending to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience, and financial resources to perform the Work in a accordance with the terms and conditions of this Agreement: (i) name and address of the proposed Subcontractor, (ii) portion of the work it is to perform (and materials that it is to furnish, if applicable), (iii) the estimated cost of the subcontract, (iv) information required by PPB Rule 2-08(e), if applicable, and (v) the proposed subcontract. In addition, if the proposed Subcontractor is required to maintain insurance in accordance with Exhibit C, the Contractor shall subject the proposed Subcontractor's proof of insurance, which must include, certificate(s) of insurance, certification of insurance broker or agent, and any required additional insured endorsements.

- c. If an approved Subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontractor shall be subject to approval in accordance with the above requirements.
  - d. The Agency will notify the Contractor in writing if the proposed Subcontractor is approved. If the proposed Subcontractor is not approved, the Contractor may submit another proposed Subcontractor unless the Contractor decides to perform the Work. No Subcontractor shall be permitted to perform any Work unless approved.
  - e. Notwithstanding paragraphs b-d of this Article 9(C)(2), the Agency may grant preliminary approval of a subcontract exceeding \$20,000 and may allow the Subcontractor to perform Work on the condition that the Contractor shall comply with paragraphs (b)-(e) as soon as practicable.
- D. *Revocation of Approval.* The Agency may revoke the approval of a Subcontractor granted or deemed approved in accordance with Article 9(C) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the Subcontractor to cease all Work under the subcontract. The City shall not incur any further obligation for services performed by such Subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for satisfactory Work performed by the Subcontractor in accordance with this Agreement prior to the effective date of revocation.
- E. *Content of Subcontracts.* Each subcontract must be memorialized in writing as soon as practicable considering the emergency circumstances and must contain the following provisions, at a minimum, in addition to any other provisions specified by the Agency in the Task Order for Emergency Response Work.
- 1. An express agreement that Subcontractor's Work, including any materials furnished, shall strictly comply with the requirements of this Agreement and the applicable Task Order for Emergency Response Work. Accordingly, before entering into any subcontract hereunder, the Contractor shall provide the proposed Subcontractor with a complete copy of this Agreement and the applicable Task Order for Emergency Response Work and inform the proposed Subcontractor fully and completely of all provisions and requirements of this Agreement and the applicable Task Order for Emergency Response Work relating either directly or indirectly to the Work to be performed and the materials to be furnished under such subcontract.
  - 2. If the City anticipates that the Task Order for Emergency Response Work is federally funded, a statement that the Subcontractor is responsible for complying with the federal requirements in this Agreement (see Exhibit H).

3. The following statement: “Contractor encourages the subcontractor to understand the local community and use local resources where appropriate.”
  4. Insurance requirements for Subcontractors as set forth in Exhibit C.
  5. A provision regarding the resolution of disputes between the Subcontractor and the Contractor that complies with the requirements in this Agreement.
  6. A provision stating that nothing contained in the agreement between the Contractor and the Subcontractor shall impair the rights of the City.
  7. A provision that nothing contained in the agreement between the Contractor and the Subcontractor, or in the Agreement between the City and the Contractor shall create any contractual relation between the Subcontractor and the City.
  8. A provision requiring that the Subcontractor comply with the requirements of Executive Order 50 (see Article 2(E)(4) of Exhibit E) and the records retention requirements of this Agreement (see Article 3 of Exhibit E) and specifically agrees that the City may enforce such provisions directly against the Subcontractor as if the City were party to the subcontract.
  9. If the subcontract exceeds \$50,000, a provision that the Subcontractor shall not engage in any unlawful discriminatory practice as defined in Title VIII of the Administrative Code (Section 8-101 *et seq.*).
  10. For Work subject to Labor Law Section 220, the prevailing wage rates and supplemental benefits to be paid in accordance with Labor Law Section 220.
  11. For Task Orders for Emergency Response Work that include construction or construction-related Work, the same terms and conditions as to method of payment for Work, labor, and materials, and as to retained percentages, as are contained in Exhibit F to this Agreement.
- F. *Copy of Subcontract.* The Contractor shall provide a copy of any subcontract or solicitation for a subcontract promptly upon the Agency’s demand.
- G. *Responsibility for Subcontractors.* The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its Subcontractors and of the Subcontractor’s officers, agents, and employees as it is for the acts and omissions of any person directly employed by the Contractor. The Agency’s approval of the Subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities hereunder.
- H. *Subcontractor Reporting System.* Following a Task Order for Emergency Response Work, the Contractor must list its Subcontractors in the web based Subcontractor Reporting System through the City’s Payee Information Portal (PIP), available at [www.nyc.gov/pip](http://www.nyc.gov/pip).

For each Subcontractor listed, the Contractor is required to provide the following information: maximum contract value, description of the Subcontractor's Work, start and end date of the subcontract, and identification of the Subcontractor's industry. Thereafter, the Contractor will be required to report in the system the payments made to each Subcontractor within 30 days of making a payment. If any of the required information changes throughout the term of the Agreement, the Contractor will be required to revise the information in the system.

Failure of the Contractor to list a Subcontractor or to report Subcontractor payments in a timely fashion may result in the Commissioner declaring the Contractor in default of the Contract and will subject the Contractor to liquidated damages of \$100 per day for each day that the Contractor fails to identify a Subcontractor along with the required information about the Subcontractor and fails to report payments to a Subcontractor, beyond the time frames set forth herein or in the notice from the City.

- I. *Minority- and Women-Owned Business Enterprises.* The City is committed to providing opportunities for minority- and women-owned business enterprises (M/WBEs), and strongly encourages the Contractor to utilize M/WBEs for services required pursuant to this Agreement. The Contractor's attention is directed to Article C(11) of Part 1 of Exhibit H for requirements applicable to federally funded contracts concerning the use of small firms, M/WBE firms, and labor surplus area firms.
- J. *Local Resources.* The City encourages the Contractor to understand the local community and use local resources where appropriate.

#### ARTICLE 10: AGREEMENT COMPONENTS

- A. *Exhibits.* This document is referred to throughout as "the main body of the Agreement." All Task Orders and the following exhibits to this Agreement are incorporated herein:

- 1. Cover Page
- 2. Exhibit A: Scope of Work
- 3. Exhibit B: Payment
- 4. Exhibit C: Indemnification and Insurance
- 5. Exhibit D: Bonding Requirements
- 6. Exhibit E: City Terms and Conditions
- 7. Exhibit F: Supplemental City Terms and Conditions
- 8. Exhibit G: HireNYC Requirements
- 9. Exhibit H: Federal Terms and Conditions
- 10. Exhibit I: Iran Divestment Rider and Certification
- 11. Exhibit J: Contractor's Proposal

B. *Attachments.* The following attachments to this Agreement are attached for the Contractor's use as specified in the Agreement:

1. Attachment C-1: Certification of Insurance Broker or Agent
2. Attachment D-1: Form of Performance Bond (for Task Orders for Emergency Response Work that are \$5 million or less)
3. Attachment D-2: Form of Performance Bond (for Task Orders for Emergency Response Work that exceed \$5 million)
4. Attachment D-3: Form of Payment Bond
5. Attachment E-1: Whistleblower Protection Expansion Act Poster

C. *Merger:* This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 6 or a Task Order issued under this Agreement.

#### ARTICLE 11: NOTICES; TELEPHONE

A. *Designated Address for Notices.* The Contractor and the Agency hereby designate the business addresses and email addresses specified on the cover page of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below. An additional address for notices to the Agency will be provided in a Task Order; if no address is provided in the Task Order, the Contractor shall promptly ask the Agency to provide such information separately.

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

- C. *Telephone.* The Contractor shall provide a telephone number where it can be reached 24 hours a day/365 days a year in order to respond to a call for services. The phone tied to that number must be text-capable and must be able to receive email.
- D. Where this Agreement requires the Contractor to provide notice to NYCEM, the Contractor shall provide such notice to the following:

City of New York Emergency Operations Center  
165 Cadman Plaza East  
Brooklyn, NY 11201  
718-422-8700 (staffed 24 x 7) / 718-422-8800  
EOCLogistics@oem.nyc.gov; EOCPlanningSection@oem.nyc.gov

#### ARTICLE 12: DEFINITIONS; RULES OF INTERPRETATION

- A. *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. “Admin. Code” means the City Administrative Code.
  2. “Addendum” or “Addenda” means the additional Agreement provisions or technical clarifications issued in writing by the City prior to the receipt of bids or proposals.
  3. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
  4. “Business Day” means a day other than a Saturday, Sunday or a day on which the executive offices of the City are not officially open for business.
  5. “Category 9 Contractor” means a firm engaged by the City to provide supervision, management, and administrative services in connection to the On-Call Emergency Contract Program.
  6. “Charter” means the City Charter.
  7. “City” means the City of New York.



8. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
9. “Commissioner” or “Agency Head” means the head of the Agency. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.
10. “Comptroller” means the Comptroller of the City of New York.
11. “Contractor” means the entity that executed this Agreement, whether a corporation, firm, partnership, joint venture, individual, or any combination thereof, and its, their, his/her successors, personal representatives, executors, administrators, and assigns, and any person, firm, partnership, joint venture, individual, or corporation which shall at any time be substituted in the place of the Contractor under this Agreement.
12. “Corporation Counsel” means the Corporation Counsel of the City of New York.
13. “Day” means a calendar day unless specifically noted as a Business Day.
14. “Emergency Declaration” or “Declaration of Emergency” means a local or state declaration issued by the Mayor or the Governor in accordance with the N.Y. Executive Law.
15. “Emergency Response Work” means the Work ordered under a Task Order that is needed to assist the City’s efforts to avoid or mitigate serious danger to life, safety, property or necessary service. Emergency Response Work does not include Work ordered under Task Order #1.
16. “Extra Work” means Work that was not included in the original Task Order at the time the written task order is agreed on that is added by a Supplemental Task Order, and, if applicable Article 26 of Exhibit F for Categories #1, #2, #3 and #17, and Article 21 of Exhibit F for Categories #4, #5, #8 and #16.
17. “Governor” means the Governor of the State of New York.
18. “Law” or “Laws” means the Charter, the Admin. Code, a local rule of the City of New York, the Constitutions of the United States and the State, a statute of the United States or of the State and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

19. “Mayor” means the Mayor of the City of New York.
20. “NYCEM” means New York City Emergency Management.
21. “Other Contractor(s)” means any contractor (other than the entity that executed this Agreement or its Subcontractors) who or which has a contract with the City for work on or adjacent to the Site of the Work.
22. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.
23. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (RCNY), §§ 1-01 *et seq.*
24. “Site” means the area upon or in which the Contractor’s Work is carried on, and such other areas adjacent thereto as may be designated as such by the City; provided, however, that this does not include the Contractor’s permanent offices.
25. “State” means the State of New York.
26. “Subcontractor” or “Subconsultant” means any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or its Subcontractors to furnish or actually furnishes consulting services, labor, or labor and materials, or labor and equipment, in the performance of any Work under this Agreement.
27. “Supplemental Task Order” means a written change to a Task Order.
28. “Task Order” means a written directive by the Agency (including a verbal directive to be memorialized in writing within 72 hours of the verbal directive) by which Work is assigned to the Contractor.
29. “Task Order #1” means the Task Order issued by the Agency directing the Contractor to develop and submit a Disaster Readiness and Mobilization Plan.
30. “Task Order Work” means everything required to be furnished and done by the Contractor in a Task Order at the time a written Task Order is agreed on, except Extra Work.
31. “Work” means all tasks and services required under this Agreement, including labor, material, superintendence, management, administration, equipment, and

incidentals, and obtaining any and all permits, certifications and licenses as may be necessary and required to complete the Work.

B. *Additional Definitions.* Additional definitions may be included in Exhibit A, or Article 2 of Exhibit F, or elsewhere in this Agreement.

C. *Rules of Interpretation.*

1. *Headings.* The article, section, and paragraph headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be deemed to define, limit, describe, explain, modify or add to the interpretation or meaning of any provision of this Agreement or the scope or intent thereof, nor in any way affect this Agreement.
2. *Singular/Plural.* The singular comprises the plural and vice versa, as the context may require.
3. *Including.* The words “including,” “includes,” etc. are without limitation and are equivalent to “including, but not limited to.”
4. *“Or.”* The word “or” is not exclusive and is equivalent to “and/or.”
5. *Task Order issued pursuant to this Agreement shall be a component of the Agreement.* As provided in Article 10, each Task Order is part of the Agreement notwithstanding that some provisions refer to the Agreement “or” a Task Order.
6. *Times.* All times stated are local New York City time.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

CITY OF NEW YORK

By:

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CONTRACTOR

By:

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Title:

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Fed. Employer I.D. No. or Soc. Sec. No.

Approved as to Form and  
Certified as to Legal Authority

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Acting Corporation Counsel

**ACKNOWLEDGEMENT BY THE CITY**

STATE OF NEW YORK )  
                                  :SS:  
COUNTY OF NEW YORK )

On this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be \_\_\_\_\_ of the NEW YORK CITY MAYOR'S OFFICE OF HOUSING RECOVERY OPERATIONS, the person described in and who is duly authorized to execute the foregoing instrument on behalf of the Commissioner, and he/she acknowledged to me that he/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 signed his 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.

On-Call Emergency Contract – Main Body of the Agreement – Category 2

**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.

EXHIBIT A  
SCOPE OF WORK

CATEGORY #2: CONSTRUCTION SERVICES FOR TEMPORARY RESTORATION OF  
HOUSING

ARTICLE 1: SUMMARY

The Contractor will provide temporary repairs to allow homeowners and occupants located in a disaster area to quickly return home after damage to their residences, thereby reducing their reliance on transitional sheltering assistance and congregate shelters. As requested by the City, the Contractor must (1) develop and maintain an operational plan for on-call deployment, (2) perform construction services, (3) maintain control of the supply chain, (4) develop and implement a reporting and communication plan that is approved by the City lead, (5) provide a customer service call center to manage customer relations and construction/inspection scheduling, and (6) close out projects.

In a large-scale emergency, the construction services will be provided in accordance with FEMA's Sheltering and Temporary Essential Power (STEP) program to enable individual or families whose homes were damaged in a disaster to take shelter in their own homes while they make permanent repairs or rebuild. STEP is intended as a temporary measure to help local jurisdictions reinstate essential utilities, and secure and weatherproof residential structures so that they are safe to reoccupy and is not a permanent repair program.

ARTICLE 2: TASK ORDER #1

Task Order #1 is governed by Article 3 of the main body of the Agreement.

ARTICLE 3: TASK ORDERS FOR EMERGENCY RESPONSE WORK

As directed by the Director of HRO (or another designated City office or agency), the Contractor shall perform Task Order Work, including, but not limited to:

- (1) *Perform construction services:* The Contractor shall perform construction and construction-related Work in accordance with program requirements and guidelines. Such Work includes, but is not limited to, the following:
  - (a) Attend and participate in site visits with a Program assessor to residential structures to assess damage to (i) roofs, doors, windows, walls (including interior drywall), and other structural elements, (ii) heating, ventilation, and air conditioning (HVAC) systems, (iii) plumbing systems, and (iv) electrical systems. Test for environmental hazards in and around residences, including oil spills, mold, and mildew.

- (b) As directed by the City and set forth in a Task Order, each unit must have a minimum of one functional kitchen and bathroom, potable water, hot water, an operational heating system, and operational and weatherproofed doors and windows. Hazardous materials and debris must be abated or removed and disposed of for the safety of occupants.
  - (c) Meet with individual property owners to review the scope of work and assist property owners who may require assistance in removing contents from damaged structure prior to the performance of temporary repair services.
  - (d) Obtain necessary state and local permits and approvals prior to the commencement of work for each structure.
  - (e) Perform Work described in the scopes of work in the Task Order, including repairs, demolition, and abatement or removal and disposal of hazardous debris or structural materials.
  - (f) Manage construction crews appropriately and effectively. Ensure that, where required by law, (i) Work is performed and supervised by contractors holding Home Improvement Contractor licenses issued by NYC Department of Consumer Affairs and (ii) all specialized labor, including engineers, electrician, plumbers, surveyors, and inspector have and maintain applicable licenses.
  - (g) Provide documentation and tracking of construction projects.
  - (h) Sign-off and close all required building permits at the end of construction.
  - (i) Provide a one-year limited warranty for labor and materials.
- (2) *Maintain control of the supply chain:* The Contractor shall maintain control of the supply chain throughout the duration of the Task Order, including: (i) subcontractors, (ii) material equipment and vehicle suppliers and vendors, (iii) logistics providers, and (iv) staffing companies. The Contractor shall maintain an independent supply of generators, containers, dewatering equipment and pumps, as well as specialized labor force for civil and structural engineers, electricians and plumbers, land surveyors, inspectors, and security personnel.



The Contractor shall provide logistics for all aspects of construction services to ensure equipment, materials, and vehicles are staged to deliver the highest level of efficient services across the service area.

- (3) *Develop and implement a reporting and communication plan:* The Contractor shall ensure that all program staff are equipped with redundant communication devices. A program directory of key project staff must be maintained and available to the City, as well as on-call access to project executives and leadership. The Contractor shall work with HRO (or other designated office or agency) on the development and integration of a data management system. All written communication must be logged, indexed, and retrievable on demand. The Contractor shall establish and implement a schedule of routine progress and staff meetings and document and summarize all meetings with action items and deliverable dates.
- (4) *Provide a customer service call center for homeowners and construction/inspection scheduling:* The Contractor shall staff and maintain a well-trained customer service call center. Calls and written inquiries may be routed from NYC 311 or directly to the Contractor's call center. The Contractor shall provide multiple points of contact (e.g. voicemail, text, webform and email) to leave information for a next Day call back, as directed in the Task Order. The Customer Service call center must be fully staffed during normal business hours, and as directed by the Task Order, during evening hours and coverage on weekends, scaled up at the height of construction activity.
- (5) *Close out projects:* The Contractor shall close out all of the projects and transfer all documents, reports, data and databases, and email communications to the City upon completion of the project in hard and soft copy format. The format for transfer will be agreed upon by all parties at the start of the Contract. All material must be transferred to the City on an organized and indexed hard drive. Final contract payments will be held until full demobilization and material transfer to HRO (or other designated City agency or office), including the closure of all applicable construction permits opened by Contractor and subcontractor under a Task Order.

(The City is procuring separate contracts for ground support (e.g., provision of generators and light towers), building demolition, building assessment teams and environmental testing engineers that may be used when the Work involves these services. The City reserves the right to deploy such contractors to provide services in connection with Category 2 Work.)

#### ARTICLE 4: MOBILIZATION

The Contractor will be expected to mobilize as quickly as possible in emergency situations. Project executives and project management team must mobilize within 48 hours of an activation call from

the City and deploy to the City within 72 hours of activation call with full operational capacity within one week of activation.

#### ARTICLE 5: STAFFING REQUIREMENTS

- A. The Contractor agrees to assign the following key personnel to the Agreement and Task Orders. The Contract Executive must be an officer of principal of the Contractor.

[TO BE INSERTED FROM THE CONTRACTOR'S PROPOSAL]

- B. It is the intent of the City to secure the personal services of those key personnel identified in this Exhibit A, and specifically in the Task Order. Accordingly, the Contractor agrees to assign such key personnel for the entire duration of the Task Order. Failure by the Contractor to provide such key personnel will be considered a material breach of the Agreement and grounds for termination for cause. Replacement of key personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer in the employ of the Contractor, or (2) if the City fails to direct the Contractor to commence work on the Task Order within (9) months of the date the Contractor submitted its technical proposal. Replacement of such key personnel must comply with the conditions set forth below.
- C. Personnel performing Work hereunder must satisfy the minimum requirements for the specific title in which he/she is performing the Work as set forth below.
- D. Staffing requirements for personnel for the performance of Work will be established in the Task Order. The Contractor agrees, throughout the term of the Contract, to provide personnel as directed by the Director. If directed in the Task Order, a staffing plan shall be established for the Work specified in the Task Order. If directed in the Task Order, such staffing plan must be approved by the Director prior to commencement of the Work.
- E. The staffing plan shall include those titles and personnel necessary for the provision of the required services. Such staffing plan must list required titles and specific individual for each title and be signed by the Contract Executive.
- F. The Director shall review the Contractor's proposed staffing plan and shall direct revisions to the same if necessary prior to final approval thereof. The Contractor shall revise the proposed staffing plan as directed, until such plan is approved in writing by the Director.
- G. Any revisions to the staffing plan are subject to the prior written approval of the Director.
- (a) No substitutions for assigned personnel shall be permitted unless the proposed replacement has received the prior written approval of the Director. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced. As set forth above, replacement of key personnel will not be permitted unless the designated individual is no longer in the employ of the Contractor.

(b) The Director reserves the right to direct changes to the staffing plan, including without limitation, modifying the titles of personnel necessary for the Task Order and increasing or decreasing the personnel assigned to the Task Order, based upon the scope of the required Work. The Contractor shall increase or decrease the personnel assigned to the Task Order, as directed by the Director.

(c) At the Director's request at any time, the Contractor shall remove any personnel and substitute another employee of the Contractor reasonably satisfactory to the Director. The Director may request such substitution at any time, in his/her sole discretion.

(d) In the event completion of a Project is delayed for any reason, including without limitation, strike, work stoppage, or other circumstances not due to the fault of the Contractor, the Director shall, in writing, direct revisions to the staffing plan to decrease the level of staffing to be maintained throughout the delay. The Contractor will be paid a reduced sum pursuant to the change order provisions of this Agreement.

H. Throughout the duration of the Work, the Contractor shall be responsible for providing the related services set forth below. Any and all costs associated with these services shall be included in the unit rate prices. No additional payments for the costs of these services will be made.

(a) The Contractor shall provide communications equipment and service, including without limitation cellular telephones for the Contract Executive and all personnel assigned to the Task Order. The telephone numbers of all personnel assigned to the Task Order shall be submitted to the Director.

(b) The Contractor shall provide transportation, including parking and tolls, for the Contract Executive and all personnel assigned to the Task.

#### ARTICLE 6: REQUIRED COMPETENCIES AND TECHNICAL REQUIREMENTS

The Contractor shall be able to:

- (a) Rapidly mobilize, deploy, and demobilize operations with scalability.
- (b) Ensure control over supply chain with redundancy measures for subcontracted vendors, equipment and materials, vehicles, and staffing.
- (c) Procure specialized labor and equipment as needed and in volume.
- (d) Provide quality assurance, regulatory compliance, and safety controls throughout all functions.
- (e) Maintain consistent and responsive communications with HRO (or another designated City office or agency).

ARTICLE 7: ADDITIONAL CONSTRUCTION MANAGEMENT SUPPORT FROM THE  
CITY

Pursuant to On-Call Emergency Contract Category #9, the Department of Design and Construction (DDC) will provide oversight of the Category #2 Contract, in the form of supervision, management and administrative services, including, but not limited to:

- (a) Initial property inspection report.
- (b) Development of the temporary repair scope of work for individual properties.
- (c) Oversight of construction projects and milestones.
- (d) Final inspection within 5 days of construction completion.
- (e) Review construction closeout documents for compliance with Contract and program requirements.

EXHIBIT B  
PAYMENT

Category #2: Construction Services for Temporary Restoration of Housing

ARTICLE 1: PAYMENT FOR TASK ORDER #1

Year 1 Payment			
Item	Annual Payment	Description	{Estimated} Invoice Timeline 2020-2021
Accepted DRMP	\$50,000	Please see attachment with Sample Outline for Task Order 1. This item includes a draft DRMP and revisions as needed, until signed off by the Contract owner.	Q4 2021 <sup>1</sup> (CELIP)
Exercise Participation & DRMP revision	\$13,000	Participation in an exercise. DRMP revision post exercise, based on AAR items identified during the exercise.	Q4 2021 or Q1 2022
Scorecard Submission (\$500/quarter)	\$2,000	Vendor's asset count and assessment of resource availability (related to resources that may be utilized during activation of contract). Submission guidelines of this data into online portal to be determined.	Each Quarter
Initial Kickoff Meeting (at NYCEM)	\$2,000	Vendor to send a minimum of 1 representative to an in-person kickoff meeting in NYC.	Q4 2021
Contract Owning Agency Integration (Discussion, draft protocol/checklist, onsite meetings x 2)	\$10,000	This includes integrating with existing systems, training on agency procedures, etc.	By June 2021
Review/Acceptance of Activation Protocol	\$1,500	Vendor to review and sign-off on contract activation protocol for NYC.	Q4 2021 (CELIP)

<sup>1</sup> City Fiscal Year begins July 1; Q4 begins April 1, 2021.

CALMS Module Training (remote)	\$1,000/staff member (x5 staff)	A minimum of 5 staff trained remotely on how to input scorecard information into NYC's online tracking system.	Q4 2021 (CELIP)
<b>Minimum Year 1 Payment:</b>		<b>\$83,500</b>	
*Additional Integration Projects (as needed)	+\$10,000	This includes additional integration with existing systems, training on agency procedures, etc.	Any Quarter
*MISC Expenses (must be detailed in invoice)	+\$500	Miscellaneous expenses, as deemed necessary and as approved by the contract owner in advance.	Any Quarter
*Planning Meetings (\$1000/each, up to 4/annually)	+\$4,000	Compensation for time spent attending Planning meetings.	Each Quarter
*Pre-mobilization/Readiness Calls (\$500/each, up to 4/annually)	+\$2,000	Compensation for time spent during pre-mobilization phone calls	As needed
<b>Maximum Year 1 Payment:</b>		<b>\$100,000</b>	

<b>Year 2 (and any renewal periods) Payment</b>			
<b>Item</b>	<b>Annual Payment</b>	<b>Description</b>	<b>{Estimated} Invoice Timeline 2021-2022</b>
*Planning Meetings (\$1000/each, up to 4/annually) and/or TTX (\$2000/each)	+\$4,000	Compensation for time spent attending Planning meetings.	Each Quarter
Scorecard Submission (\$500/quarter)	\$2,000	Vendor's asset count and assessment of resource availability – quarterly submission of this data into online portal.	Each Quarter

*Pre-mobilization/Readiness Calls (\$500/each, up to 4/annually)	+\$2,000	Compensation for time spent during pre-mobilization phone calls that are scheduled by NYCEM	As needed
<b>Maximum Year 2+ Payment</b>	<b>\$10,000</b>		

*\*Indicates item that may or may not occur depending on contract activation and/or emergency incident.*

## ARTICLE 2: PAYMENT FOR TASK ORDERS FOR EMERGENCY RESPONSE WORK

- A. *Maximum Payment.* This is a requirements agreement. The maximum amount paid to the Contractor for Task Orders for Emergency Response Work will be set forth in the Task Order.
- B. *Basis for Payment.* Payment for Task Orders for Emergency Response Work will be paid on a unit rate basis, in accordance with Attachment 1.

## ARTICLE 3: ECONOMIC PRICE ADJUSTMENT

- A. *Economic Price Adjustment.* The Contractor warrants that the prices in this Agreement do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this Article 3. If the Contractor's proposal for the award of this Agreement included unit prices or hourly wages (including fringe benefits) or both, the City may allow for a reasonable adjustment in unit prices, hourly wages (including fringe benefits) or both once during each year of the Term, not including the first year of the Term, upon request of the Contractor provided that the Contractor adequately justifies (i) the need for such adjustment in unit prices, hourly wages (including fringe benefits), or both and (ii) the cost reasonableness of such adjustment. Such adjustment shall be subject to the following:
  - 1. For hourly wages that are subject to the prevailing wage or living wage schedules promulgated by the Comptroller or hourly wages that are otherwise subject to mandatory adjustments pursuant to statute or regulation, the City may adjust the hourly wage rates set forth in the Agreement commensurate with the adjustments required by the applicable wage schedule, statute or regulation, as applicable to each wage rate, effective upon the first anniversary date of the Agreement and the first day of each renewal term.

2. For hourly wages that are not subject to the prevailing wage or living wage schedules promulgated by the Comptroller or otherwise subject to mandatory increases pursuant to statute or regulation, the City may adjust such hourly wage rates set forth in the Agreement commensurate with the Consumer Price Index All Urban Consumers (CPI-U) for New York-Newark-Jersey City based on the annual average increase for the preceding year of the Term, effective upon the first anniversary date of the Agreement and the first day of each renewal term. If an increase in CPI-U exceeds 5%, the adjustment made under this paragraph 2 will be capped at 5%.
3. For unit prices that are inclusive of wage rates and materials, the Contractor may submit a request for a price adjustment no more than once per year after the first year of the Term. The request shall include the Contractor's proposal for an adjustment to the unit prices to be negotiated along with supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal. Promptly after the Agency receives the request and the data set forth in the preceding sentence, the Agency and the Contractor shall negotiate a price adjustment in the unit prices, effective upon the first anniversary date of the Agreement and the first day of each renewal term. The aggregate of the increases in any unit price made under this clause shall not exceed 10 percent of the original unit price.



EXHIBIT C  
INDEMNIFICATION, INSURANCE  
AND THE CITY-SPONSORED EXCESS LIABILITY INSURANCE PROGRAM

FOR THE FOLLOWING CATEGORIES

- Category #1: Critical Public Building Restoration
- Category #2: Temporary Restoration of Housing for Post-Emergency Sheltering in the Home
- Category #3: Construction Support for Urban Search and Rescue
- Category #4 and 5: Debris Removal, including Marine Transportation
- Category #9: Supervision, Management and Administrative Services
- Category #16: Environmental Remediation Services
- Category #17: Construction Services for Temporary Restoration of Multi-Family Housing

ARTICLE 1: PROTECTION OF PERSONS AND PROPERTY, INDEMNIFICATION, AND  
NOTIFICATION OF ACCIDENTS

*A. Protection of Persons and Property:*

1. The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its Subcontractor's operations under this Agreement. For Task Orders involving construction Work, such duty to protect shall include the provision and maintenance of suitable and sufficient protection at Sites such as lights, barricades, and enclosures.
2. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by negligence, an intentional tortious act or omission, or failure to comply with this Agreement or Law by the Contractor and/or its Subcontractors.
3. For Task Orders involving construction Work (1) the Contractor shall be under an absolute obligation to protect the finished and unfinished construction Work against any damage, loss, injury, theft, and/or vandalism and shall promptly replace and/or repair the Work at the Contractor's sole cost and expense in the event of such damage, loss, injury, theft, and/or vandalism; and (2) the obligation to deliver finished Work in accordance with the Agreement is absolute and shall not be diminished by the City's approval of, or failure to prohibit, the means and methods of construction.

*B. Indemnification:*

1. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials, employees, and agents (the "Indemnitees") against any and all claims (including but not limited to claims asserted by any employee of the Contractor and/or its Subcontractors) and judgments for damages and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to (i) the operations of the Contractor and/or its Subcontractors in the performance of this Agreement, (ii) the Contractor's and/or its Subcontractors' failure to comply with any of the provisions of this Agreement or of the Law, or (iii) any infringement, violation or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its Subcontractors in the performance of this Agreement, regardless of whether or not the alleged infringement, violation or unauthorized use arises out of compliance with the Agreement.
2. The costs and expenses referred to in Article I(B)(1) shall include all those incurred in defending the underlying claim and those incurred in connection with

the enforcement of this Article I(B) by way of cross-claim, third-party claim, declaratory action or otherwise.

3. The parties expressly agree that the indemnification obligation under this Article I(B) contemplates (i) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of Law or otherwise; and (ii) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of Law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.
4. The Contractor's obligation to defend, indemnify, and hold harmless the Indemnitees under this Article I(B) or elsewhere in this Agreement shall neither be (i) limited in any way by the Contractor's duty or failure to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees to avail themselves of the benefits of such insurance.
5. Except to the extent that indemnification is required pursuant to this Agreement, the Parties agree that neither shall be liable to the other for damages in the nature of special, indirect, or consequential damages in contract actions between the City and the Contractor.

*C. Notification of Accidents:*

1. If there is any injury, offense, loss or damage to person, property, or Work or any accidents arising out of the operations of the Contractor and/or its Subcontractors under this Agreement, the Contractor shall comply with the following notification requirements:
  - a. The Contractor shall make a full and complete report in writing to the Agency and NYCEM within three Days after it becomes aware of or reasonably should be aware of the Occurrence.
  - b. The Contractor shall notify insurance carriers as required in Article 2(F)(5), below.

ARTICLE 2: INSURANCE

- A. *Agreement to Insure:* From the date the Agreement is registered and throughout the term of this Agreement, the Contractor must procure and maintain with companies authorized to do business in the State of New York, the following types and amounts of insurance. All insurance must meet the requirements set forth in this Article 2. Wherever this Article 2 requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), the Contractor represents to the City that the alternative form contained in its policy provides coverage at least as broad as the specified form.

B. *Workers' Compensation, Employer's Liability, and Disability Benefits Coverage:*

1. The Contractor shall maintain workers' compensation insurance, employers' liability insurance, and disability and paid family leave benefits coverage in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement. The workers' compensation insurance policy shall include a waiver of subrogation in favor of the City of New York. Pursuant to New York State General Municipal Law Section 108, this Agreement shall be void and of no effect unless Contractor maintains Workers' Compensation Insurance for the term of this Agreement to the extent required and in compliance with the New York State Workers' Compensation Law.
2. Within 10 Days of award of the Agreement, as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of its workers' compensation insurance and disability benefits and paid family leave coverage (or proof of a legal exemption) to the Agency. The following forms are acceptable:
  - a. Exemption from N.Y. workers' compensation insurance and/or disability benefits and paid family leave coverage
    - i. Form CE-200 – *Certificate of Attestation of Exemption* (available at [http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp))
  - b. Workers' compensation insurance certificate of insurance
    - i. Form C-105.2 – *Certificate of Workers' Compensation Insurance*
    - ii. Form U-26.3 – *State Insurance Fund Certificate of Workers' Compensation Insurance*
    - iii. Form SI-12 – *Certificate of Workers' Compensation Self-Insurance*
    - iv. Form GSI-105.2 – *Certificate of Participation in Workers' Compensation Group Insurance*
  - c. Disability benefits and paid family leave coverage certificate of insurance
    - i. Form DB-120.1 – *Certificate of Disability Benefits and Paid Family Leave Coverage*
    - ii. Form DB-155 – *Certificate of Disability Benefits Self-Insurance*

C. *Other*

*Insurance:*

1. Commercial General Liability Insurance: The Contractor shall maintain Commercial General Liability Insurance covering claims for property damage

and/or injury, including death arising from any operations under or in connection with this Agreement. Such insurance must:

- a. Have limits of at least \$3,000,000 per occurrence, \$3,000,000 personal and advertising injury, \$5,000,000 annual general aggregate on a “per project” basis for Emergency Response Work, and \$5,000,000 annual products and completed operations aggregate all projects combined. (In this Exhibit C, the term “per project” shall mean per Task Order for Emergency Response Work as defined in the Agreement and upon issuance to the Contractor, such Task Order shall be specified on ISO Per Project General Aggregate Form CG 25 03 or endorsement that provides coverage at least as broad as the latest edition of ISO Form CG 25 03); for Task Order #1, a “per project” aggregate is not required;
- b. Be at least as broad as that provided by the latest edition of Insurance Services Office (“ISO”) Form CG 00 01;
- c. Be “occurrence” based rather than “claims-made”;
- d. Contain a completed operations period of not less than ten (10) years;
- e. Include the Indemnitees and any other entity that may be listed in the Task Order as an Additional Insured for ongoing and completed operations. The additional insured endorsements or policy provisions must be at least as broad as the latest edition of ISO Forms CG 20 10 and CG 20 37;
- f. Include a Waiver of Transfer of Rights of Recovery Against Others to Us endorsement, in favor of the Indemnitees and any other entity that may be listed in the Task Order, at least as broad as the latest edition of ISO Form CG 24 04;
- g. Include an endorsement that is at least as broad as the latest edition of ISO Form CG 20 01 (Primary and Noncontributory – Other Insurance Condition);
- h. Include construction means and methods (with coverage at least as broad as the latest edition of ISO Form CG 22 79);
- i. Not include exclusions or limitations of the following coverage attributes:
  - i. contractual liability coverage (including the tort liability of another assumed in a contract) insuring the contractual obligations of the Contractor;
  - ii. employers’ liability coverage for liability assumed by the Contractor under an “insured contract”;
  - iii. coverage for claims arising under New York Labor Law;
  - iv. the applicability of commercial general liability coverage to the Indemnitees as additional insured in respect of liability arising out of claims by employees of the Contractor; and

v. explosion, collapse, and underground (XCU).

- j. Include, without limitation, the following types of coverage independent contractors and incidental malpractice.
2. Commercial Automobile Liability Insurance: The Contractor shall maintain Commercial Automobile Liability Insurance in the amount of \$1,000,000 per accident (combined single limit), covering all owned, non-owned, leased, and hired vehicles used in connection with this Agreement. Such policy shall name the Indemnitees and any other entity that may be listed in the Task Order, as an additional insured thereunder. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01, and shall contain a waiver of subrogation with respect to all of the insureds named in the policy. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as the MCS 90 endorsement.
  3. Professional Liability Insurance: Any Contractor performing professional services pursuant to a Task Order must maintain Professional Liability insurance in the amount of at least \$5,000,000 per claim and \$5,000,000 policy aggregate. The policy must cover liability arising out of the negligent performance of professional services or caused by a negligent error, omission or act of the Contractor or anyone employed by the Contractor. The Contractor shall ensure that all Subcontractors at any tier providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available maintain such insurance.
    - a. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years.
    - b. If available as an option, the named insured shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with the same retroactive date.
  4. Umbrella or Excess Liability Insurance: The Contractor shall maintain an occurrence-based umbrella liability insurance policy insuring against liability arising from premises (including loss of use thereof), operations, independent contractors, products-completed operations, personal and advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract), liability occurring on or in any way related to the premises, liability occasioned by reason of the operations of Contractor or its Subcontractors and liability arising from automobile liability and employer's liability. If umbrella coverage is unavailable, excess coverage may be provided. Such umbrella or excess liability insurance must:

- a. Have limits of at least \$10,000,000 per occurrence, \$10,000,000 personal and advertising injury, \$10,000,000 annual general aggregate, and \$10,000,000 annual products completed operations aggregate, excess of Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Employer's Liability Insurance primary limits. The general aggregate limit must follow form to the per project/per task order basis outlined in Article 2(C)(1);
- b. Be at least as broad as that provided by ISO Form CU 00 01 12 07 and endorsed to follow form to the scheduled underlying coverage required in Articles 2(C)(1) and (2); and
- c. Be primary to, and non-contributing with, any insurance or self-insurance maintained by the Indemntees.

Despite the minimum limits specified in this Article 2(C)(4) and Article 2(C)(1), the Contractor may satisfy the requirements for minimum insurance limits for Commercial General Liability Insurance through a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein and provided such combination is approved in writing by the Agency.

- 5. Additional Excess Liability Insurance with or without Optional Support by the City: The Contractor is required to maintain Excess Liability Insurance (excluding auto liability) with limits of \$250,000,000 per occurrence, \$250,000,000 annual general aggregate all awarded Task Orders combined and \$250,000,000 annual products completed operations aggregate all awarded Task Orders combined above the amounts required in Articles 2(C)(1) and 2(C)(4) and, if specified in a Task Order, Excess Contractor's Pollution Liability Insurance with limits of \$50,000,000 per occurrence and \$50,000,000 annual aggregate all awarded Task Orders combined above the amounts required in Article 2(6)(a)(ii). The Contractor shall meet this requirement by either participating in the insurance program described in Article 3(B) or maintaining the coverage described in Article 3(C).
- 6. Additional Insurance Provided by the Contractor: In addition to any insurance required by this Agreement of the Contractor and Subcontractors, the City may require additional insurance, including those listed below, or increased limits for specific Task Orders based on known scope of work and potential hazards. After the Contractor pays the premiums, in accordance with Article 4 of the main body of the Agreement, the Contractor may invoice the City for reasonable insurance costs that are based on a measurable exposure to loss for the specific Task Order Work, subject to the Agency Commissioner's approval of the proposed premiums, coverage forms, and sufficiency of such insurance.
  - a. Contractor's Pollution Liability Insurance: If the Contractor or any of its Subcontractors is performing asbestos or other toxic or hazardous

materials remediation, removal, abatement, storage, or disposal Work including, without limitation, related demolition Work, the Contractor shall maintain and shall cause its Subcontractor(s) performing such Work to maintain Contractor's Pollution Liability insurance that must:

- i. Be written with a per occurrence trigger and include asbestos abatement liability, lead abatement liability, transportation liability and non-owned disposal site liability;
  - ii. Have limits of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate renewed annually all Task Orders combined. The minimum limits in the preceding sentence are exclusive of the insurance required under Article 2(C)(5).
  - iii. Contain a completed operations period of not less than ten (10) years, if the CPL policy is written on a project-specific basis.
- b. Railroad Protective Liability Insurance: If the Work is adjacent to or includes an existing active railroad or subway line, the Contractor, and its Subcontractors, shall maintain the following railroad protective liability as required by the railroad authority in connection with the performance of the Work by the Contractor and its Subcontractors.
- c. Marine Insurance: If the Contractor or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Contractor and as applicable, its Subcontractors, shall maintain additional insurance of the following types and in the following amounts in connection with the performance of the Work:
  - i. Jones Act and/or U.S. Longshore and Harbor Workers Compensation Act: Full statutory amounts.
  - ii. Marine Protection and Indemnity: \$50,000,000 per occurrence, and if an annual aggregate is applicable to the policy, not less than \$50,000,000 in the aggregate per year.
- d. Builder's Risk Insurance: Unless alternative requirements are set forth in the Task Order or are approved in writing by the Commissioner, the Contractor shall maintain Builder's Risk Insurance on a completed value form for the total value of the Task Order Work through Substantial Completion of the Task Order Work in its entirety that meets the following requirements:
  - i. Be provided on a special perils ("all risk") form;
  - ii. Include coverage, without limitation, for windstorm (including named windstorm), storm surge, water (other than flood-related), earth movement, theft, collapse, fire, vandalism, malicious mischief, ordinance and law, demolition and increased costs of construction, debris removal, pollutant clean-up and removal, and expediting costs.
  - iii. Cover, without limitation, (a) all buildings and/or structures



involved in the Task Order Work, as well as temporary structures at the Site, and (b) any property that is intended to become a permanent part of such building or structure, whether such property is on the Site, in transit or in temporary storage.

- iv. Name the Contractor as Named Insured and list the City as both an Additional Insured and a Loss Payee as its interest may appear.
- v. Specify that, in the event a loss occurs at an occupied facility, occupancy of such facility is permitted without the consent of the issuing insurance company.

Such insurance may be provided through an Installation Floater, at the Contractor's option and subject to the consent of the Agency, if it otherwise conforms to the requirements of this Article 2.

***D. General Requirements for Insurance Coverage and Policies:***

1. Unless otherwise stated, all insurance required by Article 2(C) must:
  - a. Be maintained with companies that may lawfully issue the required policy;
  - b. Have an A.M. Best rating of at least A-/VII, a Standard & Poor's rating of at least A, a Moody's Investor Service rating of at least A3, or a Fitch Ratings rating of at least A- unless prior written approval is obtained from the City Corporation Counsel; and
  - c. Be primary to, and non-contributing with, any insurance or self-insurance maintained by the Indemnitees with the exception of professional liability insurance.
2. Except as provided in Articles 2(C)(6) and (3), the Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.
3. The Indemnitees' limits of coverage for all types of insurance required pursuant this Agreement shall be the greater of (i) the minimum limits set forth in this Agreement or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.
4. In its sole discretion, the Agency may, subject to the approval of the Comptroller and the City Corporation Counsel, accept Letters of Credit and/or custodial accounts in lieu of the required insurance.

***E. Proof of Insurance:***

1. For all types of insurance required by the Agreement except for Builder's Risk insurance, if required, the Contractor shall provide proof of insurance in accordance with this Exhibit C within 10 Days of award to the Agency and, again, to the Agency upon award of an Task Order for Emergency Response Work. For Builder's Risk, proof shall be filed by a date specified by the Agency.

2. For policies provided pursuant to Article 2(C) other than Builder's Risk, the Contractor shall submit one or more certificates of insurance on ACORD forms or other forms reasonably acceptable to the Commissioner. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to the Agreement that the Indemnitees (and any other entity listed in the Task Order) is an Additional Insured; and (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number). All such Certificates of Insurance shall be accompanied by the required additional insured endorsements and, if applicable, loss payee endorsements, and either a duly executed "Certification by Insurance Broker or Agent" in the form attached to this Exhibit C or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. In addition, proof of insurance submitted upon award of a Task Order must be accompanied by the endorsement indicating that the annual general aggregate is provided on a per project basis.
3. Documentation confirming renewals of insurance shall be submitted to the Agency at least 10 Days prior to the expiration date of coverage of policies required under this Agreement. Such proofs of insurance shall comply with the requirements of this Exhibit C.
4. The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Exhibit C upon the demand for such policy by the Commissioner or the City Corporation Counsel.

***F. Operations of the Contractor:***

1. The Contractor shall not commence the Work unless and until all required proof has been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of proof does not excuse the Contractor from securing insurance consistent with all provisions of this Exhibit C or of any liability arising from its failure to do so.
2. The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to perform Work only during the effective period of all required coverage.
3. If any of the required insurance policies lapse, are revoked, suspended, cancelled or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Commissioner. Upon quitting the Site, except as otherwise directed by the Commissioner, the Contractor shall leave all plant, materials, equipment, tools, and supplies on the Site. Task Order completion time shall continue to run during such periods and no extensions of time will be granted.
4. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 2 shall be cancelled or terminated

(or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner and the New York City Comptroller, ATTN: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Article 2.

5. Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article 2, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to the Contractor's own employees) as soon as practicable but no later than 10 Days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials, employees, and agents as Insured as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. 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.
6. 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 Article 2, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

**G. Subcontractor Insurance:** If the Contractor requires any Subcontractor(s) to perform any operations under this Agreement, such Subcontractor(s) (of any tier) must provide insurance coverages similar to that required in Article 2(C)(1) and Article 2(C)(4). The limits of such Subcontractor(s) insurance will be determined by the Contractor based on the Subcontractor(s)'s scope of work. Such Subcontractor(s)'s insurance must name the Contractor, the Indemnitees, and any other entity listed in the Task Order as an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 10 and CG 20 37 as well as any other endorsements or extensions of coverages required under this Article 2. Certificates of Insurance and the required additional insured endorsements must be obtained by the Contractor from each Subcontractor prior to such Subcontractor commencing Work on a Task Order.

**H. Notice:** Wherever reference is made in the Agreement or this Article 2 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address provided for notices.

**I. Waiver:** Apart from claims covered by insurance provided pursuant to Article 2(C)(3), the Contractor waives all rights against the Indemnitees for any damages or losses that are

covered under any insurance required under this Article 2(C) (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 employees, agents, or Subcontractors.

- J. Self-Insurance Programs:* If the Contractor utilizes a self-insurance program to satisfy any of the requirements of this Article 2, the Contractor shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article 2, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.
- K. Materiality/Non-Waiver:* The Contractor's failure to secure policies in complete conformity with this Article 2, or to give an insurance company timely notice of any sort required in this Agreement or to do anything else required by this Article 2 shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
- L. Other Remedies:* Insurance coverage provided pursuant to this Exhibit C or otherwise shall not relieve the Contractor of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Agreement or Law.

### ARTICLE 3: CITY-SPONSORED EXCESS LIABILITY INSURANCE PROGRAM

#### *A. City-Sponsored Coverage:*

1. The City shall make available the following insurance (referred to as the “City-sponsored Excess Liability Insurance Program” or “CELIP”) that is addition to insurance required elsewhere by this Exhibit C:
  - a. Excess Liability Insurance (excluding auto liability) – Limits of at least \$100,000,000 but no less than \$250,000,000 per occurrence, at least \$100,000,000 but no less than \$250,000,000 annual general aggregate per Emergency Declaration with the aggregate shared all Task Orders and Contractors combined, and at least \$100,000,000 but no less than \$250,000,000 annual products completed operations aggregate per Emergency Declaration all Task Orders and Contractors combined above the amounts required in Articles 2(C)(1) and 2(C)(4).
  - b. Excess Contractor’s Pollution Liability Insurance – Limits of \$50,000,000 per occurrence and \$50,000,000 in the aggregate all Emergency Declarations, Task Orders and Contractors combined above the amounts required in Article 2(C)(6)(a)(ii).
2. The City-sponsored Excess Liability Insurance Program is more fully described in the Insurance Manual to be provided to the Contractor and in the insurance policies providing coverage for CELIP.
3. The insurance provisions contained in Article 3 exclude coverage for Subcontractors of any tier.

- B. *Contractor Election to Participate in CELIP*: If the Contractor elects to participate in CELIP, the Contractor shall notify the Commissioner in writing within 30 Days of receipt of the Insurance Manual, by submitting to such Commissioner the executed CELIP form letter included as an exhibit to the Insurance Manual, along with copies of commercial general and umbrella/excess liability policies for the Contractor minimum underlying coverages required in Articles 2(C)(1) and 2(C)(4). By electing to participate in CELIP, the Contractor agrees to the terms, conditions, rights, obligations, waivers, requirements, and limitations set forth in the Insurance Manual. The coverages and exclusions summarized in the Insurance Manual are set forth in full in their respective insurance policies. The summary descriptions of the coverages in the Insurance Manual are not intended to be complete or to alter or amend any provision of the actual coverages. In the event that any provision of the Insurance Manual conflicts with the insurance policies that provide coverage under CELIP, the provisions of the actual policies shall govern.
1. Stand-by Premiums: The City shall pay “Stand-by Premiums” for CELIP directly to the insurer. (A “Stand-by Premium” means any premium or other charge made by an insurance company to maintain insurance coverage prior to the issuance of and following the completion of Work on a Task Order(s) issued in response to an emergency declaration.)
  2. Task-Order Premiums: Upon receipt of an invoice for a “Task-Order Premium,” self-insured retention or other authorized charge from a CELIP insurer the Contractor shall promptly pay such invoice and, after such payment, submit a payment request to the City in accordance with Article 4 of the main body of the Agreement. (A “Task-Order Premium” means a premium charged by an insurance company for coverage for the Work on a Task Order(s) issued in response to an emergency declaration.) The City shall reimburse the Contractor for premiums, self-insured retentions, and other costs charged by a CELIP insurer provided the Contractor has properly and promptly reported any and all claims subject to such insurance policies.
- C. *Contractor Election to not Participate in CELIP*: If the Contractor does not elect to participate in CELIP, the Contractor shall maintain Excess Liability Insurance (excluding auto liability) with limits of at least \$100,000,000 but no less than \$250,000,000 per occurrence, at least \$100,000,000 but no less than \$250,000,000 annual general aggregate all awarded Task Orders combined and at least \$100,000,000 but no less than \$250,000,000 annual products completed operations aggregate all awarded Task Orders combined above the amounts required in Articles 2(C)(1) and 2(C)(4). The Excess Liability Insurance must be at least as broad as that provided by ISO Form CU 00 01 12 07 and must follow form to the scheduled underlying limits required in Article 2(C)(1). If a Task Order requires insurance in accordance with Article 2(C)(6)(a) the Contractor shall also maintain Excess Contractor’s Pollution Liability Insurance with limits of \$50,000,000 per occurrence and \$50,000,000 annual aggregate all awarded Task Orders combined above the amounts required in Article 2(C)(6)(a)(ii).

1. If the Contractor does not elect to participate in CELIP, within 30 days of receipt of the Insurance Manual, the Contractor shall notify the Commissioner in writing and provide, for the Commissioner's written approval, the proposed premiums and proposed coverage forms provided by the insurance company or companies selected by the Contractor.
2. The proposed premiums, coverage forms, sufficiency, and manner of execution for such contracts of insurance furnished by any insurance company selected by the Contractor to underwrite such insurance are subject to the Commissioner's written approval in advance of binding the policies.
3. The Contractor shall be responsible for paying all deductibles, self-insured retentions, and Stand-by Premiums for such Excess Liability and Pollution Liability Insurance. The City will not reimburse the Contractor for such deductibles, self-insured retentions, and Stand-by Premiums.
4. Upon receipt of an invoice for a Task-Order Premium the Contractor shall promptly pay such invoice and, after such payment, submit a payment request to the City in accordance with Article 4 of the main body of the Agreement. The City shall reimburse the Contractor for Task Order Premiums for such Excess Liability and Pollution Liability Insurance if the Commissioner has provided written approval in accordance with Article 3(C)(1).

D. *CELIP Applicability for Categories: If a Task Order issued to a Category 9 Contractor involves the supervision and management of work performed under Categories 6, 7, 8, 10, 11, 12, 13, 14, or 15, then the coverage of CELIP will not apply to Emergency Response Work under such Task Order issued for the above categories, unless determined otherwise by the Commissioner in writing.*

## **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 D  
BONDING REQUIREMENTS

ARTICLE 1: APPLICABILITY

- A. This Exhibit D is applicable to Task Orders for Emergency Response Work for the following categories of Work:
1. Category #1: Critical Public Building Restoration;
  2. Category #2: Construction Services for Temporary Restoration of Housing;
  3. Category #3: Construction Support for Urban Search and Rescue;
  4. Category #16: Environmental Remediation Services;
  5. Category #17: Construction Services for Temporary Restoration of Housing-Multi-Family.

ARTICLE 2: SECURITY DEPOSIT

- A. For the required amount of the security deposit for the Agreement, see the solicitation.
- B. If performance and payment bonds are required on a Task Order for Emergency Response Work, the City shall retain the bid security to ensure that the Contractor awarded a Task Order for Emergency Response Work under this Agreement executes such Task Order and furnishes the required payment and performance security within ten 10 Days after notice of the award of such Task Order (unless the Agency establishes a different deadline). If the Contractor fails to execute the Task Order for Emergency Response Work and furnish the required payment and performance security, the City shall retain such bid security as set forth in the solicitation. If the Contractor executes the Task Order for Emergency Response Work and furnishes the required payment and performance security, the City shall return the bid security within a reasonable time after the furnishing of such bonds and execution of such Task Order by the City. If the City does not award the Contractor a Task Order for Emergency Response Work during the Term or any exercised renewals, the City shall return the bid security within a reasonable time after the expiration or termination of the Agreement.
- C. If performance and payment bonds are not required for any Task Order for Emergency Response Work awarded to the Contractor under this Agreement, the bid security shall be retained by the City as security for the Contractor's faithful performance of the Task Order(s) for Emergency Response Work. If partial payments are provided, the bid security will be returned to the Contractor after the sum retained under Article 14 of Exhibit F (for Category #16) or Article 21 of Exhibit F (for Categories #1 and #3) equals the amount of the bid security, subject to other provisions of this Agreement. If partial payments are not provided, the bid security will be released within a reasonable time after the expiration or termination of the Agreement.

D. If the Contractor is declared in default under Article 7 of the main body of the Agreement prior to the return of the deposit, or if any claim is made such as referred to in Article 16 of Exhibit F (for Category #16) or Article 23 (for Categories #1 and #3) of Exhibit F, the amount of such deposit, or so much thereof as the Comptroller may deem necessary, may be retained and then applied by the Comptroller:

1. To compensate the City for any expense, loss or damage suffered or incurred by reason of or resulting from such default, including the cost of re-letting and liquidated damages; or
2. To indemnify the City against any and all claims.

### ARTICLE 3: TASK ORDERS FOR EMERGENCY RESPONSE WORK

- A. In accordance with 2 CFR § 200.325, the Contractor must obtain performance and payment bonds for Task Orders for Emergency Response Work for construction or facility improvement Work that exceeds the federal Simplified Acquisition Threshold, which is defined in 48 CFR § 2.101.<sup>1</sup> Performance and payment bonds are not required for Task Order #1.
- B. Bid bonds and performance and payment bonds are required for the 100% of the value of the Task Order.
- C. The Contractor shall obtain performance and payment bonds as soon as practicable after the issuance of a Task Order for Emergency Response Work but no later than seven Days after issuance of the Task Order for Emergency Response Work, unless permission is granted in writing by the Agency.
- D. The City may waive or modify the requirement for performance and payment bonds to the extent consistent with 2 CFR § 200.325.

### ARTICLE 4: FORM OF BID BOND; FORM OF PERFORMANCE AND PAYMENT BONDS

- A. Performance and payment bonds and bid bonds must be provided on the form of bonds authorized by the City and attached as Attachments D-1 (Form of Performance Bond for Task Orders that are \$5 million or less), D-2 (Form of Performance Bond for Task Orders that exceed \$5 million), D-3 (Form of Payment Bond) and D-4 (Form of Bid Bond) hereto or on forms approved by the Agency.

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<sup>1</sup> As of October 10, 2018, the Simplified Acquisition Threshold is \$150,000. The United States Office of Management and Budget has indicated that an increase to \$250,000 is forthcoming in the near future; however, the federal government has not indicated when it intends to implement the increase.

- B. Bid bonds and performance and payment bonds must be issued by a surety company that is (1) approved by the City, (2) authorized to do business in the State, and (3) approved by the Department of Treasury of the United States.

#### ARTICLE 5: CITY PAYMENT GUARANTEE FOR PUBLIC IMPROVEMENT WORK

- A. This Article 5 (the “Payment Guarantee Provision”) does not apply to any Task Order for Emergency Response Work that does not involve Work for the prosecution of a “public improvement” as that term is used in section 137 of the N.Y. State Finance Law (a “Public Improvement”).
- B. If the City issues a Task Order for Emergency Response Work for the prosecution of a Public Improvement and the Contractor is not required to maintain a payment bond in accordance with Article 3 of this Exhibit D because the value of the Work is less than the Simplified Acquisition Threshold or for any other lawful reason, the City shall, in accordance with the terms of this Payment Guarantee Provision, guarantee payment of all lawful claims for:
  - 1. Wages and compensation for labor performed and/or services rendered; and
  - 2. Materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with the City as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the “beneficiary”) at the direction of the City or the Contractor.
- C. The provisions of paragraph B, above, are subject to the following limitations and conditions:
  - 1. If the Contractor provides a payment bond for a value that is less than one hundred (100%) percent of the value the Task Order ordering Work for the prosecution of a Public Improvement, the payment bond provided by the Contractor shall be primary (and non-contributing) to the payment guarantee provided under this Payment Guarantee Provision.
  - 2. The guarantee is made for the benefit of all beneficiaries as defined in paragraph B, above, provided that those beneficiaries strictly adhere to the terms and conditions of paragraphs C(4) and C(5), below.
  - 3. Nothing in this Payment Guarantee Provision shall prevent a beneficiary providing labor, services or material for the Work from suing the Contractor for any amounts due and owing the beneficiary by the Contractor.

4. Every person who has furnished labor or material, to the Contractor or to a Subcontractor of the Contractor, in the prosecution of the Work and who has not been paid in full therefor before the expiration of a period of 90 Days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to the Contractor within 120 Days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by the Contractor by other means, such notice shall be deemed sufficient.
5. Except as provided in Labor Law Section 220-g, no action on this payment guarantee shall be commenced after the expiration of the one-year limitations period set forth in Section 137(4)(b) of the N.Y. State Finance Law.
6. The Contractor shall promptly forward to the Agency any notice or demand received pursuant to paragraph C(4). The Contractor shall inform the City of any defenses to the notice or demand and shall forward to the City any documents the City requests concerning the notice or demand.
7. All demands made against the City by a beneficiary of this payment guarantee shall be presented to the Agency along with all written documentation concerning the demand which the Agency deems reasonably appropriate or necessary, which may include, but shall not be limited to: the subcontract; any invoices presented to the Contractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Contractor and that the demand has not been paid by the Contractor within the time allowed for such payment by the subcontract; and copies of any correspondence between the beneficiary and the Contractor concerning such demand. The City shall notify the Contractor that a demand has been made. The Contractor shall inform the City of any defenses to the demand and shall forward to the City any documents the City requests concerning the demand.
8. The City shall make payment only if, after considering all defenses presented by the Contractor, it determines that the payment is due and owing to the beneficiary making the demand.

9. No beneficiary shall be entitled to interest from the City, or to any other costs, including, but not limited to, attorneys' fees, except to the extent required by N.Y. State Finance Law Section 137.
- D. Upon the receipt by the City of a demand pursuant to this Payment Guarantee Provision, the City may withhold from any payment otherwise due and owing to the Contractor under the Agreement an amount sufficient to satisfy the demand.
1. If the City determines that the demand is valid, the City shall notify the Contractor of such determination and the amount thereof and direct the Contractor to immediately pay such amount to the beneficiary. In the event the Contractor, within seven Days of receipt of such notification from the City, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the Contractor to the beneficiary for the amount of the demand determined by the City to be valid. The Contractor, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the City, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.
  2. If the amount otherwise due and owing to the Contractor by the City is insufficient to satisfy such demand, the City may, at its option, require payment from the Contractor of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the City may have under Law or contract.
  3. If the City determines that the demand is invalid, any amount withheld pending the City's review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a claim or an action has been filed, the terms and conditions set forth in the section of the Agreement pertaining to the City's rights to withhold money against a claim shall apply. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York.
- E. The provisions of this Payment Guarantee Provision shall not prevent the City and the Contractor from resolving disputes in accordance with the Procurement Policy Board Rules, where applicable.
- F. If the City determines that the beneficiary is entitled to payment pursuant to this Payment Guarantee Provision, such determination and any defenses and counterclaims raised by the Contractor shall be taken into account in evaluating the Contractor's performance.

- G. Nothing in this Payment Guarantee Provision shall relieve the Contractor of the obligation to pay the claims of all persons with valid and lawful claims against the Contractor relating to the Work.
- H. The Contractor shall not require any performance, payment or other bonds of any Subcontractor if the subject Task Order does not require such bonds of the Contractor.
- I. The payment guarantee made pursuant to this Payment Guarantee Provision shall be construed in a manner consistent with Section 137 of the N.Y. State Finance Law and shall afford to persons furnishing labor or materials to the Contractor or its Subcontractors in the prosecution of the Work under the subject Task Order all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the City on the payment guarantee provided by this Payment Guarantee Provision within the one-year limitations period set forth in Section 137(4)(b).

ATTACHMENT D-1  
FORM OF PERFORMANCE BOND  
(FOR TASK ORDERS FOR EMERGENCY RESPONSE WORK THAT ARE  
\$5 MILLION OR LESS)

**PERFORMANCE BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**

That we, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

hereinafter referred to as the “Principal,” and, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

hereinafter referred to as the “Surety” (“Sureties”) are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the “City” or to its successors and assigns in the penal sum of

\_\_\_\_\_

\_\_\_\_\_

(\$ \_\_\_\_\_ ) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** The Principal is about to enter, or has entered, into a contract in writing with the City for

\_\_\_\_\_

\_\_\_\_\_



(the “Contract”) a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

**NOW, THEREFORE,** the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and/or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of the Principal’s default of the Contract, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal’s default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the City that the City has determined that the Principal is in default of the Contract, to (1) pay the City the cost to complete the contract as determined by the City in excess of the balance of the Contract held by the City, plus any damages or costs to which the City is entitled, up to the full amount of the above penal sum, (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof, or (3) tender a completion Contractor that is acceptable to the City. The Surety (Sureties) further agrees, at its option, either to notify the City that it elects to pay the city the cost of completion plus any applicable damages and costs under option (1) above, or to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and, if the Surety elects to fully perform and complete the Work, then to complete all Work within the time set forth in the Contract or such other time as agreed to between the City and Surety in accordance with the Contract. If the Surety elects to tender payment pursuant to (1) above, then the Surety shall tender such amount within fifteen (15) business days notification from the City of the cost of completion. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to pay the City the cost of completion, to commence and complete all Work as provided herein, or to tender a completion contractor.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions,

modifications, omissions, additions, changes, payments, and waivers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to subcontractors shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal. Notwithstanding the above, if the City makes payments to the Principal before the time required by the Contract that in the aggregate exceed \$100,000 or 10% of the Contract price, whichever is less, and that have not become earned prior to the Principal being found to be in default, then all payments made to the Principal before the time required by the Contract shall be added to the remaining contract value available to be paid for the completion of the Contract as if such sums had not been paid to the Principal, but shall not provide a basis for non-performance of its obligation to pay the City the cost of completion, to commence and to complete all Work as provided herein, or to tender a completion contractor.

**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Seal) \_\_\_\_\_ (L.S.)  
Principal

(Seal) By \_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_  
Surety

(Seal)

By \_\_\_\_\_

\_\_\_\_\_  
Surety

Bond Premium Rate \_\_\_\_\_.

Bond Premium Cost \_\_\_\_\_.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

***Affix Acknowledgments and Justifications of Sureties***

**ACKNOWLEDGMENT OF PRINCIPAL 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 signed his 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 PRINCIPAL 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 PRINCIPAL 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

ATTACHMENT D-2  
FORM OF PERFORMANCE BOND  
(FOR TASK ORDERS FOR EMERGENCY RESPONSE WORK THAT  
EXCEED \$5 MILLION)

**PERFORMANCE BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**

That we, \_\_\_\_\_

\_\_\_\_\_

hereinafter referred to as the “Principal,”

and, \_\_\_\_\_

\_\_\_\_\_

hereinafter referred to as the “Surety” (“Sureties”) are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the “City” or to its successors and assigns in the penal sum of

\_\_\_\_\_

(\$ \_\_\_\_\_ ) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** The Principal is about to enter, or has entered, into a contract in writing with the City for

(the “Contract”) a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

**NOW, THEREFORE,** the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of the Principal’s default of the Contract, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal’s default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the City that the City has determined that the Principal is in default of the Contract, to either (1) pay the full amount of the above penal sum in complete discharge and exoneration of this bond and of all the liabilities of the Surety relating to this bond, or (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof. The Surety (Sureties) further agrees, at its option, either to tender the penal sum or to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and to complete all Work within the time set forth in the Contract or such other time as agreed to between the City and Surety in accordance with the Contract. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to commence and to complete all Work as provided herein.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any Work to be performed or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.



**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Seal) \_\_\_\_\_ (L.S.)

Principal

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

Bond Premium Rate \_\_\_\_\_.

Bond Premium Cost \_\_\_\_\_.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

***Affix Acknowledgments and Justifications of Sureties***

**ACKNOWLEDGMENT OF PRINCIPAL 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 signed his 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 PRINCIPAL 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 PRINCIPAL 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

ATTACHMENT D-3  
FORM OF PAYMENT BOND

**PAYMENT BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**

That we, \_\_\_\_\_

\_\_\_\_\_

hereinafter referred to as the “Principal,”

and, \_\_\_\_\_

\_\_\_\_\_

hereinafter referred to as the “Surety” (“Sureties”) are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the “City” or to its successors and assigns in the penal sum of

\_\_\_\_\_

(\$ \_\_\_\_\_ ) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** The Principal is about to enter, or has entered, into a contract in writing with the City for

\_\_\_\_\_

(the “Contract”) a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

**NOW, THEREFORE**, the conditions of this obligation are such that if the Principal, his or its representatives or assigns and other Subcontractors to whom Work under this Contract is sublet and his or their successors and assigns shall promptly pay or cause to be paid all lawful claims for:

(1) Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the Work under said Contract, and any amendment or extension thereof or addition thereto, whether such persons be agents, servants or employees of the Principal or of any such Subcontractors, including all persons so engaged who perform the work of laborers or mechanics at or in the vicinity of the site of the Project regardless of any Contractual relationship between the Principal or such Subcontractors, or his or their successors or assigns, on the one hand and such laborers or mechanics on the other, but not including office employees not regularly stationed at the site of the Project, and

(2) Materials and supplies (whether incorporated in the permanent construction or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any Subcontractors at or in the vicinity of the site of the Project in the prosecution of the Work under said Contract and any amendment or extension thereof or addition thereto; then this obligation shall be null and void; otherwise to remain in full force and effect.

This bond is subject to the following additional conditions, limitations and agreements:

(a) The Principal and Surety (Sureties) agree that this bond shall be for the benefit of any materialman or laborer having a just claim, as well as the City itself.

(b) All persons who have performed labor, rendered services or furnished materials and supplies, as aforesaid, shall have a direct right of action against the Principal and his, its or their successors and assigns, and the Surety (Sureties) herein, or against either or both or any of them and their successors and assigns. Such persons may sue in their own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other person as party plaintiff.

(c) The Principal and Surety (Sureties) agree that neither of them will hold the City liable for any judgment for costs or otherwise, obtained against either or both of them by a laborer or materialman in a suit brought by either a laborer or materialman under this bond for moneys allegedly due for performing work or furnishing material.

(d) The Surety (Sureties) or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workmen's Compensation Law.

(e) In no event shall the Surety (Sureties), or its successors or assigns, be liable for a greater sum than the penalty of this bond or be subject to any suit, action or proceeding hereon that is instituted by any person, firm, or corporation hereunder later than two (2) years after the complete performance of said Contract and final settlement thereof.

The Principal, for himself and his successors and assigns, and the Surety (Sureties), for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of the City to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought hereon by any person, firm or corporation, including Subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered, or furnished as aforesaid upon the ground that there is no law authorizing the City to require the foregoing provisions to be placed in this bond.

And the Surety (Sureties) for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, Subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.



**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Seal) \_\_\_\_\_ (L.S.)  
Principal

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal) By \_\_\_\_\_

\_\_\_\_\_  
Surety

Bond Premium Rate \_\_\_\_\_.

Bond Premium Cost \_\_\_\_\_.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

*Affix Acknowledgments and Justifications of Sureties*  
**ACKNOWLEDGMENT OF PRINCIPAL 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 signed his 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 PRINCIPAL 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 PRINCIPAL 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

ATTACHMENT D-4  
FORM OF BID BOND

**BID BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**

That we, \_\_\_\_\_

---

hereinafter referred to as the “Principal,”

and, \_\_\_\_\_

---

hereinafter referred to as the “Surety” (“Sureties”) are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the “City” or to its successors and assigns in the penal sum of

---

(\$ \_\_\_\_\_ ) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to submit (or has submitted) to the City the accompanying Proposal, hereby made a part hereof, to enter into a task order/contract in writing for

---

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall not withdraw said Proposal without the consent of the City for a period of forty-five (45) days after the opening of bids and, in the event of acceptance of the Principal’s Proposal by the City, if the Principal shall

- (a) Within ten (10) days after notification by the City, execute in Quadruplicate and deliver the City the executed counterparts of the contract in the form set forth in the Contract Documents, in accordance with the proposal as accepted; and
- (b) Furnish a performance bond and separate payment bond, as may be required by the City, for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory in all respects to the City and shall be executed by good and sufficient sureties and
- (c) In all respects perform the agreement created by the acceptance of said Proposal as provided in the Information For Bidders, bound herewith and hereby made a part hereof

or if the City shall reject the aforesaid Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

In the event that the Proposal of the Principal shall be accepted and the task order/contract be awarded to him the Surety hereunder agrees, subject only to the payment by the Principal of the premium therefor, if requested by the City, to write the aforementioned performance and payment bonds in the form set forth in the Contract Documents.

It is expressly understood and agreed that the liability of the Surety for any all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

There shall be no liability under this bond if, in the event of the acceptance of the Principal's Proposal by the City, either a performance bond or a payment bond, or both, shall not be required by the City on or before the 30th day after the date on which the City signs the task order/contract.

The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and its bond shall in no way be impaired or affected by any postponements of the date upon which the City will receive or open bids, or by any extensions of the time within which the City may accept the Principal's Proposal, or by any waiver by the City of any of the requirements of the Information For Bidders; and the Surety hereby waives notice of any such postponements, extensions, or waivers.

**IN WITNESS WHEREOF**, The Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Seal) \_\_\_\_\_ (L.S.)  
Principal

(Seal) By \_\_\_\_\_

Surety  
*Affix Acknowledgments and Justifications of Sureties*  
**ACKNOWLEDGMENT OF PRINCIPAL 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 signed his 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 PRINCIPAL 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 PRINCIPAL 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



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ARTICLE 1: REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND  
DISCLOSURES

*A. Procurement of the Agreement:*

1. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is and will remain in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.
2. For any breach or violation of Legislative Law § 1-k, the Commissioner shall have the right to annul this Agreement without liability, or to deduct from the contract price or consideration, or otherwise recover, the full amount of the fee prohibited by Legislative Law § 1-k. The rights and remedies of the City provided in this Article 1(A) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

*B. Conflicts of Interest:*

1. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.
2. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This paragraph shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.
3. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

*C. Certification Relating to Fair Practices:*

1. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:
  - a. The prices and other material terms set forth in this Agreement, including any Task Orders issued under the Agreement, have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;
  - b. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement, including any Task Orders issued under the Agreement, that have been quoted in this Agreement, including any Task Orders issued under the Agreement, and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and
  - c. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.
2. 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 1(C).

D. *Disclosures Relating to Vendor Responsibility:*

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Contractor acknowledges that the City's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

E. *Solvency:*

The Contractor represents that it is financially solvent. If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States

Bankruptcy Code, the Contractor shall disclose such action to the Agency within seven days of filing.

F. *Authority to Execute Agreement:*

The Contractor represents that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

G. *Experience, Truthfulness, and Compliance:*

The Contractor represents and warrants that it is sufficiently experienced and competent to perform the Work; the facts stated in its bid or proposal and the information given by it pursuant to the solicitation is true and correct in all respects; and it has read and will comply with all requirements set forth in the Agreement.

## ARTICLE 2: LABOR PROVISIONS

A. *Independent Contractor Status:*

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

B. *Employees and Subcontractors:*

All persons who are employed by the Contractor and all the Contractor's Subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, Subcontractors, or Subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its Subcontractors, or its Subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii)

for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

*C. Removal of Individuals Performing Work:*

The Contractor shall not have anyone perform Work under this Agreement who is not competent, faithful, and skilled in the work for which he or she is employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform Work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform Work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing Work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

*D. Minimum Wage; Living Wage:*

1. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Article 2(D) shall be deemed a material breach of this Agreement.
2. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 ("Section 6-109") the following provisions apply. (For the avoidance of doubt, the following provisions apply to Category #14, Base Camp Provider and Category #15, Temporary Labor Contracts.) In accordance with Section 6-109, the Contractor agrees as follows:

- a. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.
- b. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.
- c. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any Subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(c)(2)(a)(iii).
- d. The Contractor and all Subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency).
- e. The Agency will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which



covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Agency. The Contractor shall provide the notices to its Subcontractors and require them to be posted and provided to each covered employee. (Such English and Spanish notices are attached as Attachment E-4; notices in other languages are available upon request to the Comptroller).

- f. The Contractor shall ensure that its Subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its Subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No Work may be performed by a Subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the Subcontractor.
- g. Each year throughout the term of the Agreement, whenever issued a Task Order (except Task Order #1) and whenever requesting the City's approval of a Subcontractor, the Contractor shall submit to the Agency an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement (Attachment E-3), identifying any changes to the current certification.
- h. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Agency, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or Subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the City or the Comptroller, where the City discovers that the Contractor or its Subcontractor(s) failed to comply with the requirements of this Article 2(D) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the City is hereby authorized to

deduct from a Contractor's account an amount equal to the cost of such investigation.

E. *Non-Discrimination in Employment:*

1. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law § 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.
2. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:
  - a. In the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates;
  - b. Neither the Contractor, Subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, color, disability, sex or national origin;
  - c. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

- d. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Article 2(E).

The provisions of this Article 2(E)(2) shall be limited to operations performed within the territorial limits of the State of New York.

- 3. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:

- a. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
- b. It shall be unlawful for any person or any servant, agent or employee of any person, described in the preceding paragraph, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Article 2(E)(3) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

- 4. E.O. 50 -- Equal Employment Opportunity:

- a. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq.* No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:
  - i. 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;

- ii. 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;
  - iii. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
  - iv. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;
  - v. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and
  - vi. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- b. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:
- i. Disapproval of the Contractor; and/or
  - ii. Suspension or termination of the Agreement; and/or
  - iii. Declaring the Contractor in default; and/or

- iv. In lieu of any of the foregoing sanctions, imposition of an employment program.
- c. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Agency declaring the Contractor to be non-responsible.
- d. The Contractor agrees to include the provisions of the foregoing Articles 2(E)(4)(a)-(c) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Article 2(E)(4)(d).
- e. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Article 2(E)(4)(e).
- f. Nothing contained in this Article 2(E)(4) 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.

F. *Paid Sick Leave Law:*

1. Introduction and General Provisions.

- a. 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>

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

Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSL.

- b. The PSL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").
- c. The Contractor agrees to comply in all respects with the PSL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSL in performance of this Agreement may result in its termination.
- d. The Contractor must notify the Agency's ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSL and Rules.
- e. The PSL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSL. The Contractor acknowledges that it is responsible for compliance with the PSL notwithstanding any inconsistent language contained herein.

2. Pursuant to the PSL and the Rules: Applicability, Accrual, and Use.

- a. 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 PSL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.
- b. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick

time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

- c. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:
  - i. 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;
  - ii. 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;
  - iii. closure of such employee's place of business by order of a public official due to a public health emergency; or
  - iv. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.
- d. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.
- e. 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.

- f. 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.
- 3. Exemptions and Exceptions. Notwithstanding the above, the PSLI does not apply to any of the following:
  - a. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
  - b. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
  - c. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLI are expressly waived in such collective bargaining agreement;
  - d. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLI for such employee;
  - e. 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;
  - f. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
  - g. 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
  - h. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.
- 4. Retaliation Prohibited. An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLI. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLI.
- 5. Notice of Rights.



- a. An employer must provide its employees with written notice of their rights pursuant to the PSL. 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>.
  - b. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.
6. Records. An employer must retain records documenting its compliance with the PSL 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 PSL.
7. Enforcement and Penalties.
  - a. Upon receiving a complaint alleging a violation of the PSL, 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 PSL has occurred, it has the right to issue a notice of violation to the employer.
  - b. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.
8. More Generous Policies and Other Legal Requirements. Nothing in the PSL 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 PSL 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 PSLI may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

*G. Whistleblower Protection Expansion Act*

1. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, 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 Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
  - 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 this Article 2(G), 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 (attached hereto as Attachment E-1) in a prominent and accessible place on any site where Work pursuant to the Agreement 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 Agreement; and
    - ii. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

- d. For the purposes of this Article 2(G), “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 Article 2(G) is applicable to all of Contractor’s Subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Article 2(G) in all subcontracts with a value in excess of \$100,000.00.

### ARTICLE 3: RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

#### *A. Books and Records:*

The Contractor agrees to maintain separate and accurate books, records, documents, and other evidence, and to utilize appropriate accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### *B. Retention of Records:*

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Article 3(A), for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

#### *C. Inspection:*

- 1. At any time during the Agreement or during the record retention period set forth in Article 3(B), the City, including the Agency and the Agency’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons

duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 3. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Agency's Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

2. The City shall have the right to have representatives of the City, State or federal government present to observe the services being performed. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Agency or other entity seeking to observe such Work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that Work is being performed in accordance with this Agreement.
3. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Article 3(C).

*D. Audit:*

1. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Agency, and the Agency'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.
2. Audits by the City, including the Comptroller, the Agency, and the Agency'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.

3. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Agency and by the Comptroller in the exercise of his/her powers under Law.
4. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Article 3(D).

*E. No Removal of Records from Premises:*

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Agency's designated official. Upon the request by the City at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the City any City books, records, documents, or data that has been removed from City premises.

*F. Electronic Records:*

As used in this Exhibit E, the terms "books," "records," "documents," and "other evidence" refer to electronic versions as well as hard copy versions.

*G. Investigations Clause:*

1. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
2.
  - a. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

- b. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
- 3.
  - a. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
  - b. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph 5 below without the City incurring any penalty or damages for delay or otherwise.
- 4. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
  - a. The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
  - b. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, Work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

5. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below, in addition to any other information that may be relevant and appropriate:
  - a. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - b. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
  - d. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph 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 (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.
6. Definitions
  - a. The term "license" or "permit" as used in this Article 3(G) shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
  - b. The term "person" as used in this Article 3(G) shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  - c. The term "entity" as used in this Article 3(G) shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

- d. The term “member” as used in this Article 3(G) shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.
7. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

#### H. *Confidentiality:*

1. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Agency. The obligation under this Article 3(H) to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner of the Agency, in writing or by e-mail, that it received a disclosure demand to disclose such reports, information or data and (2) if requested by the City, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the City the disclosure demand for such reports, information or data.
2. The Contractor shall provide notice to the Agency within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, Subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Agency of such steps. The Contractor shall cooperate with the City concerning the remediation and investigation of the breach and notification and other related actions. In the event of such breach of security,



without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Agency shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any

3. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, Subcontractors, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.
4. The Contractor, and its officers, employees, Subcontractors, and agents shall notify the Agency, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five Business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Article 3(H).
5. At the request of the Agency, the Contractor shall return to the City any and all confidential information in the possession of the Contractor or its Subcontractors. If the Contractor or its Subcontractors are legally required to retain any confidential information, the Contractor shall notify the Agency 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 Agency, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Agency 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 Article 3(B).
6. The Identifying Information Rider (Attachment E-5) is applicable to contracts for the following categories of Work: Category #2, Construction Services for Temporary Restoration of Housing, Category #6, Medical Space and Sheltering and

Category #17, Construction Services for Temporary Restoration of Housing - Multifamily.

7. The HIPAA Rider (Attachment E-6) is applicable to contracts for Category #6: Medical Space and Sheltering.
8. A breach of this Article 3(H) shall constitute a material breach of this Agreement for which the Agency may terminate this Agreement pursuant to Article 8 of the main body of the Agreement. The City reserves any and all other rights and remedies in the event of unauthorized disclosure.

#### ARTICLE 4: COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

##### *A. Copyrights and Ownership of Work Product:*

1. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.
2. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Agency (or other City agency) and set forth in the license.
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.
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 Agreement, copies of which shall be provided to the City upon execution of this Agreement.

5. If the services under this Agreement are supported by a federal or State grant of funds, pursuant to 2 CFR § 200.315(d) (and any applicable State grant agreement terms), the federal and State, if applicable, government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for government purposes: (a) the copyright in any work developed under the Agreement or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.
6. 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.

*B. Patents and Inventions:*

The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

*C. Pre-existing Rights:*

In no case shall Articles 4(A) and (B) apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

*D. Antitrust:*

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

## ARTICLE 5: CLAIMS

### *A. Choice of Law:*

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

### *B. Jurisdiction and Venue:*

Subject to Article 5(C), the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Article 5(B), the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Article 5(B).

### *C. Resolution of Disputes:*

1. Except as provided in Subparagraphs (1)(a) and (1)(b) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Article 5(C) and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.
  - a. This Article 5(C) shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.
  - b. For construction and construction-related services this Article 5(C) shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for Extra Work or disputed Work performed in connection with the Agreement, the conformity of the Contractor's Work to the Agreement, and the acceptability and quality of the Contractor's Work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the head of a City agency makes a determination with which the Contractor disagrees. For construction, this Article 5(C) shall not apply to termination of the Agreement for cause or other than for cause.

2. All determinations required by this Article 5(C) shall be clearly stated and made in writing, 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 5(C) shall be deemed a non-determination without prejudice that will allow application to the next level.
3. During such time as any dispute is being presented, heard, and considered pursuant to this Article 5(C), the Agreement terms shall remain in full force and effect and, unless otherwise directed by an ACCO or Engineer, the Contractor shall continue to perform Work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the head of a City agency. 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 5(C) and a material breach of contract.
4. Presentation of Dispute to Agency Head.
  - a. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing (“Notice of Dispute”) to the head of the Agency within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.
  - b. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City

Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the Work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Article 5(C) as the Contractor initiating the dispute.

- c. Agency Head Determination. Within 30 Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.
  - d. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Article 5(C). The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.
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 his or her review, investigation, and possible adjustment.
- a. Time, Form, and Content of Notice. Within 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

- b. Agency Response. Within 30 Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
  - c. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, City representatives, and any other personnel desired by the Comptroller.
  - d. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Article (5)(C)(5)(c) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.
- 6. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board 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 5(C) 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 City Chief Procurement Officer (CCPO) or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

- 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.
- 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 5(C), the Contractor, within 30 Days thereafter, may petition the CDRB to review the Agency Head determination.
  - a. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
  - b. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.
  - c. 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.

- d. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
  - e. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.
  - f. 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.
8. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Article 5(C) shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Article 5(C).

*D. No Claim Against Officials, Agents, or Employees:*

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

*E. Waiver:*

Waiver by either the City or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Article 6 of the main body of the Agreement.

*F. Claims and Actions Thereon:*

1. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.
2. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after Substantial Completion of the Task Order Work (if the defined term “Substantial Completion” is applicable to the type of Task Order Work ordered) or, if the defined term “Substantial Completion” is not applicable to the Task Order Work, within six months of the final payment for such Task Order Work, except that:
  - a. If the Agency exercises its right to terminate the Task Order pursuant to Article 8 of the main body of the Agreement, any such action shall be commenced within six months of termination of the Task Order;
  - b. If the defined term “Substantial Completion” is applicable to the Task Order Work, any claims arising out of events occurring after Substantial Completion of the Task Order Work and before Final Acceptance of the Task Order Work shall be asserted within six months of Final Acceptance of the Work;
  - c. If the defined term “Substantial Completion” is applicable to the Task Order Work, and the Agency exercises its right to complete or cause to complete any or all unsatisfactory punch list Work that remains after the completion date specified in the Final Approved Punch List pursuant to Article 14(C)(2) of Exhibit F (for Categories 1, 3) any such action shall be commenced within six months from the date the Agency notifies the Contractor that it

has exercised such right. Any claims for monies deducted, retained or withheld under the provisions of this Agreement shall be asserted within six months after the date when such monies otherwise become due and payable.

*G. No Third-Party Rights:*

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers, officials and employees.

ARTICLE 6: APPLICABLE LAWS

*A. PPB Rules:*

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

*B. All Legal Provisions Deemed Included:*

It is the intent and understanding of the parties to this Agreement that each and every provision of Law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the Law and without prejudice to the rights of either party hereunder.

*C. Severability / Unlawful Provisions Deemed Stricken:*

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

*D. Compliance With Laws:*

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

*E. Unlawful Discrimination in the Provision of Services:*

1. Discrimination in Public Accommodations. With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or

gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

2. Discrimination in Housing Accommodations. With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.
3. Admin. Code § 6-123. In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.
4. Immigration status. In connection with the Work provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by Law to inquire about such person's immigration status.

F. *Americans with Disabilities Act (ADA)*:

1. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Agency to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of Work herein readily accessible and usable by individuals with disabilities at such site(s). If the program

site is not readily accessible and usable by individuals with disabilities, the Contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO of the Agency for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

2. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

#### *G. Political Activity:*

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

#### *H. Religious Activity:*

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

#### *I. Participation in an International Boycott:*

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

J. *MacBride Principles Provisions:*

1. Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 of the Admin. Code. The local law provides for certain restrictions on City Contracts to express the opposition of the people of the City to employment discrimination practices in Northern Ireland to promote freedom of work-place opportunity.
  - a. Pursuant to Section 6-115.1, prospective Contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand (\$10,000) dollars, or for construction involving an amount greater than fifteen thousand (\$15,000) dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.
  - b. Prospective Contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the Agency shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable Law, that it is in the best interest of the City that the contract be awarded to other than the lowest responsible pursuant to Section 313(b)(2) of the Charter.
  - c. In the case of contracts let by other than competitive sealed bidding, if a prospective Contractor does not agree to these conditions, no agency, elected official or the City Council shall award the Agreement to that bidder unless the Agency seeking to use the goods, services or construction certifies in writing that the Agreement is necessary for the agency to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.
2. In accordance with Section 6-115.1 of the Admin. Code, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent 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.
- 3. For purposes of this Article, the following terms shall have the following meanings:
  - a. “MacBride Principles” shall mean those principles relating to nondiscrimination in employment and freedom of work-place opportunity which require employers doing business in Northern Ireland to:
    - i. increase the representation of individuals from under-represented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;
    - ii. take steps to promote adequate security for the protection of employees from under-represented religious groups both at the work-place and while traveling to and from Work;
    - iii. ban provocative religious or political emblems from the workplace;
    - iv. publicly advertise all job openings and make special recruitment efforts to attract applicants from under-represented religious groups;
    - v. establish layoff, recall, and termination procedures which do not in practice favor a particular religious group;
    - vi. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
    - vii. develop training programs that will prepare substantial numbers of current employees from under-represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of workers from under-represented religious groups;
    - viii. establish procedures to assess, identify, and actively recruit employees from under-represented religious groups with potential for further advancement; and
    - ix. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

4. The Contractor agrees that the covenants and representations in Article 6(J) are material conditions to this Agreement. In the event the Agency receives information that the Contractor who made the stipulation required by this Article 6(J) is in violation thereof, the Agency shall review such information and give the Contractor an opportunity to respond. If the Agency finds that a violation has occurred, the Agency shall have the right to declare the Contractor in default in default and/or terminate this Agreement for cause and procure supplies, services or Work from another source in the manner the Agency deems proper. In the event of such termination, the Contractor shall pay to the Agency, or the City 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 Agreement and the cost to the City of completing performance of this Agreement either itself or by engaging another contractor or contractors. 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 Agency for the uncompleted term of Contractor's Agreement. In the case of a construction contract, the Agency shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the City hereunder shall be in addition to, and not in lieu of, any rights and remedies the City has pursuant to this Agreement or by operation of Law.

*K. Access to Non-Public Areas.*

Attachment E-6, the Access to Non-Public Areas Rider, is applicable to contracts for the following categories of Work: Category #2, Construction Services for Temporary Restoration of Housing, Category #6, Medical Space and Sheltering and Category #17, Construction Services for Temporary Restoration of Housing - Multifamily.

ARTICLE 7: ASSIGNMENT

*A. Written Consent.*

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this Agreement, unless the previous written consent of the Commissioner shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.

*B. Request for Consent.*

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



name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the Commissioner has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Agency, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information. Such assignment, transfer, conveyance or other disposition of this Agreement shall not be valid until filed in the office of the Commissioner and the Comptroller, with the written consent of the Commissioner endorsed thereon or attached thereto.

*C. Annulment of Agreement.*

Failure to obtain the previous written consent of the Commissioner to such an assignment, transfer, conveyance or other disposition, may result in the revocation and annulment of this Agreement. The City shall thereupon be relieved and discharged from any further liability to the Contractor, its assignees, transferees or sublessees, who shall forfeit and lose all monies therefor earned under the Agreement, except so much as may be required to pay the Contractor's employees.

*D. Creditors.*

The provisions of this clause 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.

*E. Assignment by City.*

This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

ARTICLE 8: FORCE MAJEURE

*A. Definition of Force Majeure.*

For purposes of this Agreement, a force majeure event is an act or event occurring after the commencement of Work on a Task Order for Emergency Work beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

*B. Excusal of Non-Performance.*

The Contractor shall take all commercially reasonable steps to ensure it can perform the Scope of Work including, but not limited to, having multiple vendors for equipment and supplies, securing equipment and supplies from outside the greater New York City metropolitan area,

redundant mechanisms for contacting its employees, Subcontractors, and suppliers, and contingency or continuity of operations plans to mitigate risks associated with operating in disaster impacted areas. In the event that, having complied with the requirements of the previous sentence, the Contractor nevertheless cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of Work) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance, extend the time to complete the Task Order (in accordance with Article 10 of Exhibit F) and/or terminate the Task Order or the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement or a Task Order because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement or Task Order or extend the time to complete the Task Order (in accordance with Article 10 of Exhibit F for Categories 4, 5, 8 and 16, and Article 13A of Exhibit F for Categories 1, 2, 3 and 17). Such a termination shall be deemed to be without cause.

*C. Payment.*

If the City terminates the Agreement pursuant to this Article 8 of Exhibit E, payment for Work satisfactorily performed shall be made in accordance with Article 8(A) of the Agreement.

ATTACHMENT E-1:  
WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



**REPORT**  
***CORRUPTION, FRAUD, UNETHICAL CONDUCT***  
**RELATING TO A NYC-FUNDED CONTRACT**  
**OR PROJECT**  
**CALL THE NYC DEPARTMENT OF INVESTIGATION**  
**212-825-5959**

**DOI CAN ALSO BE REACHED BY MAIL  
OR IN PERSON AT:**

**New York City Department of Investigation  
(DOI)**

**80 Maiden Lane, 17th floor**

**New York, New York 10038**

**Attention: COMPLAINT BUREAU**

**OR FILE A COMPLAINT ON-LINE AT:**

**[www.nyc.gov/doi](http://www.nyc.gov/doi)**

**All communications are confidential**



**Or scan the QR Code above  
to make a complaint**

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

ATTACHMENT E-2:  
LIVING WAGE SCHEDULES

(This Attachment E-2 is applicable to contracts for the following categories of Work: Category #14, Base Camp Provider and Category #15, Temporary Laborers—Disaster Response Unskilled Labor)

The Comptroller issues the Living Wage Schedules. Such schedules are included in this Agreement and are available on the Comptroller's website at

<https://comptroller.nyc.gov/services/for-the-public/nyc-wage-standards/wage-schedules>

ATTACHMENT E-3:  
LIVING WAGE CERTIFICATION

(This Attachment E-3 is applicable to contracts for the following categories of Work: Category #14, Base Camp Provider and Category #15, Temporary Laborers—Disaster Response Unskilled Labor)

**CERTIFICATION**

The undersigned affirms and declares under the penalties of perjury, that the following information is true:

The Contractor agrees to comply with the requirements of Admin. Code § 6-109 and with all applicable federal, state and local laws. The Contractor acknowledges that a finding by the City that the Contractor has violated the requirements of Admin. Code § 6-109 may result in the cancellation or rescission of the Agreement.

The Contractor provides the following information. Attach additional sheets if necessary.

1. Procurement Identification Number (PIN) \_\_\_\_\_
2. Full Name of Contractor  
\_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_
3. Full name of the Chief Executive Officer of the Contractor  
\_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_
4. For employees of the Contractor that will be covered employees under this Agreement, state the following:
  - A. The absolute number of covered employees and the number of full-time equivalent covered employees.  
\_\_\_\_\_

B. For all categories of covered employees, the following information broken down by category:

(1) job classifications of covered employees in each category.

---

(2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave).

---

5. For employees of any subcontractor, known at this time, that will be covered employees under this Agreement, state the following:

Full Name of Subcontractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

A. The absolute number of covered employees and the number of full-time equivalent covered employees.

---

B. For all categories of covered employees, the following information broken down by category:

(1) job classifications of covered employees in each category.

---

(2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave).

---

6. To the extent permitted by Law, provide a record of any instances during the preceding five years in which the Contractor has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or, to the extent permitted by law, in which any

government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws.

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

*Must be signed by an officer or duly authorized representative.*



ATTACHMENT E-4:  
LIVING WAGE NOTICES

(This Attachment E-4 is applicable to contracts for the following categories of Work: Category #14, Base Camp Provider and Category #15, Temporary Laborers—Disaster Response Unskilled Labor)



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

EMPLOYER: \_\_\_\_\_

WORKSITE ADDRESS:

\_\_\_\_\_

This worksite is covered by New York City prevailing wage/living wage requirements.

Under applicable law, workers employed on this site must be paid prevailing wages (or living wages) and benefits or supplements as set forth in the attached schedules.

If you believe that you have not received the required wages and benefits or supplements, please contact the New York City Comptroller's Office:

- Call (212) 669-4443 or
- Pick up a complaint form in our office:  
1 Centre Street, Room 651, New York, NY 10007 or
- Download our complaint form and view all of our prevailing wage and living wage schedules at our website: [comptroller.nyc.gov/wages](http://comptroller.nyc.gov/wages)

If you file a written complaint with our office, we will investigate.

It shall be unlawful for any employer to retaliate against, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a prevailing wage/living wage violation, for seeking or communicating information regarding the employees' legal right to prevailing wages/living wages, or for participating in any investigatory or court proceeding relating to non-payment of prevailing wages/living wages.

WAGE SCHEDULES ATTACHED:

\_\_\_\_\_



**CIUDAD DE NUEVA A YORK  
OFICINA DEL CONTRALOR  
SCOTT M. STRINGER**

EMPLEADOR:

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DIRECCIÓN DEL LUGAR DE TRABAJO:

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Este lugar de trabajo está cubierto por los requisitos de salario prevaleciente/salario vital de la ciudad de Nueva York.

Conforme a las leyes vigentes, los trabajadores empleados en este lugar deben recibir el salario prevaleciente (o salario vital) y los beneficios o complementos establecidos en las listas adjuntas.

Si cree que no ha recibido los salarios y beneficios o complementos adecuados, comuníquese con la Oficina del Contralor de la Ciudad de Nueva York:

- Llame al (212) 669-4443 o
- Complete un formulario de quejas en nuestra oficina:  
1 Centre Street, Room 651, New York, NY 10007 o
- Descargue nuestro formulario de quejas y vea todas nuestras listas de salario prevaleciente y salario vital en nuestro sitio web: [comptroller.nyc.gov/wages](http://comptroller.nyc.gov/wages)

Si presenta una queja por escrito en nuestra oficina, la investigaremos.

Será una práctica ilícita para cualquier empleador tomar represalias, despedir, degradar, suspender, adoptar medidas laborales adversas en relación con los términos y condiciones de empleo o bien discriminar a cualquier empleado por denunciar o reclamar la violación de su salario prevaleciente/salario vital, por buscar o transmitir información relativa al derecho legal del empleado a percibir el salario prevaleciente/salario vital o por participar en cualquier investigación o procedimiento judicial relativo al salario prevaleciente/salario vital.

LISTAS DE SALARIO ADJUNTAS:

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ATTACHMENT E-5  
IDENTIFYING INFORMATION RIDER

(Attachment E-5 is applicable to contracts for the following categories of Work: Category #2, Construction Services for Temporary Restoration of Housing, Category #6, Medical Space and Sheltering, and Category 17, Construction Services for Temporary Restoration of Housing-Multifamily)

**Section 1.01 Background.**

Local Laws 245 and 247 of 2017 (codified at New York City Charter (“Charter”) Section 8 subdivision (h) and the Administrative Code of the City of New York (“Admin. Code”) Sections 23-1201 to -1205) are effective June 15, 2018. Such laws apply to human services contracts and other contracts designated by the City Chief Privacy Officer that involve the collection, retention, or disclosure of “Identifying Information” in connection with services provided under a City contract. Accordingly, in connection with the services provided under this Agreement, Contractor may collect, retain, and disclose Identifying Information only in accordance with the requirements of this Identifying Information Rider, the policies and protocols adopted pursuant to Admin. Code Sections 23-1201 to -1205, the other provisions of this Agreement and as otherwise required by law.

**Section 1.02 Definitions.**

- A. “Agency” means the City agency or office through which the City has entered into this Agreement.
- B. “Agency Privacy Officer” means the person designated to exercise functions under Admin. Code Sections 23-1201 to -1205 by the Agency through which the City is a party to this Agreement.
- C. “City Chief Privacy Officer” means the person designated by the Mayor pursuant to Charter Section 8 subdivision (h) as the City’s Chief Privacy Officer or such person’s designee.
- D. “Exigent Circumstances” means circumstances where collection or disclosure is urgently necessary, such that procedures that would otherwise be required cannot be followed.
- E. “Identifying Information” means any information provided by the City to Contractor or obtained by Contractor in connection with this Agreement that may be used on its own or with other information to identify or locate an individual. Identifying Information includes, but is not limited to: name, sexual orientation, gender identity, race, marital or partnership status, status as a victim of domestic violence or sexual assault, status as a crime victim or witness, citizenship or immigration status, eligibility for or receipt of public assistance or city services, all information obtained from an individual’s income tax records, an individual’s Social Security number, information obtained from any surveillance system operated by, for the benefit of, or at the direction of the New York City Police Department,

motor vehicle information or license plate number, biometrics such as fingerprints and photographs, languages spoken, religion, nationality, country of origin, place of birth, date of birth, arrest record or criminal conviction, employment status, employer information, current and previous home and work addresses, contact information such as phone number and email address, information concerning social media accounts, date and/or time of release from the custody of the Administration for Children's Services, the Department of Correction, or the New York City Police Department, any scheduled court appearances, any scheduled appointments with the City, the Contractor or its subcontractor that provides human services or other services designated by the City Chief Privacy Officer, and any other category of information designated by the City Chief Privacy Officer.

### **Section 1.03 Collection.**

Absent Exigent Circumstances, Contractor shall not collect Identifying Information unless such collection (a) has been approved by the Agency Privacy Officer or the City Chief Privacy Officer and the collection of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (b) is required by law or treaty; (c) is required by the New York City Police Department in connection with a criminal investigation; or (d) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.

### **Section 1.04 Disclosure.**

- A. Absent Exigent Circumstances, Contractor shall not disclose Identifying Information unless such disclosure (a) has been authorized in writing by the individual to whom such information pertains or, if such individual is a minor or is otherwise not legally competent, by such individual's parent, legal guardian, or other person with legal authority to consent on behalf of the individual; (b) has been approved by the Agency Privacy Officer or the City Chief Privacy Officer and the disclosure of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (c) is required by law or treaty; (d) is required by the New York City Police Department in connection with a criminal investigation; or (e) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.
- B. If Contractor discloses an individual's Identifying Information in violation of this Rider, Contractor shall notify the Agency Privacy Officer. In addition, if such disclosure requires notification to the affected individual(s) pursuant to the policies and protocols promulgated by the City Chief Privacy Officer under subdivision 6 of Section 23-1203, in the discretion of the Agency Privacy Officer Contractor shall either (i) make reasonable efforts to notify such individual(s) in writing of the Identifying Information disclosed and to whom it was disclosed as soon as practicable or (ii) cooperate with the Agency's efforts to notify such individual(s) in writing. The City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any law, administrative or judicial order, or the City Chief Privacy Officer to address the disclosure, 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 disclosure by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Agency shall provide Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, Contractor shall pay directly for the costs, detailed above, if any.

- C. Section 1.04(B) shall not require any notification that would violate any law or interfere with an investigation or otherwise compromise public safety pursuant to subdivision e of Section 23-1204.

### **Section 1.05 Exigent Circumstances.**

In the event Contractor collects or discloses Identifying Information due to Exigent Circumstances, with no other basis for collection or disclosure under subdivisions b or c of Section 23-1202, Contractor shall send to the Agency Privacy Officer information about such collection or request and disclosure, along with an explanation of why such Exigent Circumstances existed, as soon as practicable after such collection or disclosure. This section shall not require any such notification for collection or disclosure of Identifying Information that: (a) is required by the New York City Police Department in connection with an open criminal investigation; (b) is required by a City agency in connection with an open investigation concerning the welfare of a minor or other individual who is not legally competent; or (c) occurs in the normal course of performing Contractor's obligations under this Agreement and is in furtherance of law enforcement or public health or safety powers of the Agency under Exigent Circumstances.

### **Section 1.06 Retention.**

Contractor shall retain Identifying Information as required by law or as otherwise necessary in furtherance of this Agreement, or as otherwise approved by the Agency Privacy Officer or the City Chief Privacy Officer.

### **Section 1.07 Reporting.**

Contractor shall provide the Agency with reports as requested by the Agency Privacy Officer or City Chief Privacy Officer regarding the collection, retention, and disclosure of Identifying Information by Contractor. Each such report shall include information concerning Identifying Information collected, retained, and disclosed, including: (a) the types of Identifying Information collected, retained, or disclosed; (b) the types of collections and disclosures classified as "routine" and any collections or disclosures approved by the Agency Privacy Officer or City Chief Privacy Officer; and (c) any other related information that may be reasonably required by the Agency Privacy Officer or City Chief Privacy Officer.

#### **Section 1.08 Coordination with Agency Privacy Officer.**

The Agency may assign powers and duties of the Agency Privacy Officer to Contractor for purposes of this Agreement. In such event, Contractor shall exercise those powers and duties in accordance with applicable law in relation to the Agreement, and shall comply with reasonable directions of the Agency Privacy Officer and City Chief Privacy Officer concerning coordination and reporting.

#### **Section 1.09 Conflicts with Provisions Governing Records, Audits, Reports and Investigations.**

To the extent allowed by law, the provisions of this Rider shall control if there is a conflict between any of the provisions of this Rider and Article 3 of this Exhibit E and other provisions concerning records retention, inspections, audits, and reports designated elsewhere in the Agreement. The provisions of this Rider do not replace or supersede any other obligations or requirements of this Agreement.

#### **Section 1.10 Subcontracts.**

- A. Contractor shall include this Rider in all subcontracts to provide human services or other services designated in the policies and protocols of the City Chief Privacy Officer.
- B. Contractor agrees that it is fully responsible to the Agency for the compliance with this Rider by its subcontractors that provide human services or other services designated by the City Chief Privacy Officer.

#### **Section 1.11 Disclosures of Identifying Information to Third Parties.**

Contractor shall comply with the City Chief Privacy Officer's policies and protocols concerning requirements for a written agreement governing the disclosure of Identifying Information to a third party.

ATTACHMENT E-6  
INTENTIONALLY OMITTED



ATTACHMENT E-7  
ACCESS TO NON-PUBLIC AREAS RIDER

(Attachment E-7 is applicable to contracts for the following categories of Work: Category #2, Construction Services for Temporary Restoration of Housing, Category #6, Medical Space and Sheltering, and Category 17, Construction Services for Temporary Restoration of Housing-Multifamily)

Effective April 16, 2018, Local Law 246 of 2017 is codified in the New York City Administrative Code at Section 4-210. The law in part applies to any contractor having regular contact with the public in the daily administration of human services at any location, whether or not on city property, where such services are provided under a City contract. Accordingly, Contractor agrees to the following requirements:

In connection with the services provided under this Agreement, Contractor shall not knowingly permit and shall ensure that its subcontractors do not knowingly permit Enforcement Personnel to have access to non-public areas of the facilities where the services are provided unless:

1. such Enforcement Personnel are authorized to have access pursuant to an agreement, contract, or subcontract;
2. such Enforcement Personnel present a judicial warrant;
3. access is otherwise required by law;
4. such Enforcement Personnel are accessing such non-public areas as part of a cooperative arrangement involving city, state, or federal agencies;
5. access furthers the purpose or mission of a city agency; or
6. exigent circumstances exist.

For the purposes of this rider, the phrase “Enforcement Personnel” means government personnel who are empowered to enforce civil or criminal laws, but excludes personnel of the City, the New York City Department of Education, or a local public benefit corporation or local public authority.

ATTACHMENT E-8  
PREVAILING WAGE SCHEDULES

EXHIBIT F  
SUPPLEMENTAL CITY TERMS AND CONDITIONS

**CHAPTER I**  
**APPLICABILITY AND DEFINITIONS**

ARTICLE 1: APPLICABILITY

- A. This Exhibit F is applicable to Task Orders for Emergency Response Work issued under the following categories of work:

Category #2: Construction Services for Temporary Restoration of Housing

ARTICLE 2: DEFINITIONS

- A. In addition to the definitions in Article 12 of the main body of the Agreement, 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. “Dwelling” means a one- to four-family home, including the land and building, that is designated by the City for construction services for temporary restoration of housing. As appropriate according to the context, “Dwellings” refers to more than one Dwelling assigned to the Contractor or all Dwellings in the program for temporary restoration of housing administered by the Agency.
  2. “Engineer” or “Architect” or “Project Manager” shall mean the person so designated in writing by the City on the Task Order for Emergency Response Work to act as such in relation to the Task Order for Emergency Response Work, including a private Architect or Engineer or Project Manager, as the case may be. Subject to written approval by the Commissioner, the Engineer, Architect or Project Manager may designate an authorized representative.
  3. “Engineering Audit Officer” or “EAO” shall mean the person so designated by the Commissioner to perform responsible auditing functions hereunder.
  4. “Final Acceptance” shall mean final written acceptance of all the Task Order Emergency Response Work by the Commissioner, a copy of which shall be sent to the Contractor.
  5. “Inspector” shall mean the person so designated in writing by the Agency to inspect the Dwellings and issue the Final Acceptance of Task Order Emergency Response Work.
  6. “Homeowner” shall mean the legal owner of a Dwelling where Task Order Emergency Response Work shall occur.

7. “Materialman” shall mean any corporation, firm, partnership, joint venture, or individual, other than employees of the Contractor, who or which contracts with the Contractor or any Subcontractor, to fabricate or deliver, or who actually fabricates or delivers, plant, materials or equipment to be incorporated in the Work.
8. “Means and Methods of Construction” shall mean the labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by the Task Order for Emergency Response Work.
9. “Payroll Taxes” shall mean State Unemployment Insurance (SUI), Federal Unemployment Insurance (FUI), and payments pursuant to the Federal Insurance Contributions Act (FICA).
10. “Project” shall mean the City’s overall response to an event triggering an Emergency Declaration to which a Task Order for Emergency Response Work relates.
11. “Required Quantity” in a unit price Task Order for Emergency Response Work shall mean the actual quantity of any item of Work or materials which is required to be performed or furnished in order to comply with the Agreement.
12. “Resident Engineer” shall mean the representative of the Commissioner duly designated by the Commissioner to be his/her representative at the site of the Work. The City anticipates that this role will be performed by the On-Call Emergency Agreement Category #9 Contractor, but reserves the right to designate another person or entity.
13. “Small Tools” shall mean items that are ordinarily required for a worker’s job function, including but not limited to, equipment that ordinarily has no licensing, insurance or substantive storage costs associated with it; such as circular and chain saws, impact drills, threaders, benders, wrenches, socket tools, etc.
14. “Specifications” shall mean all of the directions, requirements, and standards of performance applying to the Work as hereinafter detailed and designated under the Specifications and in a Task Order for Emergency Response Work.
15. “Site” shall mean the Dwelling upon or in which the Contractor’s operations are carried on and any real property owned by or leased to the City that the Contractor uses in connection with the DRMP (e.g., staging areas).

## **CHAPTER II**

### **THE WORK AND ITS PERFORMANCE**

### ARTICLE 3: CHARACTER OF THE WORK

Unless otherwise expressly provided in the Specifications, addenda or Task Order for Emergency Response Work, the Work shall be performed in accordance with the best modern practice, utilizing, unless otherwise specified in writing, new and unused materials of standard first grade quality and workmanship and design of the highest quality, to the satisfaction of the Commissioner.

### ARTICLE 4: MEANS AND METHODS OF CONSTRUCTION

- A. Unless otherwise expressly provided in the Specifications, addenda, and the Task Order for Emergency Response Work, the Means and Methods of Construction shall be such as the Contractor may choose; subject, however, to the Engineer's right to reject the Means and Methods of Construction proposed by the Contractor which in the opinion of the Engineer:
1. Will constitute or create a hazard to the Work, or to persons or property; or
  2. Will not produce finished Work in accordance with the terms of the Task Order for Emergency Response Work; or
  3. Will be detrimental to the overall progress of the Project.
- B. The Engineer's approval of the Contractor's Means and Methods of Construction, or his/her failure to exercise his/her right to reject such means or methods, shall not relieve the Contractor of its obligation to complete the Work as provided in the Task Order for Emergency Response Work and this Agreement; nor shall the exercise of such right to reject create a cause of action for damages.

### ARTICLE 5: COMPLIANCE WITH LAWS

- A. *General Requirements.* The Contractor's attention is directed to Article 6 of Exhibit E, which sets forth some of the Laws applicable to this Agreement, in addition to the provisions below.
- B. *RESERVED.*
- C. *RESERVED.*
- D. *RESERVED.*
- E. *Pesticides.* In accordance with Section 17-1209 of the Admin. Code, to the extent that the Contractor or any Subcontractor applies pesticides to any property owned or leased by the

City, the Contractor, and any Subcontractor shall comply with Chapter 12 of the Admin. Code.

- F. *Waste Treatment, Storage, and Disposal Facilities and Transporters.* In connection with the Work, the Contractor and any Subcontractor shall use only those waste treatment, storage, and disposal facilities and waste transporters that possess the requisite license, permit or other governmental approval necessary to treat, store, dispose, or transport the waste, materials or hazardous substances.
- G. *Environmentally Preferable Purchasing.* The Contractor shall ensure that products purchased or leased by the Contractor or any Subcontractor for the Work that are not specified by the City or are submitted as equivalents to a product specified by the City comply with the requirements of the New York City Environmentally Preferable Purchasing Program contained in Chapter 11 of Title 43 of the RCNY, pursuant to Chapter 3 of Title 6 of the Admin. Code.
- H. *Right To Know.* Where applicable, as per the New York State “Right to Know” law and the Federal OSHA Hazard Communication Standard (29 C.F.R. Part 1200), Contractors providing services to the Agency are required to submit appropriate Manufacturer’s Safety Data Sheets (MSDS) when using chemically based substances on Dwellings. Failure to provide the relevant MSDS may result in the termination of the Contract (with applicable penalties). For any questions regarding this regulation contact the BUREAU OF TOXIC SUBSTANCE ASSESSMENT, New York State Health Department; Flanigan Square, 547 River Street, Troy, New York 12180-2216; (518) 402-7800.
- I. *Licenses.* Contractor shall ensure that its workers and its Subcontractors possess the licenses necessary to perform the Work.

#### ARTICLE 6: INSPECTION

- A. During the progress of the Work and up to the date of Final Acceptance, the Contractor shall at all times afford the representatives of the City every reasonable, safe, and proper facility for inspecting all Work done or being done at the Site and also for inspecting the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.
- B. The Contractor’s obligation hereunder shall include the uncovering or taking down of finished Work and its restoration thereafter; provided, however, that the order to uncover, take down and restore shall be in writing, and further provided that if Work thus exposed proves satisfactory, and if the Contractor has complied with Article 6(A), such uncovering or taking down and restoration shall be considered an item of Extra Work to be paid for in accordance with the provisions of Article 26. If the Work thus exposed proves unsatisfactory, the City has no obligation to compensate the Contractor for the uncovering, taking down or restoration.

- C. Inspection and approval by the Commissioner, the Engineer, Project Manager, or Resident Engineer, of finished Work or of Work being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the Contractor of its obligation to perform the Work in strict accordance with the Agreement and Task Order for Emergency Response Work. Finished or unfinished Work not found to be in strict accordance with the Agreement and Task Order for Emergency Response Work shall be replaced as directed by the Engineer, even though such Work may have been previously approved and paid for. Such corrective Work is deemed to be included in the Task Order for Emergency Response Work and shall not be deemed Extra Work.
- D. Rejected Work and materials shall be promptly taken down and removed from the Site, which must at all times be kept in a reasonably clean and neat condition.

#### **ARTICLE 7: PROTECTION OF WORK AND OF PERSONS AND PROPERTY; NOTICES AND INDEMNIFICATION**

- A. The Contractor's attention is directed to Article 1 of Exhibit C, which sets forth the requirements concerning protection of persons and property, indemnification, and notification of accidents.

### **CHAPTER III TIME PROVISIONS**

#### **ARTICLE 8: COMMENCEMENT AND PROSECUTION OF THE WORK**

The Contractor shall commence the Work on the date specified in the Task Order for Emergency Response Work or as directed by the Agency. The time for performance of the Work shall be computed from the date specified in the Task Order for Emergency Response Work. TIME BEING OF THE ESSENCE to the City, the Contractor shall thereafter prosecute the Work diligently, using such Means and Methods of Construction as are in accord with Article 4 herein and as will assure its completion not later than the date specified in the Task Order for Emergency Response Work, or on the date to which the time for completion may be extended or, if Work is deleted, otherwise changed.

#### **ARTICLE 9: RESERVED**

#### **ARTICLE 10: REQUESTS FOR INFORMATION OR APPROVAL**

- A. Due to the emergency nature of the Work under a Task Order for Emergency Response Work, the parties acknowledge that there may not be detailed information available about

the Work and that City records relevant to the Work may be inaccessible or impracticable to obtain in a timely manner.

- B. The City will endeavor to provide information that is available to it, so long as such information is available in the emergency circumstances and is not restricted or confidential. Since the information is being provided following or during an Emergency, the information provided may not be complete and its accuracy may be unverified. The City is not required to retain additional contractors, do research, verify information or obtain additional information for use by the Contractor.

#### ARTICLE 11: DELAY

- A. The Contractor agrees to make no claim against the City for damages for delay in the performance of a Task Order for Emergency Response Work.
- B. The Contractor must notify the Engineer, in writing (email is acceptable) within one day of the commencement of a condition that may cause a delay and must state why and in what respects the condition may cause a delay.
- C. The Contractor shall be compensated for a delay, if at all, solely by an extension of time to complete the performance of the Work (including an adjustment to the progress schedule, if any), in accordance with the provisions of Articles 13 and/or 13A. Such extensions of time will be granted, if at all, pursuant to the grounds set forth in Articles 13(C) and/or 13A(C).

#### ARTICLE 12: COORDINATION WITH OTHER CONTRACTORS

- A. During the progress of the Work, Other Contractors may be engaged in performing other work or may be awarded other contracts for additional work on this Project. In that event, the Contractor shall coordinate the Work to be done under this Agreement and the Task Order for Emergency Response Work with the work of such Other Contractors and the Contractor shall fully cooperate with such Other Contractors and carefully fit its own Work to that provided under other contracts as may be directed by the Engineer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any Other Contractors.
- B. If the Engineer determines that the Contractor is failing to coordinate its Work with the work of Other Contractors as the Engineer has directed, then the Commissioner shall have the right to withhold any payments otherwise due hereunder until the Contractor completely complies with the Engineer's directions.
- C. The Contractor shall notify the Engineer in writing if any Other Contractor on this Project is failing to coordinate its work with the Work of this Agreement. If the Engineer finds such charges to be true, the Engineer shall promptly issue such directions to the Other Contractor with respect thereto as the situation may require. The City shall not, however,



be liable for any damages suffered by any Other Contractor's failure to coordinate its work with the Work of this Agreement or by reason of the Other Contractor's failure to promptly comply with the directions so issued by the Engineer, or by reason of any Other Contractor's default in performance, it being understood that the City does not guarantee the responsibility or continued efficiency of any contractor. The Contractor agrees to make no claim against the City for any damages relating to or arising out of any directions issued by the Engineer pursuant to this Article 12 (including but not limited to the failure of any Other Contractor to comply or promptly comply with such directions), or the failure of any Other Contractor to coordinate its work, or the default in performance of any Other Contractor.

- D. The Contractor shall indemnify and hold the City harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the Engineer's directions promptly; and the Comptroller shall have the right to exercise the powers reserved in Article 23 with respect to any claims which may be made for damages due to the Contractor's failure to comply with the Engineer's directions promptly. Insofar as the facts and 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 provided by Law.
- E. Should the Contractor sustain any damage through any act or omission of any Other Contractor having a contract with the City for the performance of work upon the Site or of work which may be necessary to be performed for the proper prosecution of the Work to be performed hereunder, or through any act or omission of a subcontractor of such Other Contractor, the Contractor shall have no claim against the City for such damage, but shall have a right to recover such damage from the Other Contractor under the provision similar to the following provisions which apply to this Agreement and have been or will be inserted in the contracts with such Other Contractors:
  - 1. Should any Other Contractor having or who shall hereafter have a contract with the City for the performance of work upon the Site sustain any damage through any act or omission of the Contractor hereunder or through any act or omission of any Subcontractor of the Contractor, the Contractor agrees to reimburse such Other Contractor for all such damages and to defend at its own expense any action based upon such claim and if any judgment or claim (even if the allegations of the action are without merit) against the City shall be allowed the Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith and agrees to indemnify and hold the City harmless from all such claims. Insofar as the facts and 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 provided by Law.
- F. The City's right to indemnification hereunder shall in no way be diminished, waived or discharged by its recourse to assessment of liquidated damages as provided in Article 15, or by the exercise of any other remedy provided for by contract or by Law.

ARTICLE 13A. EXTENSION OF TIME FOR PERFORMANCE OF A TASK ORDER FOR  
EMERGENCY RESPONSE WORK

- A. If performance by the Contractor in connection with a particular Task Order for Emergency Response Work is delayed for a reason set forth below, the Contractor may submit an application for an extension of time in accordance with this Article 13A.
- B. The Contractor shall, however, be entitled to an extension of time for such causes only for the number of Days of delay which the Engineer or the ACCO may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of Article 10 and 11B.
- C. Grounds for Extension: The Contractor shall be granted an extension of time for delay caused solely:
  - 1. By the acts or omissions of the City, its officials, agents, or employees;
  - 2. By the act or omissions of Other Contractors on a project; or
  - 3. By supervening conditions entirely by a Force Majeure Event, as defined in Article 8(A) of Exhibit E.
- D. Extension for Concurrent Causes of Delay: The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or its Subcontractors or Materialmen, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.
- E. Application for Extension of Time for a Task Order for Emergency Response Work.
  - 1. The Contractor shall, within one Day after commencement of the condition which allegedly has caused or is causing a delay, submit a written application to the Engineer identifying:
    - a. the Contractor, the registration number of the Agreement, the number of the Task Order for Emergency Response Work, and Project description;
    - b. liquidated damage assessment rate, if applicable
    - c. the original start date of the Task Order for Emergency Response Work, completion date and approved construction schedule;

- d. any previous time extensions granted (number and duration);
  - e. the number of days for which an extension of time is requested along with a new construction schedule showing the requested completion date;
  - f. the nature of each alleged cause of delay; and
  - g. the date upon which each such cause of delay began and ended and the number of days attributable to each such cause; and
  - h. a statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and
  - i. a statement indicating the Contractor's understanding that the time extension is granted only for purposes of permitting continuation of the Task Order for Emergency Response Work performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future; and
  - j. A statement indicating the Contractor's understanding that the time extension is granted only for purposes of permitting continuation of performance on the Task Order for Emergency Response Work and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.
- F. The Engineer shall prepare a written determination granting or denying the application for an extension of time setting forth the reasons for such determination and the new completion date. The determination made by the Engineer granting or denying an extension of time shall be binding and conclusive on the Contractor.
- G. A determination to grant an extension of time for causes of delay other than those set forth herein shall be entirely within the discretion of the Engineer.
- H. Permitting the Contractor to continue with the Task Order for Emergency Response Work after the time for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall not operate as a waiver by the City of any of its rights under this Agreement. Neither the granting of any application for an extension of time to the Contractor or any Other Contractor on this Task Order for Emergency Response Work nor the papers, records or reports related to any application for or grant of an extension of time or determination related thereto shall be referred to or offered in evidence by the Contractor or its attorneys in any action or proceeding.

- I. Assessment of Liquidated Damages: In the event, a request for an extension is denied, a report including the written determination, analysis and related documentation shall be forwarded to the ACCO for consideration and assessment of liquidated damages. Notwithstanding the foregoing, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension, shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.
- J. For the avoidance of doubt, the Agency shall be authorized to extend a Task Order for Emergency Response Work after the original end date of the Agreement.
- K. No Damage for Delay: The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, or the Homeowner or other occupants of the Dwelling and agrees that all it may be entitled to on account of any such delay is an extension of time to complete performance of the Job Order Work as provided herein.

#### ARTICLE 13: EXTENSION OF THE AGREEMENT<sup>1</sup>

- A. If performance by the Contractor is delayed beyond the Term for a reason set forth in Article 13(C), the Contractor may be allowed a reasonable extension of time in conformance with this Article 13 and the PPB Rules.
- B. Any extension of time for completion of this Agreement may be granted only by the ACCO or by the Board for the Extension of Time (hereafter “Board”) (as set forth below) upon written application by the Contractor, except that the terms of this Agreement shall automatically remain in effect with respect to a Task Order for Emergency Response Work, including a Supplemental Task Order, that was issued prior to the end of the Term.
- C. Grounds for Extension: If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of the Work caused solely:
  - 1. By the acts or omissions of the City, its officials, agents or employees; or
  - 2. By the act or omissions of Other Contractors; or
  - 3. By supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or

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<sup>1</sup> The Contractor’s attention is directed to Article 2(E) of the main body of the Agreement, which provides, “*Effect of Open Task Order on Term*. If Work on a Task Order for Emergency Response Work commences prior to the Agreement’s expiration (including, on the last Day of this Agreement), the Contractor shall continue Work on the Task Order (including any Supplementary Task Orders relating thereto) for Emergency Response Work and all the terms of this Agreement shall apply.”

illegal, or strikes or labor disputes not brought about by any act or omission of the Contractor).

4. The Contractor shall, however, be entitled to an extension of time for such causes only for the number of Days of delay which the ACCO or the Board may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of Articles 10 and 11, herein.
- D. The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the Work as determined by the ACCO or the Board, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its Subcontractors or Materialmen, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.
  - E. The determination made by the ACCO or the Board on an application for an extension of time shall be binding and conclusive on the Contractor.
  - F. The ACCO or the Board acting entirely within their discretion may grant an application for an extension of time for causes of delay other than those herein referred.
  - G. Permitting the Contractor to continue with the Work after the Term has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the City of any of its rights under this Agreement.
  - H. Application for Extension of Time:
    1. Before the Contractor's time extension request will be considered, the Contractor shall notify the ACCO of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the ACCO identifying:
      - a. The Contractor; the registration number; and Project description, including the Dwelling address;
      - b. Liquidated damage assessment rate, if any, specified in this Agreement;
      - c. Original total bid price or value of the Agreement, if applicable;
      - d. The original Term;
      - e. Any previous time extensions granted (number and duration); and
      - f. The extension of time requested.

2. In addition, the application for extension of time shall set forth in detail:
  - a. The nature of each alleged cause of delay in completing the Work;
  - b. The date upon which each such cause of delay began and ended and the number of Days attributable to each such cause;
  - c. A statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. the application shall include a detailed statement of the dollar amounts of each element of any claim item reserved; and
  - d. A statement indicating the Contractor's understanding that the time extension is granted only for purposes of permitting continuation of performance under the Agreement and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.
- a. Agreement Services a written explanation of the exceptional circumstances.

- L. No Damage for Delay: The Contractor agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission to act of the City or any of its representatives, except as provided for in Article 11 of this Exhibit F.

#### ARTICLE 14: COMPLETION AND FINAL ACCEPTANCE OF THE WORK

- A. This Article 14 is intended to supplement Article 5(E) of the Main Body of the Agreement.
- B. Request for Inspection: Upon completion of the Task Order for Emergency Response Work, and after an inspection by the Department of Buildings if required by law, the Contractor shall submit a request for final inspection to the Agency. The Agency shall schedule a final inspection within three (3) Days after receipt of the Contractor's written request therefor.
- C. The Contractor shall instruct the Homeowner in the use of appliances installed pursuant to the Task Order for Emergency Response Work. The Inspector shall not issue a written determination of Final Acceptance unless and until the Contractor provides all such documents to the Homeowner.
- D. Determining the Date of Final Acceptance of a Task Order for Emergency Response Work: The Task Order for Emergency Response Work will be accepted as final and complete as of the date of the Final Inspection if, upon such Final Inspection, the Inspector finds that all items on the Task Order for Emergency Response Work are complete and no further

Work remains to be done. The Inspector shall then issue a written determination of Final Acceptance.

- E. Request for Re-inspection: If upon inspection for the purpose of Final Acceptance, the Inspector determines that there are items of Work still to be performed, the Contractor shall promptly perform them and then request a re-inspection. If upon re-inspection, the Engineer determines that the Work is satisfactorily completed, the date of such re-inspection shall be the date of Final Acceptance. Re-inspection by the Inspector shall be made within three (3) Days after receipt of the Contractor's written request therefor. The amount listed on the unit price list for reinspection shall be deducted from the total price of the Task Order for Emergency Response Work.

#### ARTICLE 15: LIQUIDATED DAMAGES

- A. If the Contractor fails to substantially complete the Work within the time fixed for final completion in a Task Order for Emergency Response Work, plus authorized time extensions, or if the Contractor, in the sole determination of the Agency, has abandoned the Work, the Contractor shall pay to the City the sum fixed in the Task Order for Emergency Response Work for each and every Day that the time consumed in substantially completing or finally completing the Work exceeds the time allowed therefor; which said sum, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the Final Acceptance of the Work hereunder, is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty. This Article 15 shall also apply to the Contractor whether or not the Contractor is defaulted pursuant to Article 7 of the main body of the Agreement. Neither the failure to assess liquidated damages nor the granting of any time extension shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.
- B. Liquidated damages received under this Agreement or a Task Order are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification, or the Contractor's obligation to indemnify the City, or to any other remedy provided for in this Agreement or by Law.
- C. The Commissioner may deduct and retain out of the monies which may become due under this Agreement, the amount of any liquidated damages; and in case the amount which may become due under this Agreement shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

#### ARTICLE 16: OCCUPATION OR USE PRIOR TO COMPLETION

Unless otherwise provided for in the Specifications or a Task Order for Emergency Response Work, the Homeowner may take over, use, occupy or operate any part of the Work at any time prior to Final Acceptance, upon written notification to the Contractor. Such authorization must include the date when the Homeowner may take over, use, occupy

or operate part of the Work and a brief description of the relevant part of the Work. A copy of such written authorization shall be provided to the City and the Homeowner before Final Acceptance. In the event the Homeowner takes over, uses, occupies, or operates any part of the Work:

1. the Contractor shall issue a written certification of completion with respect to such part of the Work and shall submit a certification form with photo inventory of Work;
2. the Contractor shall be relieved of its absolute obligation to protect such part of the unfinished Work in accordance with Article 7; and;
3. the Contractor's guarantee on such part of the Work shall begin on the date in the written authorization by the Contractor required in Article 16.1.

## **CHAPTER IV SUBCONTRACTS AND ASSIGNMENTS**

### **ARTICLE 17: SUBCONTRACTS**

- A. The Contractor's attention is directed to Article 9 of the main body of the Agreement concerning Subcontractors. The provisions below supplement such Article 9.
- B. The Commissioner may deduct from the amounts certified under this Agreement and a Task Order for Emergency Response Work to be due to the Contractor, the sum or sums due and owing from the Contractor to the Subcontractors according to the terms of the said subcontracts, and in case of dispute between the Contractor and its Subcontractor, or Subcontractors, as to the amount due and owing, the Commissioner may deduct and withhold from the amounts certified under this Agreement and a Task Order for Emergency Response Work to be due to the Contractor such sum or sums as may be claimed by such Subcontractor, or Subcontractors, in a sworn affidavit, to be due and owing until such time as such claim or claims shall have been finally resolved.
- C. On Task Orders where performance bonds and payment bonds are executed, the Contractor shall include on each requisition for payment the following data: Subcontractor's name, value of the subcontract, total amount previously paid to Subcontractor for Work previously requisitioned, and the amount, including retainage, to be paid to the Subcontractor for Work included in the requisition.
- D. On Task Orders where performance bonds and payment bonds are not executed, the Contractor shall include with each requisition for payment submitted hereunder, a signed statement from each and every Subcontractor and/or Materialman for whom payment is requested in such requisition. Such signed statement shall be on the letterhead of the Subcontractor and/or Materialman for whom payment is requested and shall (i) verify that such Subcontractor and/or Materialman has been paid in full for all Work performed and/or



material supplied to date, exclusive of any amount retained and any amount included on the current requisition, and (ii) state the total amount of retainage to date, exclusive of any amount retained on the current requisition.

#### ARTICLE 18: ASSIGNMENTS

- A. The Contractor's attention is directed to Article 8 of Exhibit E concerning Assignments.

### **CHAPTER V CONTRACTOR'S SECURITY AND GUARANTEE**

#### ARTICLE 19: SECURITY DEPOSIT

The Contractor's attention is directed to Exhibit D concerning the security deposit.

#### ARTICLE 20: PAYMENT GUARANTEE

The Contractor's attention is directed to Exhibit D concerning the payment guarantee.

#### ARTICLE 21: RESERVED

#### ARTICLE 22: INSURANCE

The Contractor's attention is directed to Exhibit C, Article 2, concerning the insurance requirements.

#### ARTICLE 23: MONEY RETAINED AGAINST CLAIMS

- A. If any claim shall be made by any person or entity (including Other Contractors with the City on this Project) against the City or against the Contractor and the City for any of the following:
1. An alleged loss, damage, injury, theft or vandalism of any of the kinds referred to in Article 1 of Exhibit C and Article 12 of this Exhibit F, plus the reasonable costs

of defending the City, which in the opinion of the Comptroller may not be paid by an insurance company (for any reason whatsoever); or

2. An infringement of copyrights, patents or use of patented articles, tools, etc., as referred to in Article 1(B) of Exhibit C; or
3. Damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Agreement and the Task Order,

the amount of such claim, or so much thereof as the Comptroller may deem necessary, may be withheld by the Comptroller, as security against such claim, from any money due hereunder. The Comptroller, in his/her discretion, may permit the Contractor to substitute other satisfactory security in lieu of the monies so withheld.

- B. If an action on such claim is timely commenced and the liability of the City, or the Contractor, or both, shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the Comptroller shall pay such judgment or admitted claim out of the monies retained by the Comptroller under the provisions of this Article 23, and return the balance, if any, without interest, to the Contractor.
- C. Liens: If any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Contract file a lien against a Dwelling, the Contractor shall promptly discharge such lien pursuant to the New York Lien Law. The City may retain from the monies due or to become due under this Contract, so much of such monies as shall be sufficient to pay the amount claimed and the money so retained may be held by the City until the lien is discharged.

#### ARTICLE 24: MAINTENANCE AND GUARANTY

- A. The Contractor shall promptly repair, replace, restore or rebuild, as the Commissioner may determine, any finished Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one year period subsequent to the date of Final Acceptance (or use and occupancy in accordance with Article 16) applicable to a Task Order for Emergency Response Work, except where other periods of maintenance and guaranty are provided for in a Task Order for Emergency Response Work.
  1. For one year from the date of Final Acceptance of the Task Order for Emergency Response Work completed by the Contractor, the Contractor shall maintain an email address to receive messages from the City directing the Contractor to repair, replace, restore or rebuild such defects of materials or workmanship or damage.
  2. The Contractor shall check its designated email account at least once each business day and respond to the City's direction within one business day.

3. The City shall schedule an appointment with the Homeowner, the Contractor, and an Engineer at the Dwelling. Generally such appointment will be scheduled within seven Days, but may be sooner if the defect or damage presents a health or safety risk.
  4. Pursuant to Article 15, the Contractor shall be liable for liquidated damages in the amount \$200 for failure to arrive at the appointment within 30 minutes of the scheduled time.
  5. At the appointment, the Engineer shall draft a proposed repair order, which describes the Work to be completed and the time for completion. The proposed repair order, when signed by the Engineer, the Homeowner, and the Contractor, shall constitute the approved repair order.
  6. Upon completion of the Work, the Contractor shall notify the Agency and request an inspection.
- B. As security for the faithful performance of its obligations hereunder, the Contractor, upon filing its requisition for payment on Final Acceptance, shall deposit with the Commissioner a sum equal to one (1%) percent of the price (or the amount fixed in the Task Order for Emergency Response Work) in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the Comptroller, or obligations of the City, which the Comptroller may approve as of equal value with the sum so required.
- C. In lieu of the above, the Contractor may make such security payment to the City by authorizing the Commissioner in writing to deduct the amount from the Final Acceptance payment which shall be deemed the deposit required above.
- D. If the Contractor has faithfully performed all of its obligations under this Agreement and the Task Order for Emergency Response Work the Commissioner shall so certify to the Comptroller within five Days after the expiration of one year from the date of Final Acceptance of the Work or within 30 Days after the expiration of the guarantee period fixed in the Specifications. The security payment shall be repaid to the Contractor without interest within 30 Days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all of its obligations under this Agreement and the Task Order for Emergency Response Work.
- E. Notice by the Commissioner to the Contractor to repair, replace, rebuild or restore such defective or damaged Work shall be timely, pursuant to this article, if given not later than ten Days subsequent to the expiration of the one year period or other periods provided for in this Agreement or the Task Order for Emergency Response Work.
- F. If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving such notice, the Commissioner shall have the right to have the Work done by others in the same manner as provided for in the completion of a defaulted Agreement, under Article 51.

- G. If the security payment so deposited is insufficient to cover the cost of such Work, the Contractor shall be liable to pay such deficiency on demand by the Commissioner.
- H. The Engineer's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor, shall be binding and conclusive upon the Contractor as to the amount thereof.
- I. The Contractor shall obtain all manufacturers' warranties and guaranties of all equipment and materials required by this Agreement in the name of the City (or, upon request by the City, the City's designee) and shall deliver same to the Commissioner. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent purchasers of such equipment and materials or lessees of the premises into which the equipment and materials have been installed.

## **CHAPTER VI**

### **CHANGES, EXTRA WORK, AND DOCUMENTATION OF CLAIM**

#### ARTICLE 25: CHANGES /SUPPLEMENTAL TASK ORDERS

- A. Changes may be made to this Contract only as duly authorized in writing by the Commissioner in accordance with the Law and this Contract. All such changes, modifications, and amendments will become a part of the Contract. Work so ordered shall be performed by the Contractor.
- B. Contract changes will be made only for Work necessary to complete the Work included in the original Task Order, to omit work from a Task Order, and/or for non-material changes to the scope of the Contract. Changes are not permitted for any material alteration in the scope of Work in the Task Order.
- C. The Contractor shall be entitled to a price adjustment for Extra Work performed pursuant to a written change order. Adjustments to price shall be computed in one or more of the following ways:
  - a. By applicable unit prices specified in the Contract;
  - b. By agreement of a fixed price; and/or
  - c. In any other manner approved by the CCPO.
- D. All payments for price adjustments for Extra Work are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller and/or the Agency.

#### ARTICLE 26: RESERVED

## ARTICLE 27: RESOLUTION OF DISPUTES

The Contactor's attention is directed to Article 5(C) of Exhibit E concerning the resolution of disputes.

## ARTICLE 28: RESERVED

## ARTICLE 29: RESERVED

## ARTICLE 30: RESERVED

# **CHAPTER VII POWERS OF THE RESIDENT ENGINEER, THE ENGINEER OR THE ARCHITECT AND THE COMMISSIONER**

## ARTICLE 31: RESERVED

## ARTICLE 32: THE PROJECT MANAGER AND ENGINEER

- A. The Project Manager or Engineer, in addition to those matters elsewhere delegated to the Engineer in this Agreement or in the Task Order for Emergency Response Work and expressly made subject to his/her determination, direction or approval, shall have the power, subject to review by the Commissioner:
1. To determine the amount, quality, and location of the Work to be paid for hereunder; and
  2. To determine all questions in relation to the Work, to interpret the, Specifications, Task Orders and Addenda, and to resolve all patent inconsistencies or ambiguities therein; and
  3. To determine how the Work of a Task Order for Emergency Response Work shall be coordinated with Work of Other Contractors engaged simultaneously on this Project, including the power to suspend any part of the Work, but not the whole thereof; and
  4. To make minor changes in the Work as he/she deems necessary, provided such changes do not result in a net change in the cost to the City or to the Contractor of the Work to be done under the Contract; and

5. To add explanatory information and furnish additional Specifications and drawings, consistent with this Agreement.
- B. The foregoing enumeration shall not imply any limitation upon the power of the Engineer or Project Manager, for it is the intent of this Agreement that all of the Work shall generally be subject to his/her determination, direction, and approval, except where the determination, direction or approval of someone other than the Engineer or Architect or Project Manager is expressly called for herein.
- C. The Engineer or Architect or Project Manager shall not, however, have the power to issue an Extra Work order, except as specifically designated in writing by the Commissioner.

#### ARTICLE 33: THE COMMISSIONER

- A. The Commissioner, in addition to those matters elsewhere herein expressly made subject to his/her determination, direction or approval, shall have the power:
  1. To review and make determinations on any and all questions in relation to this Agreement and its performance; and
  2. To modify or change this Agreement or a Task Order so as to require the performance of Extra Work (subject, however, to the limitations specified in Article 25) or the omission of Task Order Work; and
  3. To suspend the whole or any part of the Work whenever in his/her judgment such suspension is required:
    - a. In the interest of the City generally; or
    - b. To coordinate the Work of the various contractors engaged on this Project pursuant to the provisions of Article 12; or
    - c. To expedite the completion of the entire Project even though the completion of a particular Task Order for Emergency Response Work may thereby be delayed.

#### ARTICLE 34: NO ESTOPPEL

- A. Neither the City nor any Agency, official, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by the City, the Commissioner, the Engineer, the Resident Engineer, or any other official, agent or employee of the City, either before or after the final completion and acceptance of the Work and payment therefor:

1. From showing the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Work, or any part thereof, does not in fact conform to the requirements of this Agreement; and
2. From demanding and recovering from the Contractor any overpayment made to it, or such damages as the City may sustain by reason of the Contractor's failure to perform each and every part of its Agreement.

## **CHAPTER VIII LABOR PROVISIONS**

### **ARTICLE 35: EMPLOYEES**

#### **A. The Contractor and its Subcontractors shall not employ on the Work:**

1. Anyone who is not competent, faithful and skilled in the Work for which he/she shall be employed; and whenever the Commissioner shall inform the Contractor, in writing, that any employee is, in his/her opinion, incompetent, unfaithful or disobedient, that employee shall be discharged from the Work forthwith, and shall not again be employed upon it; this Article 35(A) supersedes Article 2(C) of Exhibit E; or
2. Any labor, materials or means whose employment, or utilization during the course of this Agreement, may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or its Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Agreement, or by Other Contractors or their Subcontractors pursuant to other 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 this requirement may, upon certification of the Commissioner, be considered as proper and sufficient cause for declaring the Contractor to be in default, and for the City to take action against it as set forth in Chapter X of this Agreement, or such other article of this Agreement as the Commissioner may deem proper; or
3. Reserved

- B. If the total cost of the Work under this Agreement is at least two hundred fifty thousand (\$250,000) dollars, all laborers, workers, and mechanics employed in the performance of the Agreement on the Site, either by the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by the Agreement, shall be certified prior to performing any Work as having successfully completed a course in

construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten hours in duration.

- C. The Contractor's attention is directed to Article 2(G) of Exhibit E concerning the Whistleblower Protection Expansion Act.
- D. The Contractor's attention is directed to Article 2(F) of Exhibit E concerning the Paid Sick Leave Law.
- E. The Contractor's attention is directed to Exhibit G concerning HireNYC.

#### ARTICLE 36: NO DISCRIMINATION

- A. The Contractor shall comply with the federal anti-discrimination provisions in Exhibit H of the Main Body Agreement.
- B. The Contractor's attention is directed to Article 2(E)(3) of Exhibit E concerning compliance with Admin. Code section 6-108.
- C. The Contractor's attention is directed to Article 2(E)(4) concerning requirements of Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules and regulations promulgated thereunder.
- D. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the DLS, the Director of the DLS may direct the Commissioner to impose any or all of the following sanctions:
  - 1. Disapproval of the Contractor; and/or
  - 2. Suspension or termination of the Contract; and/or
  - 3. Declaring the Contractor in default; and/or
  - 4. In lieu of any of the foregoing sanctions, the Director of the DLS may impose an employment program.

In addition to any actions taken under this Agreement, failure to comply with E.O. 50 and the rules and regulations promulgated thereunder, in one or more instances, may result in a City Agency declaring the Contractor to be non-responsible in future procurements. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a Subcontractor who is not in



compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

- E. The Contractor specifically agrees, as required by Section 6-123 of the Administrative Code, that:
  - 1. The Contractor will not engage in any unlawful discriminatory practice in violation of Title 8 of the Administrative Code; and
  - 2. Any failure to comply with this Article 36(E) may subject the Contractor to the remedies set forth in Section 6-123 of the Admin. Code, including, where appropriate, sanctions such as withholding of payment, imposition of an employment program, finding the Contractor to be in default, cancellation of the Agreement, or any other sanction or remedy provided by Law or Agreement.

#### ARTICLE 37: LABOR LAW REQUIREMENTS

- A. Minimum Wages: All persons employed by the Contractor and any Subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by Law, not less than the sum mandated by Law. Minimum wages shall be the rates fixed by Federal and State Law. The Contractor shall maintain employment and payroll records that comply with the requirements of the Fair Labor Standards Act.
- B. Working Conditions: No part of the Work, labor or services shall 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 article.
- C. For any breach or violation of either Working Conditions (Article 37(B)) and Minimum Wages (Article 37(A)), the party responsible therefore shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any Contracts with the City of such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damage for any other breach of this Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition, the Commissioner shall have the right to cancel Contracts and enter into other Contracts for the completion of the original Contract, with or without public letting, and the original Contractor shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Commissioner directly to the employees who have been paid less than minimum rates of pay as set forth herein 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 two (2) years from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

- D. Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Contract, and grounds for cancellation thereof by the City

#### ARTICLE 38: SITE LAMINATED IDENTIFICATION BADGES

The Contractor shall provide laminated identification badges which indicate the worker's, laborer's or mechanic's name, trade, employer's name and employment starting date (month/day/year). The Contractor shall require as a condition of employment on the Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the City and Homeowner during the performance of the Work.

#### ARTICLE 39: DUST HAZARDS

Should a harmful dust hazard be created in performing the Work of this Agreement, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the City of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard. Failure to comply with this provision after notice shall make this Agreement voidable at the sole discretion of the City.

### **CHAPTER IX PARTIAL AND FINAL PAYMENTS**

#### ARTICLE 40: CONTRACT PRICE

The City shall pay, and the Contractor agrees to accept, in full consideration for the Contractor's performance of the Work subject to the terms and conditions hereof, the prices set forth in Exhibit B of this Agreement and Task Order(s) for Emergency Response Work (if any), plus the amount required to be paid for any Supplemental Task Orders or ordered by the Commissioner under Article 25.

#### ARTICLE 41: RESERVED

#### ARTICLE 42: RESERVED

#### ARTICLE 43: PROMPT PAYMENT

- A. The Contractor's attention is directed to Article 4(C) of the main body of the Agreement concerning PPB Rule Section 4-06.

- B. If the Contractor is paid interest, the proportionate share(s) of that interest shall be forwarded by the Contractor to its Subcontractor(s).
- C. The Contractor shall pay each Subcontractor or Materialman not later than seven Days after receipt of payment out of amounts paid to the Contractor by the City for Work performed by the Subcontractor or Materialman under this Agreement.
  - 1. If Contractor fails to make any payment to any Subcontractor or Materialman within seven Days after receipt of payment by the City pursuant to this Article 43(C), then the Contractor shall pay interest on amounts due to such Subcontractor or Materialman at the rate of interest in effect on the date such payment is made by the Contractor computed in accordance with Section 756-b (1)(b) of the New York General Business Law. Accrual of interest shall commence on the Day immediately following the expiration of the seventh Day following receipt of payment by the Contractor from the City and shall end on the date on which payment is made.
- D. The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors or Materialmen for Work performed under this Agreement in the same manner and within the same time period set forth above.

#### ARTICLE 44: RESERVED

#### ARTICLE 45: FINAL PAYMENT

- A. After completion and Final Acceptance of all the Work for all Task Orders for Emergency Response Work performed under this Agreement, the Contractor shall submit all required certificates and documents, together with a requisition for the balance claimed to be due under the Agreement, less the amount authorized to be retained for maintenance under Article 24. Such submission shall be within 30 days of the date of the Commissioner's written determination of Final Acceptance, or within such additional time as may be granted by the Commissioner in writing. If the Contractor fails to submit all required certificates and documents within the time allowed, no payment of the balance claimed shall be made to the Contractor and the Contractor shall be deemed to have forfeited its right to payment of any balance claimed. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Commissioner.
- B. Amended Verified Statement of Claims: The Contractor shall also submit with the final requisition any amendments to the final verified statement of any pending dispute resolution procedures in accordance with the PPB Rules and this Agreement and any and all alleged claims against the City, in any way connected with or arising out of this Agreement (including those as to which details may have been furnished pursuant to

Articles 11, 27, 28, and 30) that have occurred subsequent to Final Acceptance, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item. With reference to each such claim, the Commissioner, the Comptroller and, in the event of litigation, the City Corporation Counsel shall have the same right to inspect, and to make extracts or copies of, the Contractor's books, vouchers, records, etc., as is referred to in Articles 11, 27, 28, and 30. Nothing contained in this Article 45.B, is intended to or shall relieve the Contractor from the obligation of complying strictly with Articles 11, 27, 28, and 30. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor, upon acceptance of the Final Payment pursuant to Article 46, will have waived any such claims.

- C. Preparation of Final Voucher: Upon determining the balance due hereunder other than on account of claims, the Engineer will prepare and certify, for the Commissioner's approval, a voucher for final payment in that amount less any and all deductions authorized to be made by the Commissioner under this Agreement or by Law for such Task Order for Emergency Response Work. In the case of a lump sum Agreement, the Commissioner shall certify the voucher for final payment within thirty (30) Days from the date of completion and acceptance of the Work, provided all requests for extensions of time have been acted upon.
  - 1. Payment pursuant to such final voucher, less any deductions authorized to be made by the Commissioner under this Agreement or by Law, shall constitute the final payment, and shall be made by the Comptroller within thirty (30) Days after the filing of such voucher in his/her office.
- D. The Contractor acknowledges that nothing contained in this Article 45 is intended to or shall in any way diminish the force and effect of Article 13.

#### ARTICLE 46: ACCEPTANCE OF FINAL PAYMENT

- A. The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor for anything heretofore done or furnished for the Contractor relating to or arising out of this Agreement and the Work done hereunder, and for any prior act, neglect or default on the part of the City or any of its officials, agents or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Agreement or by Law, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures which are contained in the verified statement filed with the Contractor's substantial and final requisitions pursuant to Article 45.
- B. The Contractor is warned that the execution by it of a release, in connection with the acceptance of the final payment, containing language purporting to reserve claims other

than those herein specifically excepted from the operation of this Article 46, or those for amounts deducted by the Commissioner from the final requisition or from the final payment as certified by the Engineer and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any official, agent or employee of the City to the contrary notwithstanding.

- C. Should the Contractor refuse to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.
- D. The Contractor, however, shall not be barred by this Article 46 from commencing an action for breach of contract to the extent permitted by Law and by the terms of the Agreement for any claims that are contained in the verified statement filed with the Contractor's substantial and final requisitions pursuant to Article 45 or that arose after submission of the final payment requisition, provided that a detailed and verified statement of claim is served upon the contracting Agency and Comptroller not later than 40 Days after the making of such final payment by electronic funds transfer (EFT) or 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.

#### ARTICLE 47: RESERVED

### **CHAPTER X CONTRACTOR'S DEFAULT**

#### ARTICLE 48: COMMISSIONER'S RIGHT TO DECLARE CONTRACTOR IN DEFAULT

The Contractor's attention is directed to Article 7 of the main body of the Agreement concerning default.

#### ARTICLE 49: EXERCISE OF THE RIGHT TO DECLARE DEFAULT

The Contractor's attention is directed to Article 7 of the main body of the Agreement concerning default.

#### ARTICLE 50: QUITTING THE SITE

Upon receipt of a notice of default the Contractor shall immediately discontinue all further operations under this Agreement and shall immediately quit the Site, leaving untouched all plant, materials, equipment, tools, and supplies then on the Site.

#### ARTICLE 51: COMPLETION OF THE WORK

The Contractor's attention is directed to Article 7(F) of the main body of the Agreement concerning the completion of the Work upon a default.

## ARTICLE 52: PARTIAL DEFAULT

The Contractor's attention is directed to Article 7(D) of the main body of the Agreement concerning a partial default.

## ARTICLE 53. PERFORMANCE OF UNCOMPLETED WORK

In completing the whole or any part of the Work under the provisions of this Chapter X, the Commissioner shall have the power to depart from or change or vary the terms and provisions of this Agreement or a Task Order for Emergency Response Work, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Commissioner's certificate of the cost of completion referred to in Article 51, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.

## ARTICLE 54: OTHER REMEDIES

- A. In addition to the right to declare the Contractor in default pursuant to this Chapter X, the Commissioner shall have the absolute right, in his/her sole discretion and without a hearing, to complete or cause to be completed in the same manner as described in Articles 51 and 53, any or all unsatisfactory or Work that remains after the completion date specified in the Task Order or Supplemental Task Order. A written notice of the exercise of this right shall be sent to the Contractor who shall immediately quit the Site in accordance with the provisions of Article 50.
- B. The expense of completion permitted under Article 54(A), including any and all related and incidental costs, as so certified by the Commissioner, shall be charged against and deducted out of monies which have been earned by the Contractor prior to the date of the exercise of the right set forth in Article 54(A); the balance of such monies, if any, subject to the other provisions of this Agreement, to be paid to the Contractor without interest after such completion. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be paid by the Contractor.
- C. The previous provisions of this Chapter X shall be in addition to any and all other remedies available under Law or in equity.
- D. The exercise by the City of any remedy set forth herein shall not be deemed a waiver by the City of any other legal or equitable remedy contained in this Agreement or provided under Law.

## **CHAPTER XI**

## **MISCELLANEOUS PROVISIONS**

### **ARTICLE 55: CONTRACTOR’S WARRANTIES**

The Contractor’s attention is directed to Article 1 of Exhibit E concerning representations and warranties.

### **ARTICLE 56: CLAIMS AND ACTIONS THEREON**

The Contractor’s attention is directed to Article 5(F) of Exhibit E concerning claims and actions thereon.

### **ARTICLE 57: INFRINGEMENT**

The Contractor’s attention is directed to Article 1(B) of Exhibit C concerning indemnification for infringement.

### **ARTICLE 58: NO CLAIM AGAINST OFFICIALS, AGENTS OR EMPLOYEES**

The Contractor’s attention is directed to Article 5(D) of Exhibit E, which bars claims against City officials, agents, and employees in their personal capacities.

### **ARTICLE 59: SERVICE OF NOTICES**

The Contractor’s attention is directed to Article 11 of the main body of the Agreement concerning the service of notices.

### **ARTICLE 60: UNLAWFUL PROVISIONS DEEMED STRICKEN FROM AGREEMENT**

The Contractor’s attention is directed to Article 6(C) of Exhibit E concerning unlawful provisions.

### **ARTICLE 61: ALL LEGAL PROVISIONS DEEMED INCLUDED**

The Contractor’s attention is directed to Article 6(B) of Exhibit E concerning provisions required by law.

### **ARTICLE 62: TAX EXEMPTION**

- A. The Contractor agrees to sell and the City agrees to purchase all tangible personal property, other than consumable supplies and other tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work, that is required, necessary or proper for or incidental to the construction of the Project covered by a Task Order for Emergency Response Work. The purchase by Subcontractors or Materialmen of tangible personal property to be sold hereunder shall be a purchase or procurement for resale to the Contractor (either directly or through other Subcontractors). The sum paid under a Task Order for Emergency Response Work for such tangible personal property shall be in full payment and consideration for the sale of such tangible personal property.
- B. The Contractor may include in its price for the Task Order for Emergency Response work the cost to the Contractor of federal, State of New York, and local taxes, including sales and compensating use taxes of the State of New York and its cities and counties on tangible personal property incorporated into the Dwellings. The Contractor and its Subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensation Use Taxes, on tangible personal property and leased tools, machinery, equipment or other property.
- C. The Contractor shall not charge taxes to the City for services, including but not limited to, labor and profit.
- D. In the event any of the provisions of this Article 62 shall be deemed to be in conflict with any other provisions of this Agreement or create any ambiguity, then the provisions of this Article 62 shall control.

#### ARTICLE 63: INVESTIGATION(S) CLAUSE

The Contractor's attention is directed to Article 3(G) of Exhibit E concerning investigations.

#### ARTICLE 64: TERMINATION BY THE CITY

- A. The following provisions supplement Article 8 of the main body of the Agreement.
- B. In the event of termination by the City pursuant to this Article 64, payment to the Contractor shall be in accordance with Articles 64(B)(1), 64(B)(2) or 64(B)(3), to the extent that each respective article applies.
  - 1. Lump Sum Contracts or Items: On all lump sum Task Orders for Emergency Response Work, or on lump sum items in a Task Order for Emergency Response Work, the City will pay the Contractor the sum of the amounts described in Articles 64(B)(1)(a) and 64(B)(1)(b), less all payments previously made pursuant to the applicable Task Order for Emergency Response Work. On lump sum Task Orders



for Emergency Response Work only, the City will also pay the Contractor an additional sum as provided in Article 64(B)(1)(c).

- a. For Work completed prior to the notice of termination, the Contractor shall be paid a pro rata portion of the amount set forth in the Task Order for Emergency Response Work, plus approved Supplemental Task Orders, based upon the percent completion of the Work, as determined by the Commissioner. For the purpose of determining the pro rata portion of the lump sum bid amount to which the Contractor is entitled, the breakdown submitted in accordance with Article 41 shall be considered, but shall not be dispositive. The Commissioner's determination hereunder shall be final, binding, and conclusive.
  - b. For non-cancelable material and equipment that is not capable of use except in the performance of a Task Order for Emergency Response Work under this Agreement and has been specifically fabricated for the sole purpose of this Agreement, but not yet incorporated in the Work, the Contractor shall be paid the lesser of the following, less salvage value:
    - i. The Direct Cost, as defined in Article 64(B)(4); or
    - ii. The fair and reasonable value, if less than Direct Cost, of such material and equipment, plus necessary and reasonable delivery costs.
    - iii. In addition, the Contractor shall be paid five (5%) percent of the amount described in Article 64(B)(1)(b)(i) or Article 64(B)(1)(b)(ii), whichever applies.
  - c. On all lump sum Task Orders for Emergency Response Work, the Contractor shall be paid the percentage indicated below applied to the difference between the total lump sum Task Order amount and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to Articles 64(B)(1)(a) and 64(B)(1)(b):
    - i. Five percent of the first \$5,000,000; and
    - ii. Three percent of any amount between \$5,000,000 and \$15,000,000; plus
    - iii. One percent of any amount over \$15,000,000.
2. Unit Price Task Orders for Emergency Response Work or Items: On all unit price Task Orders for Emergency Response Work, or on unit price items in a Task Order for Emergency Response Work, the City will pay the Contractor the sum of the

amounts described in Articles 64(B)(2)(a) and 64(B)(2)(b), less all payments previously made pursuant to such Task Order:

- a. For all completed units, the unit price stated in the Agreement or Task Order for Emergency Response Work, and
  - b. For units that have been ordered but are only partially completed, the Contractor will be paid:
    - i. A pro rata portion of the unit price stated in the Agreement or Task Order for Emergency Response Work based upon the percent completion of the unit and
    - ii. For non-cancelable material and equipment, payment will be made pursuant to Article 64(B)(1)(b).
3. Time and Materials Contracts or Items Based on Time and Material Records: On all Task Orders for Emergency Response Work or items in Task Order for Emergency Response Work where payment for the Work is based on time and material records, the Contractor shall be paid in accordance with Article 26, less all payments previously made pursuant to such Task Order.
4. Direct Costs: Direct Costs as used in this Article 64(B) shall mean:
- a. The actual purchase price of material and equipment, plus necessary and reasonable delivery costs,
  - b. The actual cost of labor involved in construction and installation at the Site, and
  - c. The actual cost of necessary bonds and insurance purchased pursuant to requirements of this Agreement less any amounts that have been or should be refunded by the Contractor's sureties or insurance carriers.
  - d. Direct Costs shall not include overhead.
- C. In no event shall any payments under this Article 64 exceed the Agreement or Task Order price for such items.
- D. All payments pursuant to Article 64 shall be in the nature of liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the City.
- E. The City may deduct or set off against any sums due and payable pursuant to this Article 64, any deductions authorized by this Agreement or by Law (including but not limited to liquidated damages) and any claims it may have against the Contractor. The City's exercise of the right to terminate the Agreement pursuant to this Article 64 shall not impair or

otherwise effect the City's right to assert any claims it may have against the Contractor in a plenary action.

- F. Where the Work covered by the Agreement has been substantially completed, as determined in writing by the Commissioner, termination of the Work shall be handled as an omission of Work pursuant to Articles 29 and 33, in which case a Supplemental Task Order will be issued to reflect an appropriate reduction in the price of the Task Order for Emergency Response Work, or if the amount is determined after final payment, such amount shall be paid by the Contractor.

#### ARTICLE 65: CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

The Contractor's attention is directed to Article 5(A) and (B) of Exhibit E concerning choice of law and consent to jurisdiction and venue.

#### ARTICLE 66: PARTICIPATION IN AN INTERNATIONAL BOYCOTT

The Contractor's attention is directed to Article 6(I) of Exhibit E concerning participation in an international boycott.

#### ARTICLE 67: RESERVED

#### ARTICLE 68: ANTITRUST

The Contractor's attention is directed to Article 4(D) of Exhibit E concerning antitrust.

#### ARTICLE 69: MacBRIDE PRINCIPLES PROVISIONS

The Contractor's attention is directed to Article 6(J) of Exhibit E concerning MacBride Principles Provisions.

#### ARTICLE 70: ELECTRONIC FILING/NYC DEVELOPMENT HUB

The Contractor shall electronically file all alteration type-2 and alteration type-3 applications via the New York City Development Hub Web site, except applications for the following types of minor alterations: enlargements, curb cuts, legalizations, fire alarms, builders pavement plans, and jobs filed on Landmark Preservation Commission calendared properties. All such filings must be professionally certified. Information about electronic filing via the New York City Development Hub is available on the City Department of Buildings Web site at [www.nyc.gov/buildings](http://www.nyc.gov/buildings).

#### ARTICLE 71: PROHIBITION OF TROPICAL HARDWOODS

Tropical hardwoods, as defined in Section 165 of the New York State Finance Law (Finance Law), shall not be utilized in the performance of this Agreement except as expressly permitted by Section 165 of the Finance Law.

#### ARTICLE 72: CONFLICTS OF INTEREST

Section 2604 of the City Charter and other related provisions of the City Charter, the Administrative Code, and the Penal Law are applicable under the terms of this Agreement in relation to conflicts of interest and shall be extended to Subcontractors authorized to perform Work, labor and services pursuant to this Agreement and further, it shall be the duty and responsibility of the Contractor to so inform its respective Subcontractors. Notice is hereby given that, under certain circumstances, penalties may be invoked against the donor as well as the recipient of any form of valuable gift.

#### ARTICLE 73: MERGER CLAUSE

The Contractor's attention is directed to Article 10(C) of the main body of the Agreement concerning merger.

#### ARTICLE 74: STATEMENT OF WORK

The Contractor shall furnish all labor and materials and perform all Work in strict accordance with this Agreement, including all Task Orders.

#### ARTICLE 75: COMPENSATION TO BE PAID TO CONTRACTOR

This is a requirements contract. The City will pay and the Contractor will accept in full consideration for the performance of the Agreement, subject to additions and deductions as provided in the Agreement, the total sum shown in Exhibit B and the Task Orders for Emergency Response Work (if any).

#### ARTICLE 76: ELECTRONIC FUNDS TRANSFER

The Contractor's attention is directed to Article 4(D) of the main body of the Agreement for requirements concerning payments by electronic funds transfer.

#### ARTICLE 77: RECORDS RETENTION

The Contractor's attention is directed to Article 3(B) of Exhibit E concerning records retention.

ARTICLE 78: EXISTING CONDITIONS AND CHANGED SITE CONDITIONS

- A. The Contractor must, prior to commencement of any Work under a Task Order for Emergency Response Work, carefully view and examine the Site of the proposed Work, its adjacent area, and all existing conditions on which the Work may in any way be dependent, and shall immediately report to the Agency any condition(s) that may prevent the Contractor from performing the Work in a manner acceptable to the Agency. The Contractor shall also seek other usual sources of information, for they will be conclusively presumed to have full knowledge of any and all conditions and hazards on, about or above the Site relating to or affecting in any way the performance of the Work to be done under the Task Order for Emergency Response Work that were or should have been known by a reasonably prudent Contractor.
- B. Should the Contractor encounter during the progress of the Work site conditions or environmental hazards at the Site materially differing from any indicated in the Specifications or Task Order for Emergency Response Work, or such conditions or environmental hazards as could not reasonably have been anticipated by the Contractor, which conditions or hazards will materially affect the cost of the Work to be done under the Task Order for Emergency Response Work, the attention of the Commissioner must be called immediately to such conditions or hazards before they are disturbed. The Commissioner shall thereupon promptly investigate the conditions or hazards. If the Commissioner finds that they do so materially differ, and that they could not have been reasonably anticipated by the Contractor, the Agreement or Task Order for Emergency Response Work may be modified with the Commissioner's written approval.

EXHIBIT G  
HIRING AND EMPLOYMENT RIDER

HireNYC and Reporting Requirements

*A. Applicability:*

This Exhibit G (or “Rider”) is applicable to Agreements for the following categories of Work:

1. Category #10: Building Demolition

and only if the value of a Task Order for Emergency Response Work issued to the Contractor exceeds \$1,000,000 (a “Covered Task Order” in this Exhibit G), provided, however that certain requirements shall apply only as indicated below.

*B. Introduction:*

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 City’s HireNYC portal found on the SBS website, to disclose all entry to mid-level job opportunities described in this Rider arising from a Covered Task Order and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

*C. Enrollment:*

The Contractor shall enroll with the HireNYC system, found at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), within 30 Days after issuance of a Covered Task Order. 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 a Covered Task Order and located in New York City, and, if so, the approximate start date of the first hire.

*D. Job Posting Requirements:*

1. Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from a Covered Task Order 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 Agreement 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 Agreement 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.

2. 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.
3. 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 Agreement and each anniversary date.
4. 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.
5. 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 Admin. Code § 22-505. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section C, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

*E. Breach and Liquidated Damages:*

1. If the Contractor fails to comply with the terms of the Agreement 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 \$2,500 per breach. For all other events of noncompliance with the terms of this Rider, the Contracting Agency may assess liquidated damages in the amount of \$500 per breach.

2. Furthermore, in the event the Contractor breaches the requirements of this Rider during the Term of the Agreement, the City may hold the Contractor in default of a Covered Task Order.

*F. Audit Compliance:*

In addition to the auditing requirements set forth in other parts of the Agreement, 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 Agreement and located in New York City. The Contractor shall permit an inspection within seven Business Days of the request.

*G. 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 as otherwise requested by the City.

*H. Construction Requirements:*

1. 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 Agreement and located in New York City) as set forth above.
2. 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 a Covered Task Order.
3. Further, a Covered Task Order shall be subject to a project labor agreement if so required elsewhere in this Agreement.

*I. Federal Hiring Requirements:*

1. The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this Agreement, including, as applicable:
  - a. 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.
  - b. Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for Work involving any Construction trade.



## EXHIBIT H

### FEDERAL TERMS AND CONDITIONS

#### Applicable to all On-Call Emergency Contract Categories

The Federal Terms and Conditions are comprised of three parts, as follows:

PART 1: The Uniform Federal Contract Provisions Rider, which is applicable to all Work, except for Task Order #1 Work

- a. Exhibit 1 to the Uniform Federal Contract Provisions Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.
- b. Exhibit 2 to the Uniform Federal Contract Provisions Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.

PART 2: The FEMA Rider, which is applicable to all Work, except for Task Order #1 Work

PART 3: The CDBG-DR Rider, which is applicable to all Work (except for Task Order #1 Work) unless otherwise specified by the Ordering Agency in a Task Order

- a. Exhibit 1 to the CDBG-DR Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.
- c. Exhibit 2 to the CDBG-DR Rider, is applicable Construction Work, as defined in Part 1, section A(4), below.

## **PART 1**

### **UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS**

(Adapted for the On-Call Emergency Contracts Program in January 2019)

#### **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 Contracting Agency.
- (4) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
- (5) “Contract” refers to the agreement between the Awarding Entity and the Contractor. The Contract between the City and the Contractor, which is defined elsewhere as the Agreement, may be referred to in this Exhibit H as the “Contract” or as the “Agreement.”
- (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. Reserved.**

#### **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 Work performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.

- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.
- (4) *Energy Efficiency.* The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
- (5) *Debarment.* The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.
- (6) *Lobbying.* The Contractor certifies, to the best of its knowledge and belief, that:
- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract,

grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and

(c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.

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

(7) *Solid Waste Disposal Act.* Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 and <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program> 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.* See Article 3 of Exhibit E.

(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.* Provisions governing intangible property are set forth in Article 4, Exhibit E.

**D. Special Provisions for Construction Contracts and Construction Related 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) 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<sup>1</sup>, 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

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<sup>1</sup> The Davis-Bacon Act is generally not applicable to FEMA grants to the City for disaster recovery and mitigation construction work and so it is unlikely that it will apply to the Task Order Work. However, the Davis-Bacon Act is applicable to CDBG-DR grants to the City and, sometimes, the City uses CDBG-DR funds to supplement FEMA grants. Contractors must consult with the City about the source of federal funding for construction work performed under Emergency Response Task Orders involving construction Work and the applicability of Davis-Bacon Act requirements to such Work.

detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

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

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

1. As used in these specifications:
  - a. “Covered area” means the geographical area described in the solicitation from which this Contract resulted;
  - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. “Minority” includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

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

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

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed



by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

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

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

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

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

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

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents

(e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- (3) **Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR § 60-1.4(b).

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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. RESERVED.**

## **FEDERAL EXHIBIT 1**

### **NOTICE TO BIDDERS**

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

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

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

#### **Goals and Timetables for Minorities**

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

#### **Goals and Timetables for Women**

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

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

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

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

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



**EXHIBIT 2**

**Federal Labor Standards Provisions (Non-Davis Bacon)**  
**Federal Emergency Management Agency**  
**(Adapted for the On-Call Emergency Contracts Program in January 2019)**

**Applicability:** The Project or Program to which the construction Work covered by this Agreement pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Agreement pursuant to the provisions applicable to such Federal assistance.

**A. Compliance with the Copeland “Anti-Kickback” Act.**

1. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
2. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause in paragraph 1 above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all of these contract clauses.
3. **Breach.** A breach of the contract clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**B. Compliance with the Contract Work Hours and Safety Standards Act.** The provisions of this Section B are applicable where the amount of the prime contract exceeds \$100,000.

1. **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this Section B, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such

District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages.** The City of New York shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this Section B and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section B.

C. **Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.
3. The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any subcontractor as FEMA or the Secretary of Labor shall direct as a means of enforcing such provisions.

## **PART 2**

### **FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) RIDER**

(Adapted for the On-Call Emergency Contracts Program in January 2019)

1. Suspension and Debarment. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:
  - (a) This Agreement is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this Agreement, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.
  - (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the Term of this Agreement and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
2. Davis-Bacon Act. For the purposes of Section D(1)(a) of the Uniform Federal Contract Provisions Rider, compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) is not required of the Contractor pursuant to FEMA regulations. However, if this Agreement is funded by another federal funding source (e.g., the U.S. Department of Housing and Urban Development CDBG or CDBG-DR programs), compliance with the Davis-Bacon Act is required to the extent required by law and as set forth in the contract documents.
3. Reserved.
4. Copeland “Anti-Kickback” Act. The Contractor shall comply with provisions of the Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (A).

5. Contract Work Hours and Safety Standards Act. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (B).
6. Access to Records.
  - (a) The Contractor agrees to provide the City of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
  - (b) The Contractor agrees to permit any of the foregoing parties to reproduce said documents by any means or to copy excerpts and transcriptions as reasonably needed.
  - (c) The Contractor agrees to provide the FEMA Administrator or his/her authorized representative access to construction or other work Sites pertaining to the Work being completed under the Agreement.
7. Logos. The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
8. Compliance with Law. The Contractor acknowledges that FEMA financial assistance will be used to fund the Agreement only and agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
9. Federal Government not a Party. The Contractor acknowledges and understands that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the Agreement.
10. False Claims. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

### **PART 3**

#### **CDBG-DR Rider**

(Adapted for the On-Call Emergency Contracts Program in January 2019)

#### **FEDERAL REGISTER NOTICES**

##### **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Federal Register Notices applicable to the use of CDBG-DR Funds are typically issued by HUD after a disaster for which HUD grant funds will be provided. The Notice(s) may require changes to this Rider.

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## ARTICLE 1. DEFINITIONS

As used in this CDBG-DR Rider:

(a) “Act” means Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

(b) “Agency” means the Contracting Agency, the Ordering Agency, or both.

(c) “Agreement” means either the “contract” (as defined by 2 CFR § 200.22) between the City and the Contractor or the agreement between the City and “Subrecipient” as defined by 2 CFR § 200.93 as the context requires.

(d) “City” means the City of New York.

(e) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.

(f) “Contractor” means the entity executing this Agreement, other than the City.

(g) “Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds \$5,000.

(h) “Grant” means Community Development Block Grant Program funds provided to the City of New York by the Federal Department of Housing and Urban Development or a pass-through entity.

(i) “Hometown Plan” means a voluntary areawide plan that was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

(j) “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(k) “Program” means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(l) “Real property” means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and moveable equipment.

## **ARTICLE 2. HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT**

### ***[Applicable to Contractors and Subrecipients]***

This Agreement is subject to Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended (The Act) and all rules, regulations and requirements now issued or hereafter issued pursuant to the Act; the Agreement may be suspended and/or terminated without liability to the City if the Grant to the City pursuant to the Act is suspended or terminated, and unless and until the City or Agency receives Community Development funds in an amount that is deemed sufficient to enable it to fund this Agreement, the City or Agency is under no obligation to make any payments to the Contractor. In this regard, the Agency is under no obligation to make any payments to the Contractor, and shall not make any such payment, and the Contractor shall not commence performance, until:

- (a) the Agency has received from the City's Office of Management and Budget instructions to proceed, evidencing compliance with the National Environmental Policy Act, as amended, and with regulations of the U.S. Department of Housing and Urban Development, related thereto, found at 24 CFR Part 58, and
- (b) the Contractor has been notified of such instructions by the Agency. Furthermore, the Contractor and the City mutually agree that the Contractor shall not advance any funds, from any source without limitation, to pay for costs intended to be paid for under this Agreement prior to the receipt and notification described in this paragraph (a), and the City shall not reimburse the Contractor for any costs incurred in violation of this provision.

## **ARTICLE 3. LABOR REQUIREMENTS**

### ***[Applicable to Contractors; must be included in all subcontracts]***

- (a) **Section 3.** This Agreement is subject to Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448) and implementing regulations at 24 CFR Part 135, as may be amended during the term of this Agreement. Pursuant to 24 CFR § 135.38, the Contractor agrees to the following:
  - 1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.



2. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.
3. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b)

agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

8. The Contractor agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the Agency detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

(b) ***The Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.)***. In Construction contracts involving an excess of \$2000, unless exclusively in connection with the rehabilitation of residential property containing fewer than 8 units, the Contractor shall pay all laborers and mechanics at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7, which enforce statutory labor standards provisions. **This provision supersedes section D(1)(a) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**

(c) ***Overtime***. In Construction contracts involving an excess of \$2000, and subject to the exception in 24 CFR section 570.603 (regarding the rehabilitation of residential property containing less than 8 units), Contractor shall comply with sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701 et seq.), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages. **This provision supersedes section D(1)(b) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**

#### ARTICLE 4. RESERVED

#### ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS

This Agreement is subject to:

- (a) Section 109 of the Act, which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109

also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The Contractor agrees to comply with provisions of 24 CFR Parts 6, 8, and 146.

- (b) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.
- (c) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107, which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.
- (d) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this Agreement.
- (e) 24 CFR § 5.109, “Equal participation of faith-based organizations in HUD programs and activities.”
- (f) Consistent with 24 CFR § 570.614, the Contractor warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

The non-discrimination provisions in this Article shall be incorporated in and made a part of all subcontracts executed in connection with this Agreement.

## **ARTICLE 6. ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT**

- (a) For agreements, subcontracts, and subgrants of amounts in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33

U.S.C. §§ 1251, et seq.) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).

- (b) 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). Further, the Contractor shall comply with the construction standards concerning energy efficiency set forth in any HUD Notices.
- (c) This Agreement is subject to laws and authorities listed in 24 CFR § 58.5, including the Historic Preservation Act of 1966 (Section 1 of Pub. L. No. 89-665, as amended by Pub. L. No. 96-515; 54 U.S.C. §§ 100101 and 300101 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.
- (d) This Agreement is subject to the Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.
- (e) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

## **ARTICLE 7.           UNIFORM RELOCATION ASSISTANCE**

This Agreement is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601-4655) and regulations at 49 CFR Part 24 and 24 CFR § 570.606.

## **ARTICLE 8.           UNIFORM ADMINISTRATIVE REQUIREMENTS**

Pursuant to 2 CFR § 2400.101 and 24 CFR § 85.1, Contractors is subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (commonly referred to the “Super Circular”), as applicable.

## **ARTICLE 9. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS**

- (a) Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor must be returned to the City.

The Contractor agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of Community Development Block Grant funds. Alternative program requirements concerning the definition of "program income" may be set forth in notices issued by HUD related to the funding.

- (b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and readily accessible.
- (c) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor's chief fiscal officer or its insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount equal to cash advances from the City. If the bond is cancelled or coverage is substantially reduced, the Contractor shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor until it has received assurance that adequate coverage has subsequently been obtained.
- (d) No money under this Agreement shall be disbursed by the Agency to any Contractor except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR Part 58.

## **ARTICLE 10. RECORDS AND AUDITS**

- (a) The Contractor shall maintain records in accordance with the requirements elsewhere in this Agreement.
- (b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information,

as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:

- (i) Quarterly Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Quarterly Performance Reports.
  - (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased equipment.
- (c) At any time during normal business hours and as often as the City, the Contracting Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

#### **ARTICLE 11. SUBCONTRACTORS**

- (a) The provisions of this Agreement, including but not limited to this CDBG-DR Rider, shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor. The Contractor shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor.
- (b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor.
- (c) The Work furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor, and the Contractor shall remain responsible therefor.

#### **ARTICLE 12. CONFLICTS; EXHIBITS**

- (a) If any provision in this CDBG-DR Rider directly conflicts with any other provision in the Agreement, the provision in CDBG-DR Rider shall be controlling.
- (b) Federal Exhibits 1 and 2 are attached to, and made a part of this CDBG-DR Rider.

**ARTICLE 13. RESERVED.**

**ARTICLE 14. RESERVED.**

**ARTICLE 15. RESERVED.**

**ARTICLE 16. RESERVED**

**ARTICLE 17. RESERVED.**

**ARTICLE 18. PERFORMANCE REQUIREMENTS AND REMEDIES**

Contractor shall be subject to any performance requirements and remedial provisions and/or liquidated damages set forth in this Agreement. Contractor acknowledges that negative performance evaluations may impair its ability to win future contracts with the City as follows: Under City Procurement Policy Board (PPB) Rules section 4-01, Contractor is subject to performance evaluations at least once annually. The City shall enter such performance evaluations into the PASSPort system or a system that replaces PASSPort. To the extent allowed by the PPB Rules, such performance evaluations shall be considered by the City in:

- (1) making a determination of the Contractor's responsibility or non-responsibility in future City procurements, under PPB Rule section 2-08(g)(1)(ii) and
- (2) deciding to renew or not to renew the Agreement, under PPB Rule section 4-04(c)(10).

## **FED. EXHIBIT 1**

### **NOTICE TO BIDDERS**

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL HUD COMMUNITY DEVELOPMENT FUNDED CONSTRUCTION CONTRACTS AND SUBCONTRACTS IN EXCESS OF \$10,000.

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth above.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

#### Goals and Timetables for Minorities

<u>Trade</u>	<u>Goal (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 non-federally involved Construction.

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

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

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

## **EXHIBIT 2**

EXHIBIT I  
IRAN DIVESTMENT ACT COMPLIANCE RIDER

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.

