Department of Design and Construction

Dr. Feniosky Peña-Mora
Commissioner

Charlette Hamamgian, Esq.
Agency Chief
Contracting Officer

April 4, 2016

ADDENDUM NO. 5

PROJECT: CM/Design Build for Disaster Recovery On-Call Contracts for Project Management and Related Services

PIN: 8502016EM0011-37P

THE ADDENDUM IS ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THE REQUEST FOR PROPOSALS AND IS HEREBY MADE A PART OF SAID REQUEST FOR PROPOSALS TO THE SAME EXTENT AS THOUGH IT WERE ORIGINALLY THEREIN.

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PROPOSED QUESTIONS AND ANSWERS

Please see the revised Request For Proposal (RFP) which has replaced the previous version.

Contact: Keesha Smartt
Phone No.: 718-391-2825

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By signing in the space provided below, the Proposer acknowledges receipt of this Addendum.

THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER FOR THE CONTRACT AND ATTACHED TO THE TECHNICAL PROPOSAL.

Andrew Cammock
Director of Professional Contracts

_____
Name of Proposer

By _____ **Title** _____

Department of Design and Construction

Request for Proposals

Project
CM/Design Build for Disaster Recovery: On-Call Contracts for Project Management and Related Services

PIN
8502016EM0011-37P

Pre-Proposal Conference
Tuesday, February 23, 2016

Submission Deadline
Friday, April 15, 2016

Bill de Blasio
Mayor

Dr. Feniosky Peña-Mora
Commissioner

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF INFRASTRUCTURE

REQUEST FOR PROPOSALS

CONSTRUCTION MANAGEMENT DESIGN BUILD FOR DISASTER RECOVERY: ON-CALL CONTRACTS FOR PROJECT MANAGEMENT AND RELATED SERVICES FOR EMERGENCY WORK INVOLVING DESIGN, CONSTRUCTION, CONSTRUCTION MANAGEMENT SERVICES, AND PROCUREMENT OF GOODS

FMS ID: RQ_C

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Printed on paper containing 30% post-consumer material.

REVISED 4.1.16 DRAFT

PREFACE

The City of New York is committed to providing on-call emergency-response construction and construction-related services in response to natural and/or man-made disasters that impact any New York City borough. To achieve this goal, the City of New York is seeking to establish a registry of on-call emergency-response contractors that will be required to expeditiously respond to any City or State declared emergency. As part of this effort, the Department of Design and Construction ("DDC") is pleased to announce the following contracting opportunity.

SECTION I. TIMETABLE

A. RFP Issuance

Pre-Proposal Conference

A pre-proposal conference will be held at **10:00 AM on February 23, 2016, at DDC headquarters, 30-30 Thomson Avenue, Long Island City, NY 11101, in the Atrium.** Attendance at this pre-proposal conference is not mandatory to propose on the contract described in this RFP; however, it is strongly encouraged.

Submission Deadline: The proposer shall hand deliver, on or before **4:00 PM** on **Friday, April 15, 2016,** the proposal in a clearly marked envelope or package. The Proposal shall consist of THREE separate, clearly marked, sealed packages containing the following: (1) the Technical Proposal (1 original and 4 copies), (2) Fee Proposal (Attachment 4) (1 original), and (3) Doing Business Data Form (Attachment 7) (1 original).

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

Keesha Smartt (718) 391-2825
Professional Contracts Section
Department of Design and Construction
30-30 Thomson Avenue, 4th Floor (Entrance on 30th Place)
Long Island City, NY 11101
E-mail: smarttke@ddc.nyc.gov

NOTE: Respondents are held responsible for ensuring that the Professional Contracts Section receives the RFP response package by the deadline. Respondents are warned not to rely on signed delivery slips from their messenger services. Occasionally packages are delivered to the School Construction Authority located in the same building and the packages are not forwarded to the DDC Professional Contracts Section in a timely manner. Entrance to DDC is on 30th Place, *not* Thomson Avenue despite our Thomson Avenue address.

B. Inquiries:

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website http://ddcftp.nyc.gov/rfpweb/. All inquiries must be directed ONLY to the contact person listed above.

C. Addenda:

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the addendum to the Technical Proposal. All addenda shall become a part of the requirements for this RFP.

D. RFP Schedule:

The following is the estimated timetable for receipt, evaluation, and selection of proposals. This is only an estimate and is provided to assist responding firms in planning.

a. Identify Contractor: Within four weeks of submission deadline.

b. Complete Registration: Approximately three months from date of Contractor selection.

c. Commence Work: When directed by DDC.

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. Background and Objectives of the Project

The City of New York (City), through its Department of Design and Construction (DDC), intends to issue contracts for emergency construction and construction-related services as part of its Citywide Disaster Preparedness Plan. Work under these contracts will be generally consistent with conducting emergency disaster operations pursuant to the Stafford Act (as amended), and, while not limited to declared Federal disasters, will be ordered under State or locally declared disasters. DDC will procure these contracts in compliance with all federal procurement rules as required by 2 CFR Part 200 and all applicable State and local laws and rules. These contracts will be similar to the US Army of Engineers ("USACE") Advanced Contracting Initiative that uses Indefinite Delivery Indefinite Quantity ("IDIQ") contracts or Multiple Award Task Order Contracts ("MATOC").

As part of the Citywide Disaster Preparedness Plan, DDC is seeking to engage up to twenty-seven (27) qualified firms to manage, supervise and perform emergency construction management and construction-related services. The categories of work are as follows:

1. Critical Public Facility Restoration;
2. Temporary Restoration of Housing;

3. Construction Support for Urban Search and Rescue;
4. Debris Removal;
5. Debris Removal – Marine Transportation;

6. Provision of Medical Space and/or Shelters;
7. Communications/IT Services Restoration;
8. Provision of Environmental Testing Services; and
9. Supervision, Management and Administrative Services

More detailed descriptions of each scope of work category are in Section III.A of this RFP, Scope of Services.

With respect to the first eight categories of work ("Eight Work Categories"), DDC is seeking to engage up to twenty-four (24) qualified firms to manage, supervise and perform emergency construction management and construction-related services, with up to three (3) firms within each of the separate Eight Work Categories.

With respect to the Eight Work Categories, Proposers may propose on one or more work category in the Eight Work Categories by submitting up to eight separate proposals in one package. Each submission must include an individual proposal (both technical and fee proposals) for each category of work for which the Proposer is proposing. Each proposal should clearly indicate the category for which the Proposer is proposing and it should contain information on the Proposer's ability to perform the work in each category. The Proposers may, but are not required to, indicate their preference for one or more category of work; however the City reserves the right to assign the awardees to one or more category(ies) of work based on the Proposer's capacity and the best interest of the City.

Notwithstanding the City's intention to procure these contracts for emergency construction and construction-related services, the City retains the right to award contracts for emergency work without the use of these Task Order contracts.

With respect to the last category of work, Supervision, Management and Administrative Services ("Ninth Work Category"), DDC intends to engage up to three (3) firms to supervise, manage, administer, and perform any other construction management or professional services that are necessary for the oversight of the Task Orders issued pursuant to the contracts for the Eight Work Categories, as directed by the Commissioner. The proposal should contain information on the Proposer's ability to perform the work within this category of work.

Any entity submitting a proposal for any of the Eight Work Categories may also submit a proposal for the Ninth Work Category. Similarly, any entity submitting a proposal for the Ninth Work Category may also submit a proposal for any of the Eight Work Categories. However, any contractor awarded a contract for any of the Eight Work Categories shall not be awarded a contract for the Ninth Work Category. Correspondingly, any contractor awarded a contract for the Ninth Work Category shall not be awarded a contract for any of the Eight Work Categories. In the event that the same entity submits a proposal for any of the Eight Work Categories and also for the Ninth Work Category, DDC reserves the right to determine whether that proposing entity will be awarded a contract for the Ninth Work Category or for any of the Eight Work Categories for which it submitted a proposal (**if any**), based on the proposing firm's qualifications, capacity, and the best interest of the City.

B. Joint Ventures and Other Business Relationships

Proposals may be submitted by joint ventures. Note that, there is no minimum requirement for the proportion of work by either of the two joint ventured parties. Joint ventures must carry

the required insurance either as policies written specifically for the joint venture entity, or by using their existing single entity policies with endorsements written for the joint venture activity.

The joint venture must be formed as a separate legal entity at the time of the award. DDC does not recognize the corporate configuration wherein one company is “in association with” another. Relationships between two or more firms shall be either as joint venture or prime contractor/subcontractor. In the event that a proposal is received wherein two or more firms are described as being "in association with" each other, DDC will treat the relationship as one of prime contractor/subcontractor(s). The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms will be treated as subcontractors.

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Scope of Services

Eight Work Categories:

The scope of work for this contract for the Eight Work Categories consists of on-call emergency construction and construction related services. Task Orders will be issued in response to a City or State declared emergency. Each Task Order issued under these contracts will be subject to the type of disaster and emergency situations that require additional contracted resources to supplement the City response to an emergency declaration as per New York City Procurement Policy Board Rule 3-06. DDC may issue Task Orders that include the scope of work categories listed below. The proposers should note that each of the work categories may include ancillary work listed in the remaining work categories. As such, contractors holding a contract within one specific work category will be required to primarily perform work within that work category, but may also perform minimal/ancillary work listed in the other work categories.

1. Critical Public Facility Restoration:
Temporary repair of City owned critical public facilities essential for continuity of governmental operations such as police stations, fire/EMS stations, sanitation facilities, water/sewer facilities, and other public service facilities. Scopes of Work will depend on the extent of damages and need to restore power, HVAC, plumbing, and other essential services for occupancy and use until permanent repairs are made. Task Orders may be issued to provide temporary energy restoration to City facilities including, but not limited to, the installation, maintenance and operation of temporary generators and boilers. Task Orders may include the provision of temporary emergency heating or air conditioning. Some or all scopes may require the provision of structural and environmental inspections services. In certain situations, permanent repairs may be more cost effective, and will be allowed subject to approval by the City.

2. Temporary Restoration of Housing:
Temporary restoration of power, heat, and hot water to primary residences to help residents safely shelter-in-place in their homes pending more permanent repairs. Residents of the designated disaster areas that participate will be able to have the damage to their residence assessed and, where safe and practicable, have electricity and heat restored and other basic repairs made so they can move back into their homes as temporary shelters. Task Orders for this scope of work may require advance Federal and State approvals and coordination.

3. Construction Support for Urban Search and Rescue (US&R):
Tasks Orders may be issued to support the FEMA National US&R Response System and other Federal, State, and City resources to design shoring systems to stabilize structures, or other safety measures or equipment necessary for rescuers to gain safe access for search and rescue missions. Work may also include debris clearance and removal as needed. Task Orders will be coordinated with the applicable response organization starting with the City's Fire Department and Office of Emergency Management.

4. Debris Removal:

In cases where the damage and debris are so extensive that it exceeds City capabilities, DDC will issue Task Orders to provide debris removal assistance to augment City resources. There are no "typical" debris removal Task Orders, but generally, the types of Task Orders may consist of one or more of the following: right of way debris removal, emergency clearance, private property debris removal, demolition, debris removal from drainage structures, waterway debris as approved by FEMA, removal of water from buildings and roadways, and hazardous materials testing, removal, and disposal. Task Orders shall require that contractors provide equipment, operators, and laborers for debris management services which include, but are not limited to, separation, removal, hauling, disposal, and structural demolition on public, commercial, and private property as specified by the City. Task Orders may also require removal of water from City roadways and highways. DDC will work with the City's Department of Sanitation (DSNY) to coordinate debris hauling Task Orders.

5. Debris Removal – Marine Transportation:

The City may need additional resources to remove debris from waterways and shorelines, and transport debris by use of waterways. Task Orders may require that contractors provide marine vessels and barges plus equipment, operators, and laborers for debris management services which requires marine transportation from marine transfer stations to disposal sites. DDC will work with the City's Department of Sanitation (DSNY) to coordinate marine debris hauling Task Orders.

6. Provision of Medical Space and/or Shelters:

Task Orders may be issued to assist the City prepare certain buildings or facilities for temporary emergency sheltering and medical space as needed. Such Task Orders may include the provision of temporary mobile facilities or construction of temporary facilities. DDC will work with the City's Health and Hospitals Corporation (HHC) and Office of Emergency Management (OEM) to coordinate the provision of such space.

7. Communications/IT Services Restoration:

Assists City agencies with emergency communications during emergency period. Task Orders may be issued to support coordination communications between City, State, and Federal emergency responders when their systems have been affected, including, but not limited to, providing communications and IT support to the City's OEM and its coordinating City agencies.

8. Provision of Environmental Testing Services:

Task Orders to provide environmental monitoring of disaster sites and debris disposal sites and testing of hazardous and toxic materials in compliance with EPA and OSHA.

Provide procedures to document that all environmental laws and safety measures are met – including personal protective equipment (PPE), roadway signing, and flagmen – and verify disaster relief trucks are certified, properly licensed, and have the correct volume of weight or cubic yards.

Upon registration of each contract, DDC will issue the first Task Order to all contractors holding these on-call emergency construction and construction-related contracts for these Eight Work Categories, requiring each contractor to prepare a Disaster Readiness and Mobilization Plan for the category of work for which the contractor was selected. The

contractor is not required to develop a brand new Disaster Readiness and Mobilization Plan if the contractor already has an existing plan that can be tailored to the specific category of work for which the contractor was selected. The Disaster Readiness and Mobilization Plan will be subject to the City's approval. Throughout the term of the Contract, the City may request that the contractor revise or amend its Disaster Readiness and Mobilization Plan based on new developments, and/or responses to past emergencies. The maximum allowance per contract for the preparation of the Disaster Readiness and Mobilization Plan is $100,000.00, for the duration of the contract term. This allowance is for the development of (or tailoring of already existing) Disaster Readiness and Mobilization Plan. Funding for this Plan is expected to be higher in the first year of the contract term to cover the development of, or tailoring of already existing, Disaster Readiness and Mobilization Plan. Funding for this Plan in the subsequent years of the contract term is expected to be lower as the contractor will be required to only refresh and test the Plan.

Subsequent Task Orders under this contract will be issued only when a New York State or City emergency declaration is issued pursuant to the New York State Executive Law, and after an approval for emergency procurements is obtained pursuant to the New York City Charter, although the work of the Task Order may extend beyond the period of the emergency declaration. In order to ensure that on-call emergency construction and construction-related services are performed in a timely manner, it is DDC's intention to have available these Task Order contracts to be used on an as-needed basis.

If the need arises for these emergency services, DDC will contact the contractor(s) holding contract(s) for a specific category of work (or categories of work) and solicit responses from the contractor(s) for the proposed Task Order(s), unless the exigent need is so great that it is necessary to contact fewer than all of the contractors within a specific category. The Task Order award will be determined through competition by price and/or combination of other factors (including, but not limited to, capacity, location, and experience). Contractors holding contracts in the Debris Removal category of work and Provision of Environmental Testing Services category of work shall use the unit price items submitted as part of this proposal when preparing responses to the proposed Task Orders.

Depending on the severity of the emergency, the contractor may be required to proceed with the Work without a written Task Order, which will be issued within 72 hours after the City notifies the contractor of the need for the contractor's services. The Task Order process is described in Article 11 of the attached contract.

Ninth Work Category:

9. Supervision, Management and Administrative Services:
The scope of work for the Supervision, Management and Administrative Services category of work consists of the supervision, management, administration and performance of other construction management and professional services necessary for the oversight of the Task Orders issued pursuant to the contracts for the Eight Work Categories, as directed by the Commissioner. The services include, but are not limited to, reviewing of the disaster readiness and mobilization plans submitted by the contractors holding contracts for the Eight Work Categories, monitoring compliance with the disaster readiness and mobilization plans, emergency Task Order coordination, auditing, and any other service as directed by the Commissioner.

Upon registration of the contract(s) for the Ninth Work Category, DDC will issue the first Task Order to contractors holding the contracts for Ninth Work Category, requiring each contractor to prepare a Disaster Readiness and Mobilization Plan. The contractor is not required to develop a brand new Disaster Readiness and Mobilization Plan if the contractor already has an existing plan that can be tailored to the services to be provided under the Ninth Work Category. The Disaster Readiness and Mobilization Plan will be subject to the City's approval. Throughout the term of the Contract, the City may request that the contractor revise or amend its Disaster Readiness and Mobilization Plan based on new developments, and/or responses to past emergencies. The maximum allowance per contract for the preparation of the Disaster Readiness and Mobilization Plan is $100,000.00, for the duration of the contract term. This allowance is for the development of (or tailoring of already existing) Disaster Readiness and Mobilization Plan. Funding for this Plan is expected to be higher in the first year of the contract term to cover the development of, or tailoring of already existing, Disaster Readiness and Mobilization Plan. Funding for this Plan in the subsequent years of the contract term is expected to be lower as the contractor will be required to only refresh and test the Plan.

Furthermore, the first Task Order issued to contractors holding the contracts for the Ninth Work Category will also require the contractors to review, assist in reviewing, recommend for approval or disproval, and provide any other services that may be necessary to aid the Commissioner in evaluating the Disaster Readiness and Mobilization Plans prepared by contractors holding contracts for the Eight Work Categories. Each contractor will be required to review, assist in reviewing, recommend for approval or disproval, and any other services that may be necessary to aid the Commissioner in evaluating up to twenty-four (24) separate Disaster Readiness and Mobilization Plans. Throughout the term of the Contract, the City may request that the contractors review, and assist in DDC's review of, any revisions or amendments to the Disaster Readiness and Mobilization Plans. The maximum allowance per contract for the review, and assistance in reviewing, of the Disaster Readiness and Mobilization Plans is $100,000.00, for the duration of the contract term.

If the need arises for these emergency services, DDC will contact the contractor(s) holding contract(s) for the Ninth Work Category and solicit responses from the contractor(s) for the proposed Task Order(s), unless the exigent need is so great that it is necessary to contact fewer than all of the contractors within the category. The Task Order award will be determined through competition by price and/or combination of other factors (including, but not limited to, capacity, location, and experience).

Depending on the severity of the emergency, the contractor may be required to proceed with the services without a written Task Order, which will be issued within 72 hours after the City notifies the contractor of the need for the contractor's services. The Task Order process is described in Article 11 of the attached contract.

B. <u>Contract Provisions</u>

The services to be provided by the Contractor and all standards of performance applicable to the required work set forth in the form of contract, attached hereto and incorporated herein as part of this RFP. Any firm awarded a contract as a result of this RFP will be required to sign a contract containing the City's contract provisions, in substantially the form they appear in the attached contract. For a more complete and thorough description of the scope of services summarized in this section of the RFP, the proposer is advised to review the contract.

C. Selection Process and Task Order Process

Selection of a firm to perform services for a specific project shall be in accordance with Article 11 of the attached contract. The Task Order process is set forth in Article 11 of the attached contract. Proposers are advised to review this section carefully to ensure understanding. Please note that the contractor(s) may be initially required to perform the emergency services under this contract without a Task Order, in accordance with the Article 11 of the attached contract.

D. Contract Term / Not to Exceed Amount

The Contract shall commence on the date of registration by the Comptroller, and shall remain in effect for 730 consecutive calendar days. Each contract will have a not to exceed amount of Thirty-Six Million Dollars ($36,000,000). At the Commissioner's sole option, the term of the contract may be renewed for an additional 365 consecutive calendar days with additional funding of Eighteen Million Dollars ($18,000,000).

E. Insurance

The Contractor or Consultants or Subcontractors performing work pursuant to this Contract must provide the types and amounts of insurance specified in Article 27 of the attached contract. The Contractor or Consultants or Subcontractors performing work pursuant to this Contract must provide the types and amount of additional insurance set forth in Task Orders. The proposer is advised to carefully review such insurance requirements.

F. Payment Provisions

Payment for all required services shall be in accordance with Article 45 of the attached contract. Information regarding the Fee Proposal is set forth in Attachment 4 of this RFP.

The method of payment for the performance of all required emergency construction and construction-related services shall be specified in the Task Order. However, for most services, the specified method of payment shall be through fixed fee(s) for fixed scope of work to be paid upon reaching specific milestones and/or deliverables set forth in the Task Order. Alternatively, All-Inclusive Hourly Rates as set forth in the Disaster Readiness and Mobilization Plan, or a portion thereof, shall be used as a basis for negotiating fee(s) with the Contractor. Payments based on time and materials and/or time card basis, with a not to exceed amount, will only be used if, under the totality of the circumstances, the Commissioner determines that no other form of payment is suitable.

G. Minimum Requirements for Key Personnel

The terms and conditions regarding the Contractor's obligation to provide personnel for the performance of services specified in the Task Order(s) are set forth in Article 14 of the attached contract. Proposers are advised to carefully review these requirements for the provision of personnel to ensure their capability of complying with specified staffing requirements.

Minimum requirements for Key Personnel are set forth below. **The Proposal will be rejected as non-responsive if the individuals identified by the proposer as Key Personnel fail to meet the minimum requirements per title**.

TITLE	MINIMUM REQUIREMENTS Years of Experience	Years in Relevant Supervising Experience
Contract Executive……..	15	7
Project Executive……..	10	7
Senior Project Manager……	10	5
Safety Manager……	10	5

H. Compliance with Iran Divestment Act of 2012

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, the Agency/Department will be able to award a contract to such Proposer only in situations where the Proposer is takings steps to cease its investments in Iran or where the Proposer is a necessary sole source. Please refer to Attachment 2 for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to http://www.ogs.ny.gov/About/regs/ida.asp for additional information concerning the list of entities.

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

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

DDC 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 Contract. The Contractor will make a good faith effort to procure the services of M/WBEs to the fullest extent possible under the circumstances.

J. Compliance with Local Law 34 of 2007

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

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

PART I. INSTRUCTION AND FILING REQUIREMENTS FOR PROPOSALS FOR THE EIGHT WORK CATEGORIES ONLY

A. Proposal Subdivisions Instructions:

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: (http://www.epa.gov/cpg/products/printing.htm). Pages should be paginated. The proposal will be evaluated on the basis of its content, not its length. Failure to comply with any of these instructions will not make the proposal non-responsive.

1. Technical Proposal (1 original and 4 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus completed forms 254 and 255 for Proposer and its subcontractors/subconsultants. These forms are available in hard copy from DDC and can be downloaded online at http://www.nyc.gov/html/ddc/html/business/business.shtml. **Such forms shall not be altered in any way.**

B. Technical Proposal (1 original and 4 copies):

The Technical Proposal for each of the work category shall contain the information described below.

1. Introductory Material:

a. Cover Letter: Submit a one page cover letter, indicating the company name and address, and the name, address and telephone number of the person authorized to represent the firm. ***(Be sure to refer to the proper DDC project number and title, and indicate the specific work category for which the Proposer is proposing).***

b. Table of Contents: Provide a table of contents of the material contained in the proposal.

c. Specific Scope of Work Category: List the specific category of work from the Eight Work Categories listed in Section III.A of this RFP, for which the Proposer is seeking consideration. Include Proposer's qualifications and capabilities related to those categories of work for which the Proposer seeks consideration.

d. Summary: Submit a brief statement of the salient features of the proposal, including approach, qualifications and nature of the proposed project team. Do not include fee data in the summary. Inclusion of such information may deem the proposal non-responsive.

2. Support Documentation:

a. Experience of the Proposer and subcontractors (if any):

i. The Proposer must demonstrate the following qualifications:

1. Proposer shall have been actively and routinely engaged in the past five (5) to ten (10) years in managing, supervising and responding to on-call emergency situations of varying magnitude, such as, but not limited to, building collapse, water or sewer main breaks, or weather-related destruction or damage.
2. Proposer shall explain whether it has had experience developing and maintaining disaster readiness and mobilization plans, and if yes, if its existing plan can be tailored to the category(ies) of work for which the Proposer is submitting proposal(s).
3. Proposer must identify prior project experience performing the types of work outlined in the scope category(ies) for which the Proposer is submitting a proposal, including the dates of such contract, client's name, client contact information, and work location, and description of the work performed.
4. Proposer must demonstrate revenue of at least $1,000,000 for each year for the last two years.
5. Proposer must demonstrate that all Proposer's employees, and the employees of all subcontractors, performing work on this Contract, shall have successfully completed OSHA 10 Hour Training

ii. The Proposer must submit an example of, or already existing, disaster readiness and mobilization plan for the category of work for which it is submitting a proposal.

iii. The Proposer must provide a statement of experience and qualifications that includes the following:

1. A general statement of the experience of the Proposer, including experience with local, state, or federal disaster situations.

b. <u>Equipment/Facilities</u>

i. Provide a statement explaining specifically how the Proposer intends to mobilize equipment and/or facilities in an expedient and efficient manner, in the event a Task Order is issued to the Proposer.
ii. For each of Proposer's (or Proposer's subcontractors') locations from which equipment will be deployed for this Contract, list Proposer's (or Proposer's subcontractors') equipment by type and quantity, including emergency general capabilities and portable heating and cooling equipment.

3. <u>Key Personnel</u>: For each title of Key Personnel listed in Attachment 3, the Proposer shall identify the individuals it will provide, throughout the term of the contract, to perform the required services. Such individuals must be employees of the Proposer. The Proposer may identify multiple individuals for each title; provided, however, it shall only identify those individuals it has the ability to provide. The Proposer shall annex to Attachment 3 the resume of each individual, indicating his/her technical qualifications and expertise.

Any proposed Key Personnel provided by the Contractor must satisfy the minimum requirements per title set forth in Section III G of this RFP. All personnel performing services for any Project(s) assigned to the Contractor must be approved in advance by the Commissioner.

4. Firm's Capability: The Proposer shall describe and provide the following:

   a. The firm's ability to provide personnel for the required on-call emergency construction and construction-related services;
   b. The firm's ability to provide sufficient personnel in the event of multiple Task Orders;
   c. The firm's current and anticipated workload, including other DDC projects, or other large contracts in the New York City metropolitan region.
   d. Disclosure of all the firm's existing standby contracts, if applicable.
   e. Firm's plan to deliver the services required and the ability to respond to multiple events at different locations at the same time;
   f. The firm's ability to have, or be able to enter into subcontractors for, sufficient labor, materials and equipment and be able to mobilize labor, material and equipment on any site within 2 hours of receiving notice and must be able to perform a minimum of three emergency Task Orders;
   g. Location of firm's offices and warehouse (or firm's subcontractors' offices and warehouse) from which labor, material and equipment will be deployed; and
   h. Organizational chart for all personnel.

C. Statement of Understanding and Certification:

The Statement of Understanding and Certification (Attachment 1) shall be signed by a responsible partner or corporate officer of the Proposer and submitted with the firm's technical proposal.

D. Acknowledgement of Addenda

The Acknowledgement of Addenda form (Attachment 5) serves as the Proposer's acknowledgement of the receipt of addenda to this RFP that may have been issued by the Agency prior to the Proposal Due Date and Time. The Proposer should complete this form as instructed on the form.

E. Fee Proposal

A form for the submission of the Fee Proposal is included as Attachment 4 of the RFP. The Proposer must complete the Fee Proposal as per instructions on Attachment 4 and submit the Fee Proposal in separate sealed package. The Proposer must submit a separate Fee Proposal for each of the work category for which it wishes to propose.

F. Proposal Package Contents (Checklist)

The Proposal Package shall contain the following materials:

1. Technical Proposal: (1 original and 4 copies):
   Sealed envelope, clearly marked as "Technical Proposal", including

   - Completed Forms 254 and 255

- Statement of Understanding and Certification (Attachment 1)
- Iran Divestment Act Compliance Rider (Attachment 2)
- Technical Proposal Form (Attachment 3)
- Acknowledgement of Addenda (Attachment 5)

2. Fee Proposal (1 original) (Attachment 4)
   Sealed envelope clearly marked as "Fee Proposal"

3. Doing Business Data Form (1 original) (Attachment 7)
   Sealed envelope clearly marked "Doing Business Data Form" containing a completed Doing Business Data Form.

PART II. INSTRUCTION AND FILING REQUIREMENTS FOR PROPOSALS FOR SUPERVISION, MANAGEMENT, AND ADMINISTRATIVE SERVICES (THE NINTH WORK CATEGORY) ONLY

A. Proposal Subdivisions Instructions:

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: (http://www.epa.gov/cpg/products/printing.htm). Pages should be paginated. The proposal will be evaluated on the basis of its content, not its length. Failure to comply with any of these instructions will not make the proposal non-responsive.

1. Technical Proposal (1 original and 4 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus completed forms 254 and 255 for Proposer and its Subconsultants or Subcontractors. These forms are available in hard copy from DDC and can be downloaded online at http://www.nyc.gov/html/ddc/html/business/business.shtml. **Such forms shall not be altered in any way.**

B. Technical Proposal (1 original and 4 copies):

The Technical Proposal for the Ninth Work Category shall contain the information described below.

1. Introductory Material:

a. Cover Letter: Submit a one page cover letter, indicating the company name and address, and the name, address and telephone number of the person authorized to represent the firm. ***(Be sure to refer to the proper DDC project number and title, and indicate that the Proposal is for the Ninth Work Category).***

b. Table of Contents: Provide a table of contents of the material contained in the proposal.

c. Summary: Submit a brief statement of the salient features of the proposal, including approach, qualifications and nature of the proposed project team. Do not include fee data in the summary. Inclusion of such information may deem the proposal non-responsive.

2. Support Documentation:

   a. Experience of the Proposer:

      i. The Proposer must demonstrate the following qualifications:

         1. Firm shall have been actively and routinely engaged in the past five (5) to ten (10) years in managing, supervising, and providing various construction management services necessary for the oversight of construction contracts, including, but not limited to, on-call emergency construction and construction-related contracts of varying magnitude.
         2. Firm shall explain whether it has had experience reviewing, approving, and/or monitoring compliance with, disaster readiness and mobilization plans.
         3. Firm must identify prior project experience managing, supervising, and providing various construction management services necessary for the oversight of construction contracts, including, but on limited to, on-call emergency construction and construction-related contracts of varying magnitude, including the dates of such contract, client's name, client contact information, and work location, and description of the work performed.
         4. Firm must demonstrate revenue of at least $1,000,000 for each year for the last two years.

      ii. The firm submitting the proposal must provide a statement of experience and qualifications that includes the following:

         1. A general statement of the experience of the firm, including experience with local, state, or federal disaster situations.

3. Key Personnel: For each title of Key Personnel listed in Attachment 3, the Proposer shall identify the individuals it will provide, throughout the term of the contract, to perform the required services. Such individuals must be employees of the Proposer. The Proposer may identify multiple individuals for each title; provided, however, it shall only identify those individuals it has the ability to provide. The Proposer shall annex to Attachment 3 the resume of each individual, indicating his/her technical qualifications and expertise.

   Any proposed Key Personnel provided by the Contractor must satisfy the minimum requirements per title set forth in Section III G of this RFP. All personnel performing services for any Project(s) assigned to the Contractor must be approved in advance by the Commissioner.

4. Firm's Capability: The Proposer shall describe and provide the following:

   a. The firm's ability to provide personnel for the required management, supervision, and other construction management services necessary for the oversight of on-call emergency construction and construction-related contracts;
   b. The firm's ability to provide sufficient personnel in the event of multiple Task Orders;
   c. The firm's current and anticipated workload, including other DDC projects, or other

large contracts in the New York City metropolitan region;

d. Disclosure of all the firm's existing standby contracts, if applicable.
e. Firm's plan to deliver the services required and the ability to respond to multiple events at different locations at the same time; and
f. Organizational chart for all personnel.

C. Statement of Understanding and Certification:

The Statement of Understanding and Certification (Attachment 1) shall be signed by a responsible partner or corporate officer of the Proposer and submitted with the firm's technical proposal.

D. Acknowledgement of Addenda

The Acknowledgement of Addenda form (Attachment 5) serves as the Proposer's acknowledgement of the receipt of addenda to this RFP that may have been issued by the Agency prior to the Proposal Due Date and Time. The Proposer should complete this form as instructed on the form.

E. Fee Proposal

A form for the submission of the Fee Proposal is included as Attachment 4 of the RFP. The Proposer must complete the Fee Proposal as per instructions on Attachment 4 and submit the Fee Proposal in separate sealed package.

F. Proposal Package Contents (Checklist)

The Proposal Package shall contain the following materials:

1. Technical Proposal: (1 original and 4 copies):
   Sealed envelope, clearly marked as "Technical Proposal", including

   - Completed Forms 254 and 255
   - Statement of Understanding and Certification (Attachment 1)
   - Iran Divestment Act Compliance Rider (Attachment 2)
   - Technical Proposal Form (Attachment 3)
   - Acknowledgement of Addenda (Attachment 5)

2. Fee Proposal (1 original) (Attachment 4)
   Sealed envelope clearly marked as "Fee Proposal"

3. Doing Business Data Form (1 original) (Attachment 7)
   Sealed envelope clearly marked "Doing Business Data Form" containing a completed Doing Business Data Form.

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Selection Process:

All proposals accepted by DDC will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by DDC to be non-responsive will be rejected. For each work category, a DDC evaluation committee will review, evaluate and score all Technical Proposals in accordance with evaluation criteria prescribed in this RFP. This evaluation and scoring will determine the Proposer's technical score. DDC reserves the right to conduct site visits and/or interviews and/or to request that Proposers make presentations and/or demonstrations, as DDC deems applicable and appropriate. Although discussions may be conducted with Proposers submitting acceptable proposals, DDC reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the Proposer's initial proposal should contain its best technical and price terms.

B. Proposal Evaluation Criteria:

1. Experience of Firms (Weight 30%)
2. Key Personnel (Weight 20%)
3. Firm's Capability (Weight 50%)

C. Basis of Award:

For each work category, DDC will award contract(s) to the responsible Proposer(s) whose proposal(s) represent the best value to the City by optimizing quality, cost and efficiency and is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria set forth in this RFP. Price will be considered as follows: Based on the final technical scores of the proposals, DDC will establish a shortlist; and those proposals under consideration for award will be ranked in the order of lowest price per technical point. Contract award shall be subject to the timely completion of contract negotiations between DDC and the selected Proposer.

D. Supply and Service Employment Report:

Upon selection, the successful Proposers will be required to submit one original copy of the Department of Small Business Services Supply and Service Employment Report, a copy of which can be downloaded from http://www.nyc.gov/html/sbs/html/procurement/dls.shtml. Upon written notification; the Proposers must submit the Supply and Service Employment Report within ten days of such notification.

E. VENDEX:

Upon selection, the successful Proposers will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the Proposers must submit a Confirmation of VENDEX Compliance and VENDEX Certificate of No Change to DDC within five days of official notification. A form for this confirmation is set forth in the RFP.

The Proposer is advised that VENDEX Questionnaires and procedures have changed. See www.nyc.gov/vendex to download the new VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact DDC's VENDEX Unit at 718-391-1565.

1. Submission: VENDEX Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: VENDEX, 253 Broadway, 9th Floor, New York, New York 10007.

2. Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, Proposers may be obligated to complete and submit VENDEX Questionnaires. If required, VENDEX Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after award.

F. Contract Finalization:

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

SECTION VI. GENERAL INFORMATION TO PROPOSERS

A. Complaints

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

B. Applicable Laws

This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of 2 CFR Part 200, New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.

C. Contractual Requirements

Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in attached contract.

D. Contract Award

Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the Proposer of the requisite New York City Department of Small Business Services/Division of Labor Services Employment Report and certification by that office; submission by the Proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

E. Proposer Appeal Rights

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

F. Multi-Year Contracts

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

the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

G. Prompt Payment Policy

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

H. Prices Irrevocable

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

I. Confidential, Proprietary Information or Trade Secrets

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

J. RFP Postponement/Cancellation

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

K. Proposer Costs

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

L. VENDEX Fees

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

M. Charter Section 312(a) Certification

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

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

____ The contract to be awarded through this Request for Proposal is a Task Order contract that does not simultaneously result in the award of a first Task Order; a displacement

determination will be made in conjunction with the issuance of each task pursuant to such Task Order contract. Determination for any subsequent Task Orders will be made in conjunction with such subsequent Task Orders.

_____ _____

Agency Chief Contracting Officer Date

ATTACHMENT 1: STATEMENT OF UNDERSTANDING AND CERTIFICATION

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

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

□ **Yes** □ **No**

_____
Name of Firm

By:_____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Telephone # EIN #

_____ _____
Address E-Mail Address

ATTACHMENT 2

IRAN DIVESTMENT ACT COMPLIANCE RIDER

FOR NEW YORK CITY CONTRACTORS

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

(a) The person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

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

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

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

ATTACHMENT 2 (continued)

PROPOSER'S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT

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

[*Please Check One*]

PROPOSER'S CERTIFICATION

☐ By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

☐ I am unable to certify that my name and the name of the proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, ____
City State

_____ 20___
Month, Date Year

_____
SIGNATURE

_____
PRINTED NAME

_____
TITLE

_____
FULL BUSINESS NAME

Sworn to before me this

_____ day of____, 20____

_____
Notary Public

ATTACHMENT 3

TECHNICAL PROPOSAL FORM

A. IDENTIFICATION OF KEY PERSONNEL (include this form with the Proposal)

As set forth in Section IV (B) (3) of the RFP, the proposer must identify by name the individuals who will perform the required services for the titles of Key Personnel set forth below. Such individuals must be employees of the proposer. The proposer may identify multiple individuals for each title; provided, however, it shall only identify those individuals it has the ability to provide. The proposer shall annex to this Attachment 4 the resume of each individual identified therein for a title of Key Personnel.

Any individual proposed for a title of Key Personnel by the Consultant must satisfy the minimum requirements per title set forth in Section III G of the RFP. The individuals identified as Key Personnel will be included in Exhibit B to the contract.

Title	Name	Years of Experience
Contract Executive	_____	_____
	_____	_____
	_____	_____
Project Executive	_____	_____
	_____	_____
	_____	_____
Senior Project Manager	_____	_____
	_____	_____
	_____	_____
Safety Manager	_____	_____
	_____	_____
	_____	_____

ATTACHMENT 4a*

FEE PROPOSAL FORM

To be completed ONLY by Proposers submitting proposals for work categories listed below (a separate fee proposal form is required for each category):

III.A.1 Critical Public Facility Restoration;
III.A.2 Temporary Restoration of Housing;
III.A.3 Construction Support for Urban Search and Rescue;
III.A.5 Debris Removal – Marine Transportation;
III.A.6 Provision of Medical Space and/or Shelters;
III.A.7 Communications/IT Services Restoration;

Project: Task Order Contract for On-Call Emergency Construction and Construction-Related Services, Citywide.
Submission: The Proposer shall submit its Fee Proposal (Attachment 4a) in a clearly labeled, sealed package. The Fee Proposal shall consist of the addition of Total Amount per Title for all titles listed below. The Total Amount per Title shall consist of Total Hours per Title multiplied by All Inclusive Hourly Rates per Title. The Total Hours per Title is being used for bidding purposes only. If requested in writing by DDC, the Proposer shall submit Back-up Material for All Inclusive Hourly Rates, as described below. Submission of such Back-up material shall be within two (2) business days of notice by DDC.

All Inclusive Hourly Rates for Specified Titles of Personnel

TITLE	TOTAL HOURS PER TITLE (For Proposal Purposes Only)	ALL INCLUSIVE HOURLY RATE	TOTAL AMOUNT PER TITLE (Total Hours per Title multiplied by All Inclusive-Hourly Rate)	Number of Years of Experience	Number of Years in Relevant Supervising Experience
Contract Executive	200			15	7
Project Executive	200			10	7
Senior Project Manager	200			10	5
Junior Project Manager	200			5	N/A
Senior Technical Advisor (Subject Matter Expert)	200			10	5
Junior Technical Advisor (Subject Matter Expert)	200			5	N/A
Safety Manager	200			10	5
Operational Crew (4 people)	800				

Total Amount for All Titles
(Addition of Total Amount per Title
for all titles):

_____
THE CONTRACTOR'S FEE PROPOSAL

ATTACHMENT 4a (continued)

The proposer must sign the Fee Proposal in the space provided below.

_____
Name of Proposer

By: _____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Telephone # EIN #

_____ _____
Address E-Mail Address

ATTACHMENT 4b*

FEE PROPOSAL FORM

To be completed ONLY by Proposers submitting proposals for Debris Removal work category – (III.A.4)

Project: Task Order Contract for On-Call Emergency Construction and Construction-Related Services, Citywide.

Submission: The Proposer shall submit its Fee Proposal (Attachment 4b) in a clearly labeled, sealed package. The Fee Proposal shall consist of two parts. Part I is the Total Amount for All Titles, and Part II is the Total Amount for Unit Price Items.

Part I: All Inclusive Hourly Rates for Specified Titles of Personnel

Part I is the addition of Total Amount per Title for all titles listed below. The Total Amount per Title shall consist of Total Hours per Title multiplied by All Inclusive Hourly Rates per Title. The Total Hours per Title is being used for proposal purposes only. If requested in writing by DDC, the Proposer shall submit Back-up Material for All Inclusive Hourly Rates, as described below. Submission of such Back-up material shall be within two (2) business days of notice by DDC.

TITLE	TOTAL HOURS PER TITLE (For Proposal Purposes Only)	ALL INCLUSIVE HOURLY RATE	TOTAL AMOUNT PER TITLE (Total Hours per Title multiplied by All Inclusive-Hourly Rate)	Number of Years of Experience	Number of Years in Relevant Supervising Experience
Contract Executive	200			15	7
Project Executive	200			10	7
Senior Project Manager	200			10	5
Junior Project Manager	200			5	N/A
Senior Technical Advisor (Subject Matter Expert)	200			10	5
Junior Technical Advisor (Subject Matter Expert)	200			5	N/A
Safety Manager	200			10	5
Operational Crew (4 people)	800				

PART I: Total Amount for All Titles (Addition of Total Amount per Title for all titles):

_____
TOTAL AMOUNT FOR ALL TITLES

ATTACHMENT 4b (continued)

Part II: Unit Price Items

Part II is the addition of all Unit Prices for the Items specified below. Such Unit Price Items cover the cost of all work, labor, material, tools, plant, insurance and appliances of every description necessary to complete the work, in accordance with the attached specifications.

The Proposer is advised that the estimated Quantities set forth in the Unit Price proposal are approximate only, given solely to be used as part of proposal evaluation, and are not to be considered part of this Contract. The quantity of any unit item the Contractor is actually directed to provide may be less or more than so estimated and/or the Contractor may not perform all items of work. If so, no claim shall be made against the City for damages or for loss of anticipated profits.

(Separate Attachment)

COL. 1	COL. 2	COL. 3	COL. 4	COL. 5		COL. 6	
		ENGINEER'S ESTIMATE		UNIT PRICE (IN FIGURES)		EXTENDED AMOUNT (IN FIGURES)	
SEQ. NO	ITEM NUMBER and DESCRIPTION	OF QUANTITIY	UNIT	DOLLARS	CTS	DOLLARS	CTS
001	**4.11 CA** FILL, PLACE MEASUREMENT	3,000.00	C.Y.				
002	**6.01 AC** CLEARING AND GRUBBING	20,000.00	S.Y.				
003	**6.01 DRD-EC** DEBRIS REMOVAL AND DISPOSAL (EMERGENCY CONTRACTS)	150,000.00	C.Y.				
004	**6.27-EC** DEMOLITION OF STRUCTURE (EMERGENCY CONTRACTS)	20,000.00	C.Y.				
005	**6.34 ACTP** TEMPORARY CHAIN LINK FENCE, 6'-0" HIGH (WITH TOP AND BOTTOM RAILS AND POSTS MOUNTED ON STEEL PLATES)	5,000.00	L.F.				

006	**6.52 CG** CROSSING GUARD	3000.00	P/HR		
007	**7.13 A** MAINTENANCE OF SITE (10%)	1.00	L.S.		
008	**8.01 C1** HANDLING, TRANSPORTING, AND DISPOSAL OF NON-HAZARDOUS CONTAMINATED SOIL	4,000.00	TONS		
09	**8.01 C2** SAMPLING AND TESTING OF CONTAMINATED/POTENTIALLY HAZARDOUS SOIL FOR DISPOSAL PARAMETERS	20.00	SET		
010	**8.01 H** HANDLING, TRANSPORTING, AND DISPOSAL OF HAZARDOUS SOILS	1000.00	TONS		
011	**8.01 S** HEALTH AND SAFETY	1.00	LUMP SUM		

012	**8.01 W1** REMOVAL, TREATMENT AND DISPOSAL/DISCHARGE OF CONTAMINATED WATER	7.00	DAY		
013	**8.01 W2** SAMPLING AND TESTING OF CONTAMINATED WATER	3.00	SET		

TOTAL AMOUNT FOR UNIT PRICE ITEMS: $ _____

ATTACHMENT 4b (continued)

A. The Proposer shall insert the Total Amount for Part I: Total Amount for All Titles

Total Amount for Part A: $_____

B. The Proposer shall insert the Total Amount for Part II: Total Amount for Unit Price Items

Total Amount for Part B: $_____

TOTAL PROPOSAL PRICE (Add A + B) $_____
(a/k/a FEE PROPOSAL)

The Proposer must sign the Fee Proposal in the space provided below.

_____
Name of Proposer

By: _____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Telephone # EIN #

_____ _____
Address E-Mail Address

PROJECT: RQ_C **PIN: 8502016EM0011-37P**

ATTACHMENT 4c*

FEE PROPOSAL FORM

To be completed ONLY by Proposers submitting proposals for Provision of Environmental Testing Services work category – (III.A.8)

Project: Task Order Contract for On-Call Emergency Construction and Construction-Related Services, Citywide.

Submission: The proposer shall submit its Fee Proposal (Attachment 4c) in a clearly labeled, sealed package. The Fee Proposal shall consist of two parts. Part I is the Total Amount for All Titles, and Part II is the Total Amount for Unit Price Items.

Part I: All Inclusive Hourly Rates for Specified Titles of Personnel

Part I is the addition of Total Amount per Title for all titles listed below. The Total Amount per Title shall consist of Total Hours per Title multiplied by All Inclusive Hourly Rates per Title. The Total Hours per Title is being used for proposal purposes only. If requested in writing by DDC, the proposer shall submit Back-up Material for All Inclusive Hourly Rates, as described below. Submission of such Back-up material shall be within two (2) business days of notice by DDC.

TITLE	TOTAL HOURS PER TITLE (For Proposal Purposes Only)	ALL INCLUSIVE HOURLY RATE	TOTAL AMOUNT PER TITLE (Total Hours per Title multiplied by All Inclusive-Hourly Rate)	Number of Years of Experience	Number of Years in Relevant Supervising Experience
Contract Executive	200			15	7
Project Executive	200			10	7
Senior Project Manager	200			10	5
Junior Project Manager	200			5	N/A
Senior Technical Advisor (Subject Matter Expert)	200			10	5
Junior Technical Advisor (Subject Matter Expert)	200			5	N/A
Safety Manager	200			10	5
Operational Crew (4 people)	800				

Total Amount for All Titles
(Addition of Total Amount per Title
for all titles):

_____
TOTAL AMOUNT FOR ALL TITLES

ATTACHMENT 4c (continued)

Part II: Unit Price Items

Part II is the addition of all Unit Prices for the Items specified below. Such Unit Price Items cover the cost of all work, labor, material, tools, plant, insurance and appliances of every description necessary to complete the work, in accordance with the attached specifications.

The Proposer is advised that the estimated Quantities set forth in the Unit Price proposal are approximate only, given solely to be used as part of proposal evaluation, and are not to be considered part of this Contract. The quantity of any unit item the Contractor is actually directed to provide may be less or more than so estimated and/or the Contractor may not perform all items of work. If so, no claim shall be made against the City for damages or for loss of anticipated profits.

Test Description*	**Unit Laboratory Rate**	**Estimated Quantity (# of samples)**	**Total ($)**
RCRA Characteristics - EPA 7.3.4.2.. - 5 Day TAT		**4000**	
Lead Paint Chip Analysis - AAS - 48 hour TAT		**2000**	
TEM Analysis - NOB ACM - 48 hour TAT		**3000**	
PLM Analysis - Friable ACM - 24 hour TAT		**2000**	
Individual Total Metals - EPA 6010/7000 Series		**4000**	
NYCDEP Effluent Parameters - 5 Day		**4000**	
TAL Metals -EPA 6010/20/7000 Series - 5 Day TAT		**3000**	
Soil Gas VOC Analysis - TO-15 - 5 Day		**3000**	
Full TCLP - EPA 1311/8260B.. - 5 Day TAT		**4000**	
Total Cyanide		**4000**	
Phenols - EPA-9066/420.2 - 5 Day TAT		**4000**	
TCLP Lead EPA 1311/7000 Series - 5 Day TAT		**4000**	
TCLP Metals -RCRA 8 - EPA1311/6010B - 5 Day TAT		**4000**	
RCRA 8 Metals- EPA 6010/20/7000 Series - 5 Day TAT		**4000**	
PP Metals (Soil) EPA 7000 Series - 5 Day TAT		**4000**	
PLM Analysis - NOB ACM - 48 hour TAT		**2000**	
PLM Analysis - Friable ACM - 4 hour TAT		**2000**	
Photo Ionization Detector - PID - Direct Read		**4000**	

Microbial Analysis - Wipe Sample - 10 day TAT		2000	
Flame Ionization Detector (FID) - Direct Read		4000	
TCLP Waste Class -EPA 7.3.4.2.. - 5 Day TAT		4000	
Microbial Anal.- Air Sample - 10 TAT- Total Spores		2000	
Multiple Gas Monitor - Direct Read		4000	
Multiple Water Analyzer - Direct Read		4000	
Oil-Water Interface Probe - Direct Read		4000	
Radiation Meter - Direct Read		4000	
Global Positioning System - Direct Read		4000	
Mercury Vapor Analyzer - Direct Read		4000	
Colorimetric chemical detector tubes incl. pump		1000	
PCM Analysis - Air Sample - 4 hour TAT		2000	
Lead in Air Sample - 48 hour TAT		2000	
STARS VOC - EPA 8021B/8260 - 5 Day TAT		4000	
TCL-Pest - EPA 8081A/608 - 5 Day TAT		4000	
PCB - EPA-3550B - EPA 8082/608 - 5 Day TAT		4000	
PAH - EPA 8270C/625 - 5 Day TAT		4000	
StARS SVOC - EPA 8270C/625 - 5 Day TAT		4000	
TCL/TAL EPA 8260B.. - 5 Day TAT		4000	
TCL-Herb. - EPA 8151A/608 - 5 Day TAT		4000	
Landfill Gas Monitor - Direct Read		2000	
Real Time Analyzer (Temp., RH, CO, CO2)		1000	
Lead in Water Sample - 48 hour TAT		2000	
TEM Analysis - Air Sample - 24 hour TAT		2000	
TPHC-DRO/GRO Method 8015B -2 Day TAT		2500	
Lead Wipe Sample Analysis - AAS - 48 hour TAT		2000	
Microbial Anal. - Air Sample - 10 TAT - Culturable		2000	
TEM Analysis - Friable ACM - 48 hour TAT		2000	
XRF Test Apparatus		2000	

TCL BNAE SVOC - EPA 8270C/625 - 5 Day TAT		4000	
Lead in Soil Sample - 48 hour TAT		2000	
PCM Analysis - Air Sample - 24 hour TAT		6000	
TCL VOC - EPA - 8260B/624 - 2 Day TAT		4000	
		Total Lab Testing =	
Soil Disposal*			
Item Description	Unit Price	Estimated Units (Tons)	Total
Disposal of Non-Hazardous Contaminated Soils		10000	
Disposal of Hazardous Soils		5000	
Water Disposal*	Unit Price	Estimated Units (per day)	Total
Removal, Treatment, and Discharge / Disposal of Contaminated Water		45	
		Total Disposal =	
* May include radioactive and bio-hazard testing			
		Total Price (Total Lab Testing + Total Disposal)=	

ATTACHMENT 4c (continued)

A. The Proposer shall insert the Total Amount for Part I: Total Amount for All Titles

Total Amount for Part A: $_____

B. The Proposer shall insert the Total Amount for Part II: Total Amount for Unit Price Items (Total Laboratory Testing + Total Disposal)

Total Amount for Part B: $_____

TOTAL PROPOSAL PRICE (Add A + B) $_____
(a/k/a FEE PROPOSAL)

The proposer must sign the Fee Proposal in the space provided below.

_____
Name of Proposer

By: _____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Telephone # EIN #

_____ _____
Address E-Mail Address

PROJECT: RQ_C **PIN: 8502016EM0011-37P**

ATTACHMENT 4d*

FEE PROPOSAL FORM

To be completed ONLY by Proposers submitting proposals for the Supervision, Management and Administrative Services (III.A.9)

Project: Task Order Contract for On-Call Emergency Construction and Construction-Related Services, Citywide.

Submission: The Proposer shall submit its Fee Proposal (Attachment 4a) in a clearly labeled, sealed package. The Fee Proposal shall consist of the addition of Total Amount per Title for all titles listed below. The Total Amount per Title shall consist of Total Hours per Title multiplied by All Inclusive Hourly Rates per Title. The Total Hours per Title is being used for bidding purposes only. If requested in writing by DDC, the Proposer shall submit Back-up Material for All Inclusive Hourly Rates, as described below. Submission of such Back-up material shall be within two (2) business days of notice by DDC.

All Inclusive Hourly Rates for Specified Titles of Personnel

TITLE	TOTAL HOURS PER TITLE (For Proposal Purposes Only)	ALL INCLUSIVE HOURLY RATE	TOTAL AMOUNT PER TITLE (Total Hours per Title multiplied by All Inclusive-Hourly Rate)	Number of Years of Experience	Number of Years in Relevant Supervising Experience
Contract Executive	200			15	7
Project Executive	200			10	7
Senior Project Manager	200			10	5
Junior Project Manager	200			5	N/A
Senior Technical Advisor (Subject Matter Expert)	200			10	5
Junior Technical Advisor (Subject Matter Expert)	200			5	N/A
Safety Manager	200			10	5

Total Amount for All Titles
(Addition of Total Amount per Title
for all titles):

_____
THE CONTRACTOR'S FEE PROPOSAL

ATTACHMENT 4d (continued)

The Proposer must sign the Fee Proposal in the space provided below.

_____
Name of Proposer

By: _____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Telephone # EIN #

_____ _____
Address E-Mail Address

ATTACHMENT 5

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS: On-Call Contracts for Project Management and Related Services for Emergency Work Involving Design, Construction, Construction Management Services and Procurement of Goods.	**PIN:** 8502016EM00011-37P

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

___Part I

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

Addendum # 1, dated _____
Addendum # 2, dated _____
Addendum # 3, dated _____
Addendum # 4, dated _____
Addendum # 5, dated _____
Addendum # 6, dated _____
Addendum # 7, dated _____
Addendum # 8, dated _____
Addendum # 9, dated _____
Addendum #10, dated _____

___Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT 6

CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of VENDEX Compliance

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

VENDEX Compliance: To demonstrate compliance with VENDEX requirements, the Proposer shall complete either Section (1) or Section (2) below, whichever applies.

(1) **Submission of Questionnaires to MOCS**: By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted VENDEX Questionnaires to the Mayor's Office of Contract Services, Attn: VENDEX, 253
Broadway, 9th Floor, New York, New York 10007.

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

(2) **Submission of Certification of No Change to DDC**: By signing in the space provided below, the Proposer certifies that it has read the instructions in a "Vendor's Guide to VENDEX" and that such instructions do not require the Proposer to submit VENDEX Questionnaires. The Proposer has completed **TWO ORIGINALS** of the Certification of No Change.

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

ATTACHMENT 7

DOING BUSINESS DATA FORM

DOING BUSINESS ACCOUNTABILITY PROJECT
QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM

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

Why have I received this *Data Form*?
The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this *Data Form* is completed. Most transactions valued at more than $5,000 are considered business dealings and require completion of the *Data Form*. Exceptions include transactions awarded on an emergency basis or by publicly advertised, non-pre-qualified competitive sealed bid. Other types of transactions that are considered business dealings include real property and land use actions with the City.

What entities will be included in the *Doing Business Database*?
Entities that hold $100,000 or more in grants, contracts for goods or services, franchises or concessions ($500,000 or more for construction contracts), along with entities that hold any economic development agreements or pension fund investment contracts, are considered to be doing business with the City for the purposes of LL 34 and will be included in the *Doing Business Database*. Because all of the business that an entity does or proposes to do with the City will be added together, the *Data Form* must be completed for all covered transactions even if an entity does not currently do enough business with the City to be listed in the *Database*.

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

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

I provided some of this information on the VENDEX Questionnaire; do I have to provide it again?
Although the *Doing Business Data Form* and the VENDEX Questionnaire request some of the same information, they serve entirely different purposes. In addition, the *Data Form* requests information concerning senior managers, which is not part of the VENDEX Questionnaire.

My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the Data Form be completed?
A joint venture that does not yet exist must submit Data Forms from each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.

Will the information on this *Data Form* be available to the public?
The names and titles of the officers, owners and senior managers reported on the *Data Form* will be made available to the public, as will information about the entity itself. However, personal identifying information, such as home address, home phone and date of birth, will not be disclosed to the public, and home address and phone number information will not be used for communication purposes.

No one in my organization plans to contribute to a candidate; do I have to fill out this *Data Form*?
Yes. All entities are required to return this *Data Form* with complete and accurate information, regardless of the history or intention of the entity or its officers, owners or senior managers to make campaign contributions. The *Doing Business Database* must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

I have already completed a *Doing Business Data Form*; do I have to submit another one?
Yes. An entity is required to submit a *Doing Business Data Form* each time it proposes on or enters a transaction considered business dealings with the City. However, the *Data Form* has both a No Change option, which only requires an entity to report its EIN and sign the last page, and a Change option, which allows an entity to only fill in applicable information that has changed since the previous completion of the *Data Form*. No entity should have to fill out the entire *Data Form* more than once.

How does a person remove him/herself from the *Doing Business Database*?
Any person who believes that s/he should not be listed may apply for removal from the *Database* by submitting a Request for Removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the entity, or the entity no longer being in business. Entities may also update their database information by submitting an update form. Both of these forms are available online at www.nyc.gov/mocs (once there, click MOCS Programs) or by calling 212-788-8104.

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

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

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

What are the new campaign contribution limits for people doing business with the City?
Contributions to City Council candidates are limited to $250 per election cycle; $320 to Borough President candidates; and $400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at www.nyccfb.info, or 212-306-7100.

The *Data Form* is to be returned to the contracting agency.

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

The City of New York
Mayor's Office of Contract Services
Doing Business Accountability Project

Doing Business Data Form

To be completed by the City agency prior to distribution

Agency: 850 (DDC) **Transaction ID:** 85016P009 PIN:8502016EM0011-37P

Check One:	Transaction Type (check one):		
☒ Proposal	☐ Concession	☒ Contract	☐ Economic Development Agreement
☐ Award	☐ Franchise	☐ Grant	☐ Pension Investment Contract

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

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

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

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

☐ Entity has never completed a Doing Business Data Form. *Fill out the entire form.*

☐ Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*

☐ No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Entity is a Non-Profit: ☐ Yes ☐ No

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

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

Section 2: Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

☐ The entity is not-for-profit ☐ There are no individual owners ☐ No individual owner holds 10% or more shares in the entity

☐ Other (explain): _____

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Section 4: Senior Managers

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

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

I certify that the information submitted on these four pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

Return the completed Data Form to the agency that supplied it.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.

Printed on paper containing 30% post-consumer material

ATTACHMENT 8

Displacement Determination Form – Pursuant to City Charter § 312(a)

(for PSRs or equivalent pre-procurement documents)

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

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

If you have any questions about Local Law 63 or about completing this form, please contact the Mayor's Office of Contract Services at APTLL63@cityhall.nyc.gov or (212) 788-0010.

Procurement Description:

APT EPIN:	85016P0009	**Agency:**	DDC
Your Name:	Eric Macfarlane		
Phone:	718-391-3142	**Email:**	macfarla@ddc.nyc.gov

Please specifically identify the service(s) being procured.

FY16NDDC9901 - RQ_C Construction Management Design Build for Disaster Recovery On-Call Contracts For Project Management and Related Services For Emergency Work Involving Design, Construction Management Services, and Procurement of Goods.

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

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

Part 1: Certification of No Displacement

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

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

Do any civil service and/or job titles within this Agency currently perform the services sought by the proposed contract and/or services of a substantially similar nature or purpose?
Yes __ No X
If so, list the names of such titles and the extent to which Agency employees within such titles currently perform such services.

Do the services sought by the proposed contract expand, supplement, or replace existing services?
Yes X No __
In either event, include a detailed description comparing the services sought by the proposed contract with such existing services.

The services under this proposed contract will expand existing capacity. The services sought by the proposed cntract will secure On-Call Contracts For Project Management and Related Services For Emergency Work Involving Design, Construction Management Services, and Procurement of Goods. The role of the DDC staff in the Infrastructure Division responsible for managing the contract is predominantly one of review and oversight, coordination, including but not limited to, collaborating with the client agency in project scope development, review of consultant work in the form of design plans and specifications, and ensuring that all design guidelines are met.

Is there capacity within the Agency to perform the services sought by the proposed contract?
Yes __ No X
If not, provide a detailed description specifying the ways in which the Agency lacks such capacity.

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

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

As stated above the agency does not have staff who could perform the services required for this contract.

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

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

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

Part 2: Certification of Displacement

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

ATTACHMENT 9

SPECIFICATIONS FOR DEBRIS REMOVAL WORK CATEGORY

I - PAGES NEW SECTIONS

NOTICE

UNLESS OTHERWISE NOTED, ALL SECTIONS, SUBSECTIONS, ARTICLES, OR SUBARTICLES AS REFERRED TO HEREIN WITHIN THESE NEW SECTION SPECIFICATIONS SHALL BE THOSE OF THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION'S (NYCDOT'S) CURRENT STANDARD HIGHWAY SPECIFICATIONS WITH CURRENT ADDITIONS, MODIFICATIONS AND REVISIONS TO THE STANDARD HIGHWAY SPECIFICATIONS (R-PAGES).

THE STANDARD HIGHWAY SPECIFICATIONS ARE NOT INCLUDED IN THESE I-PAGES. SEE THE NYCDOT STANDARD HIGHWAY SPECIFICATIONS BOOKS FOR STANDARD SPECIFICATIONS TEXTS.

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Section 6.01 DRB-EC
DEBRIS REMOVAL AND DISPOSAL FOR EMEGNECY CONTRACTS

6.01 DRB-EC.1. DESCRIPTION. Under this item, the Contractor shall remove all debris and objectionable material in the work areas which shall be contained in the TASK ORDER issued for such work.

In general, the TASK ORDER shall include but not limited to the following:

1. Right of Way debris removal
2. Municipal Solid Waste (MSW)
3. House Hold Hazardous Waste (HHW): Which included Oil, pesticides, paints, clealing agents like beleach use in house hold chores, for which means and method of disposal is to be decided by the Eingeer in consultation with the EMERGENCY RESPONSE TEAM (ERT)EMERGENCY RESPONSE TEAM (ERT).
4. White Goods: Refrigerators, freezers, air conditioners, washiers, dryers, stoves water heartes and dishwashers.
5. Putrescibles: Rotten or spoiled fruites, begetables, seafood, or meat.
6. Feron removal: Means and method of disposal is to be decided by directred by the Eingeer in consultation with the EMERGENCY RESPONSE TEAM (ERT).
7. Electronic goods
8. Waste containers like drums, propane tanks, large and small containers, and vehicle fuel tanks
9. Private property debris removal
10. Debris removal from drainage structures
11. Waterway debris as approved by FEMA
12. Removal of water from buildings and roadways

Work shall also include removal and disposal of debris including, but not limited to, household wastes, yard waste, construction fill, fencing, abandoned structures, stones, wood, construction debris, concrete structures, steel/metal trusses, fallen trees, abandoned vehicles, large appliances, tires, auto engines, other auto debris, scrap pieces of metal, plastic, asphalt and concrete rubble, other dumped fill, and any other objectionable materials, as noted in the TASK ORDER, from within the work area and where directed and approved by the Engineer in consultation with ERT.

6.01 DRB-EC.3. DISPOSAL OF MATERIAL. All materials shall be disposed of away from the site of the work in accordance with all applicable regulations. The disposal of materials resulting from debris removal by burning in open fires will not be permitted.

6.01 DRB-EC.4. METHODS.

A. All removal of debris from, private properties, drainage structures etc. Wooded areas, marshes, ponds and stream beds shall be performed by hand unless otherwise directed by the Engineer in consultation with ERT, except those areas that can

be reached by machines located on paved roads or hard-packed open surfaces.

B. The removal of all water based debris shall be done following the installation of the turbidity curtain and cofferdam and shall be performed "in the dry". If debris removal is necessary to allow installation of the cofferdam, the turbidity curtain shall be installed first, and only to the extents necessary to install same. The cofferdam shall be installed prior to dewatering. Remove debris from an entry point that minimizes impact to the shoreline, considering both edge vegetation and bank stability.

C. Removals shall be done with care and shall include the necessary shoring, bracing, and support to prevent movement, settlement, or collapse of existing structures and facilities. The Contractor shall be responsible for any damage which may be caused by removal work to any part or parts of the existing structures or items designated to remain.

D The Contractor shall remove concrete structures and sub-structures to the existing grade as directed by the Engineer in consultation with ERT.

E. Use water sprinkling, temporary enclosures and other suitable methods to limit the amount of dust and dirt rising and scattering in the air to the lowest practical level. Comply with all governing regulations pertaining to environmental protection. Do not use water when it may create hazardous or objectionable conditions such as ice, flooding and pollution.

F. Clean adjacent structures and facilities of dust and dirt caused by debris removal operations. Return adjacent areas to conditions existing prior to the start of work.

G. The Contractor shall at all times during the progress of the work keep the debris removal area free from water. The water from the ground surface, trenches and excavations shall be disposed of in such a manner as will not cause injury to the public health, nor to public or private property, nor to the work completed or in progress, nor to the surface of the streets, nor cause any interference with the use of the same by the public. All sewers used for disposal of water from the trenches and excavation during construction shall be acceptably cleaned.

When in order to comply with the above it would be necessary to install well points, the Contractor shall do so at no additional cost to the City.

The Contractor shall, with the Contractor's own equipment, provide dewatering where required at no additional cost to the City. The cost for all labor, equipment, materials, etc. required to dispose of water from the trenches and excavations shall be deemed included in the prices bid for all items of the contract.

All dewatering and discharge pipes and hoses which cross traveled roadways shall be placed in such a manner so as to eliminate any disruption of traffic flow. If so ordered by the Engineer in consultation with ERT, the Contractor shall place the pipes and hoses in shallow trenches that will then be plated over. All header pipes shall be buried below existing roadway grade at driveways in order to maintain access to driveways.

All plates shall be firmly secured so as to eliminate any possible shift or movement.

All pumps used in the dewatering operation shall be electric and shall be powered directly from a Con Edison drop, unless otherwise unavailable.

Dewatering by means of well points or deep wells will not be allowed in the Boroughs of Brooklyn or Queens where the rate of pumping exceeds forty-five (45) gallons per minute unless the appropriate permit has been secured from the New York State Department of Environmental Conservation.

6.01 DRB-EC.5. MEASUREMENT. The quantity of Debris Removal and Disposal to be measured for payment shall be the volume of debris satisfactorily removed from within the specified Work Areas.

In computing the amount of debris removal to be measured for payment, one (1) cubic yard of measured material in containers and/or vehicles will be paid for as eight-tenths (8/10) of a cubic yard of debris removed.

6.01 DRB-EC.6. PRICE TO COVER. The contract price bid per cubic yard for Debris Removal and Disposal shall include the cost of all labor, materials, equipment, insurance, and incidentals required to complete the work, together with all other work including but not limited to dewatering, building cofferdams etc., in connection therewith and incidental thereto,and as in full compliance with the TASK ORDER, the specifications and the directions of the Engineer in consultation with ERT.

Price for the cost of fill shall be paid under Item No.4.11 CA.

Price for the cost of temporary chain link fence shall be paid under 6.34 ACTP.

Payment will be made under:

Item No.	Item	Pay Unit
6.01 DRD-EC	DEBRIS REMOVAL AND DISPOSAL (EMERGENCY CONTRACT)	C.Y.

SECTION 6.27 - EC
DEMOLITION OF CONCRETE/STEEL/WOODEN FRAME STRUCTURES FOR EMERGENCY CONTRACT

6.27- EC.1. INTENT. This section describes the demolition concrete/steel/woorde frame structures to be executed through TASK ORDERS, specifications, as directred by the Eingeer in consultation with the EMERGENCY RESPONSE TEAM (ERT)

6.27- EC.2. DESCRIPTION. In addition to furnishing all necessary labor, materials, plant, equipment, and necessary incidentals required, the work shall include the demolition, removal and disposal of entire or portions of buildings or other structures, particulars as indicated in the TASK ORDER, specified or directred by the Eingeer in consultation with the EMERGENCY RESPONSE TEAM (ERT), together with all appurtenances, sheds, extensions, fences, railings, stoops, steps, porches, areaways, chimneys, cellars, sub-cellars, debris and refuse of all kinds, and other miscellaneous structures.

TASK ORDER shall require that contractors provide equipment, operators, and laborers for debris management services which include, but are not limited to, separation, removal, hauling, disposal, and structural demolition on public, commercial, and private property as specified by the City during an actual emergency event. Task orders may also require removal of water from City roadways and highways. Task orders for debris monitoring and verification activities may also be required

6.27- EC.3. GENERAL.

The Contractor shall comply with the directions of the the Eingeer who will issue directions after consultation with the EMERGENCY RESPONSE TEAM (ERT), relating to the demolition of buildings or structures; the removal and disposal of materials resulting from demolition operations; the protection of adjacent properties and the general public; and the furnishing and maintenance of passageways, guard fences and other protective facilities.

(A) DISPOSAL

All materials resulting from demolition operations or required to be excavated in connection with such operations, except as otherwise provided or directed, shall be disposed of by the Contractor away from the demolition site and the site of the contract work.The burning of debris or other demolition materials will not be permitted except as approved and authorized by the Eingeer in consultation with the EMERGENCY RESPONSE TEAM (ERT).

(B) CLEAN AIR ACT

The U.S. Environmental Protection Agency (E.P.A.) Clean Air Act regulations shall be followed if directed the EMERGENCY RESPONSE TEAM.

The Contractor shall notify the Eingeer who will issue dirctions after consultation with the EMERGENCY RESPONSE TEAM (ERT) of any building demolition work to be performed.

(C) DAMAGES

The Contractor shall be responsible for all damages resulting from and due to his demolition operations. Said responsibility shall include, but not be limited to, the grounds; buildings; structures; and portions of buildings or structures which are adjacent to the demolition site and are to remain. No additional payment or compensation will be made or allowed the Contractor for costs incurred for repairs and replacements required to satisfactorily remedy the aforesaid damages or for the settlement of any claims resulting therefrom.

(D) RODENT EXTERMINATION

When required by any code, law, ordinance, statute, rule or regulation, the Contractor shall employ a licensed exterminator to rid a building or structure of rats; later on file an extermination certificate with the regulating agency; and submit a copy of the said certificate to the Engineer in consultation with ERT, before starting demolition operations when the emergeny is over.

(E) SALVAGE

The City assumes no responsibility for the condition or presence of salvageable materials in or on the premises. All damage to or loss of salvageable materials, whether by reason of fire, theft or other happening, shall be at the risk of the Contractor and no such loss or damage shall relieve him from any obligation under the contract or form the basis of any claim against the City.

(F) FIRE PROTECTION, ETC.

The Contractor shall furnish, employ and pay for all necessary appliances required for the adequate protection of the work against fire and to safeguard existing structures and the public. He shall at all times maintain adequate facilities for the thorough saturation of all debris and materials with water to the extent required to prevent dust arising from the work. All water used including temporary piping, connections, permits therefor, and removal of piping, when directed, shall be provided and paid for by the Contractor.

(G) DISCONNECTING UTILITY AND PUBLIC SERVICES

a. Prior to commencement of work, the Contractor shall give notice to the EMERGENCY RESPONSE TEAM to have the steam, gas and electricity to the buildings to be demolished, disconnected by the utility companies owning the services.The Contractor shall obtain clearance from the utilities that the services have been terminated, and shall infor them to the EMERGENCY RESPONSE TEAM, for his approval, prior to commencement of demolition operations.

b. The Contractor shall seal or plug all storm or sanitary sewers or other connections to the sewers leading from the structure to be demolished. He shall disconnect all water services and shall make the necessary arrangements with the New York City Department of Environmental Protection, Bureau of Water and Sewer Operations, to destroy or plug the tap in the City water main. All such work shall be done in full accordance with the rules and regulations of, and to the satisfaction of the EMERGENCY RESPONSE TEAM.

c. The Contractor shall maintain and preserve all utilities, other than those covered by paragraphs a and b above, traversing the premises. He shall maintain in a safe condition all street openings made by him, and shall backfill and tamp them.

d. All expenses arising from or in connection with the performance of the provisions of paragraphs b and c above shall be borne by the Contractor.

(H) BLASTING

Blasting operations, when permitted by the EMERGENCY RESPONSE TEAM. All damage to existing structures shall be promptly repaired by the Contractor at no cost to the City.

6.27.4- EC. METHODS.

(A) EXTENT OF REMOVAL

Within the limits shown, all structures and appurtenances shall be completely removed except that foundation walls shall be removed to a depth of two (2’) feet below new subgrade of pavement. Basement, vault, yard, garage and areaway floors shall be broken up to prevent accumulation of water and to expose voids and hollows beneath the floors. No piece of masonry or concrete, when broken, shall exceed eighteen (18”) inches in its greatest dimension. When the top of an existing floor lies above or less than eighteen (18”) inches below the proposed final surface, the said floor shall be removed and

disposed of by the Contractor away from the site or at such location on the site as the Engineer in consultation with ERT shall direct.

(B) REMOVAL AND DISPOSAL OF MATERIALS

All materials in buildings or structures, demolished hereunder, shall become the property of the Contractor, unless otherwise provided, and shall be removed and disposed of away from the site by him,

including all wood, plaster, lath and debris of every kind which has been allowed to fall and accumulate in the cellars, vaults and areaways of a demolished building or structure. Before issuance of a final certificate, the Contractor shall remove all falsework, temporary structures, plant of all description, equipment, and debris of every nature from the demolition area, and dispose of them away from the site.

(C) BACKFILL

All areas of demolition shall be backfilled to a level of two (2') feet below the top of proposed curb, or to such elevation as the Engineer in consultation with ERT shall direct, with material consisting of earth and not more than fifty (50) percent of broken stone, brick masonry, and/or broken concrete. This fill shall be graded from coarse to fine with no single piece having a dimension greater than eighteen (18") inches, and it shall be deposited so that no voids will occur. Wood, plaster, lath or any such material shall not be used. All material not acceptable for backfill shall be removed from the site. The depth between two (2') feet below top of curb or directed elevation and the top of curb or directed elevation shall be backfilled with acceptable fill material consisting of clean earth, clean ashes, clean cinders, broken stone and broken masonry; all of which shall be free from muck, garbage, rubbish and any other perishable or objectionable material. This fill shall be graded uniformly from coarse to fine and deposited so that no voids will occur. It shall have no material larger than three (3") inches in its greatest dimension. No frozen material will be permitted to be used for backfill.

(D) CLEAN UP

The demolition areas and the portions of the streets affected by the work shall be cleaned of all materials resulting from or used in the work to be done hereunder and shall be left in a condition satisfactory to the Engineer in consultation with ERT.

6.27- EC.5. PAYMENT. The Contractor will be paid per cubic yard of price bid for completing all of the work required to be done hereunder.

6.27- EC.6. PRICE TO COVER. The contract price bid per cubic yard for Debris Removal and Disposal shall include the cost of all labor, materials, equipment, insurance, and incidentals required to complete the work, together with all other work including but not limited to the type of structure like concrete/steel/wooden frame, in full compliance with the TASK ORDER, the specifications and the directions of the Engineer in consultation with ERT and Emergency Response Team.

Payment will be made under:

Item No.	Item	Pay Unit
6.27-EC	DEMOLITION OF STRUCTURE (EMERGENCY CONTRACT)	C.Y.

SECTION 6.39A-EC
Mobilization for Emergency Contracts

6.39 GI.1. Description. Under this section, the Contractor shall set up his necessary general plant, including shops, storage areas, office and such sanitary and other facilities as are required by City, State or Federal law or regulation. Unless otherwise provided, the cost of required bonds and/or any other similar significant initial expense required for the initiation of the contract work shall also be included in this section. The determination of the adequacy of Contractor's facilities, except as noted above, shall be made by the Contractor.

6.39 GI.2. Materials. Unless otherwise specified, such materials as are required that are not to be a part of the completed contract shall be as determined by the Contractor, except that they shall conform to any pertinent City, State or Federal law, regulation or code.

6.39 GI.3. Construction Methods. Such work as is done in providing the facilities and services under this section shall be done in a safe and workmanlike manner and shall conform with any pertinent City, State or Federal law, regulation or code. Good housekeeping consistent with safety shall be maintained.

6.39 GI.4. Measurement and Payment. Payment for this item will be made by lump sum, and included in the payment for each Task Order. The lump sum shall be equal to eight percent (8%) of the total price of each Task Order. Said lump sum amount shall be deemed to include the furnishing and maintaining of any plant, services or other facilities noted under "Description" to the extent and at the time the Contractor deems them necessary for his operations, consistent with the requirements of this section and this contract.

Payment will be made under:

Item No.	Item	Pay Unit
6.39A-EC	MOBILIZATION FOR EMERGENCY CONTRACTS	L.S.

NOTE: This item will not be included in the proposal price.

HAZ - PAGES

SPECIFICATIONS FOR HANDLING, TRANSPORTATION AND DISPOSAL OF NON-HAZARDOUS AND POTENTIALLY HAZARDOUS CONTAMINATED MATERIALS

NOTICE

THE PAGES CONTAINED IN THIS SECTION ARE ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THE CONTRACT DOCUMENTS AND HEREBY MADE PART OF SAID CONTRACT DOCUMENTS TO THE SAME EXTENT AS IF IT WAS ORIGINALLY INCLUDED HEREIN.

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Attachments

1. New York City Department of Environmental Protection Limitations for Effluent to Storm-Sanitary or Combined Sewers Parameters
2. Applicable Regulations
3. Definitions

ITEM 8.01 C1 HANDLING, TRANSPORTING AND DISPOSAL OF NON-HAZARDOUS CONTAMINATED SOILS

8.01 C1.1 WORK TO INCLUDE

General: This work shall consist of the handling, transportation and disposal of non-hazardous contaminated soils. The materials covered by this specification are soils that are contaminated with petroleum or chemical products but cannot be classified as hazardous waste. For the purpose of this specification, soil shall be defined as any material excavated below the pavement and base for pavement.

Non-hazardous contaminated soils are defined as soils exhibiting one or more of the following characteristics:

- Elevated Photo-Ionization Detector (PID) readings, subsequently confirmed by lab analysis
- Visual evidence of contamination
- Petroleum and/or chemical odors
- Soils that have been documented as contaminated in previous environmental reports

Non-hazardous contaminated soils must be stockpiled at an off-site approved location or secured on-site by the Contractor, meeting all required Federal, State and Local stipulations. Sampling and laboratory analysis must be conducted to determine if the soils are hazardous, unless the alternative procedure as defined under subsection 8.01 C1.1 A.5 has been agreed upon by treatment facilities. Contaminated soils determined to be non-hazardous shall be handled in accordance with the specifications herein for Item 8.01 C1. Contaminated soils determined to be hazardous shall be handled in accordance with the specifications for Item 8.01 H – Handling, Transporting and Disposal of Hazardous Soils.

The Contractor shall retain the services of an independent Environmental Consultant, as specified under Item 8.01 S – Health and Safety, to oversee the work required under this Item.

Non-hazardous soils shall be delivered to the disposal or treatment facility within thirty (30) calendar days after excavation.

The Contractor shall conduct sampling and analysis of the impacted soils as specified under Item 8.01 C2 – Sampling and Testing of Contaminated/Potentially Hazardous Soils for Disposal Parameters. The laboratory results shall be forwarded to DDC Program Management, Office of Environmental and Geotechnical Services (OEGS) for review to determine if the soils will be handled and disposed of as contaminated regulated soils or hazardous waste. No other soils shall be sampled or tested without the DDC's approval or direction.

The Contractor shall ensure that all operations associated with the handling, sampling, loading, transportation, and disposal of non-hazardous contaminated soils are in compliance with all applicable Federal, State, and City statutes and regulations.

The Contractor shall document the excavation, handling, transportation and disposal of non-hazardous contaminated soils. The Contractor shall supply all equipment, material and labor required to conduct the specified work of this Item.

A. Material Handling Plan: Within twenty-four (24) hrs after award of the TASK ORDER, the Contractor shall submit to the Program Management, OEGS for review, a Material Handling Plan (MHP). The MHP must be approved by the Program Management, OEGS, prior to the Contractor's commencement of work. The MHP shall, at a minimum, consist of:

   1. The Contractor's procedures for identifying non-hazardous contaminated soils during excavation, including the specific model and manufacturer of intended organic vapor

monitoring equipment and calibration procedures to be used. It should also include the training and experience of the personnel who will operate the equipment.

1. The Contractor's procedures for safely handling non-hazardous contaminated soils. The procedures must include personnel safety and health as well as environmental protection considerations.

3. Name, address, New York State Department of Health's (DOH) Environmental Laboratories Accreditation Program (ELAP) status and telephone number of the proposed laboratory for analysis of representative soil samples. The ELAP for the intended analysis must approve the laboratory.

4. Identification of the Contractor's proposed waste transporter(s). This information shall include:

   a. Name and Waste Transporter Permit Number

   b. Address

   c. Name of responsible contact for the hauler

   d. Telephone number for the contact

   e. Any and all necessary permit authorizations for each type of waste transported

   f. Previous experience in performing the type of work specified herein

5. All staging/stockpiling areas (if stockpiling areas are intended and available), or alternate procedures that will be used. Alternate procedures may include, but are not limited to, agreements from the intended disposal or treatment facilities to accept boring data and/or analytical data previously obtained during the site characterization so that materials may be directly loaded into vehicles for shipment to the disposal facility.

6. A backup facility should the staging/stockpile areas become unavailable, insufficient in area or not be present by some other unforeseen difficulty.

7. Identification of the Contractor's two proposed Treatment Storage or Disposal (TSD) facilities for non-hazardous contaminated soils (primary and back-up) for final disposal of the soils. The primary TSD shall be an approved soil recycling/treatment facility. The backup facility may be a recycling/treatment facility or a New York State Department of Environmental Conservation (DEC) approved lined landfill or other facility approved by DEC to accept this material. The information required for each facility shall include:

   a. Facility name and the State identification number

      (1) Facility location

      (2) Name of responsible contact for the facility

      (3) Telephone number for contact

      (4) Signed letter of agreement to accept waste as specified in this contract

      (5) Unit of measure utilized at facility for costing purposes

   b. A listing of all permits, licenses, letters of approval, and other authorizations to operate, which are currently held and valid for the proposed facility.

   c. A listing of all permits, licenses, letters of approval, and other authorizations to operate which have been applied for by the proposed facility but not yet granted or issued.

d. The Contractor shall specify and describe the disposal/containment unit(s) that the proposed facility will use to manage the waste. The Contractor shall identify the capacity available in the units and the capacity reserved for the subject waste.

e. The Contractor shall provide the date of the proposed facility's last compliance inspection.

f. A list of all active (unresolved) compliance orders (or agreements), enforcement notices, or notices of violations issued to the proposed facility shall be provided. The source and nature of the cause of violation shall be stated, if known.

8. Description of all sampling and field/laboratory analyses that will be needed to obtain disposal facility approval.

8.01 C1.2 MATERIALS

A. Containers shall be as required in the United State Department of Transportation (DOT) regulations.

B. Polyethylene to be placed under (20 mil. thickness minimum) and over (10 mil. thickness minimum) soil piles.

C. The Contractor shall assure that the waste hauler's appropriate choice of vehicles and operating practices shall prevent spillage or leakage of contaminated material from occurring en route.

D. The Contractor shall provide, install and maintain any temporary loading facilities on site as required until completion of material handling activities. The location and design of any facilities shall be included in the MHP and be approved by the Program Management, OEGS.

8.01 C1.3 CONSTRUCTION DETAILS

A. <u>Material Handling</u>

1. Immediately after excavation of non-hazardous contaminated soil the Contractor shall:

a. Load material directly onto trucks/tankers/roll offs for disposal off site; or

b. If interim stockpiling is required, place on a minimum of 20 mil. or equivalent plastic ground cloth and cover by minimum of 10 mil. polyethylene sheeting or equivalent to protect against leaching or runoff of contaminants into groundwater or stormwater. Weight or secure the sheeting by appropriate means and seal seams as approved by the DDC to prevent tearing or removal by weather. Grade surrounding surface to provide for positive drainage away from pile. Stockpile shall not exceed 100 cubic yards.

2. Institute appropriate procedures and security measures to ensure the protection of site personnel and the public from contaminated materials as described in the approved MHP and Item 8.01 S - Health and Safety.

3. Any soil encountered that appears to contain unknown contaminants (based on visual, odor, or other observation), or that vary substantially from the material originally identified must be segregated in stockpiles and the independent Environmental Consultant promptly notified. Construct stockpiles to the same requirements as stated in subsection A.1.b above.

4. Provide any dewatering that is necessary to complete the work. Contaminated water shall be disposed of in accordance with Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

5. Provide and operate field organic vapor test equipment, a PID or a flame ionization detector (FID), to detect general organic vapor levels at intervals of approximately fifty (50) cubic yards of soil excavated, when visual or odor observations indicate the material may substantially differ from the soil previously excavated and/or as directed by the independent Environmental Consultant.

B. Off-Site Transportation to Disposal or Treatment Facility

1. General

a. The Contractor shall furnish all labor, equipment, supplies and incidental costs required to transport contaminated material from the work area to the off-site disposal or treatment facility, and any other items and services required for transporting contaminated material for disposal at an off-site facility.

b. The Contractor shall submit the name and location of the facility where an off-site scale is located. The Contractor shall also submit a plan to the DDC for review outlining procedures on controlling trucks leaving the work site and en-route to the off-site scale. The Contractor shall be responsible for tracking all material/vehicles from the site to the off-site scale.

c. The Contractor shall provide to the DDC certified tare and gross weight slips for each load received at the accepted facility which shall be attached to each returned manifest.

d. The Contractor shall coordinate the schedule for truck arrival and material deliveries at the job site to meet the approved project schedule.

e. The Contractor shall inspect all vehicles leaving the project site to ensure that contaminated soils adhering to the wheels or undercarriage are removed prior to the vehicle leaving the site.

f. The Contractor shall obtain letters of commitment from the waste haulers and the treatment, disposal or recovery facility to haul and accept shipments. The letter shall indicate agreement to handle and accept the specified estimated quantities and types of material during the time period specified in the project schedule and any time extension as deemed necessary.

g. **The Program Management, OEGS shall review and approve waste profiles before transportation to the TSD facility.**

2. Hauling

a. The Contractor shall coordinate manifesting, placarding of shipments, and vehicle decontamination. All quantities shall also be measured and recorded upon arrival at the disposal or treatment facility. If any deviation between the two records occurs, the matter is to be reported immediately to the DDC and to be resolved by the Contractor to the satisfaction of the DDC.

b. The Contractor shall be held responsible, at its own cost for any and all actions necessary to remedy situations involving material spilled in transit or mud and dust tracked off-site.

c. The Contractor shall ensure that trucks are protected against contamination by properly covering and lining them with compatible material (such as polyethylene) or by decontaminating them prior to and between acceptances of loads.

d. The Contractor shall be responsible for inspecting the access routes for road conditions, overhead clearance, and weight restrictions.

e. The Contractor shall only use the transporter(s) identified in the MHP for the performance of work. Any use of substitute or additional transporters must have previous written approval from the Program Management, OEGS at no additional cost to the City.

f. The Contractor shall develop, document, and implement a policy for accident prevention.

g. The Contractor shall not combine contaminated materials from other projects with material from this project.

h. No material shall be transported until approved by the DDC.

3. Off-Site Disposal

a. The Contractor shall use only the facility(ies) identified in the MPH for the performance of the work. Substitutions or additions shall not be permitted without prior written approval from the Program Management, OEGS, and if approved shall be at no extra cost to the City.

b. The Contractor shall be responsible for acceptance of the materials at an approved facility, for ensuring that the facility is properly permitted to accept the stated materials, and that the facility provides the stated treatment and/or disposal services.

c. The DDC reserves the right to contact and visit the disposal or treatment facility and regulatory agencies to verify the agreement to accept the stated materials and to verify any other information provided.

d. In the event that the identified and approved facility ceases to accept the stated materials or the facility ceases operations, it is the Contractor's responsibility to locate an alternate approved and permitted facility(ies) for accepting materials. The alternate facility(ies) must be approved in writing by the DDC in the same manner and with the same requirements as for the original facility(ies). This shall be done at no extra cost or delay to the City.

e. The Contractor shall obtain manifest forms, and complete the shipment manifest records required by the appropriate regulatory agencies for verifying the material and quantity of each load in unit of volume and weight. Copies of each manifest shall be submitted to the DDC within four (4) business days following shipment, and within three (3) business days after notification of receipt of the facility. Any manifest discrepancies shall be reported immediately to the DDC and be resolved by the Contractor to the satisfaction of the DDC.

4. Equipment and Vehicle Decontamination

a. The Contractor shall design and construct a portable decontamination station to be used to decontaminate equipment and vehicles exiting from the exclusion zone. The cost for this work will be paid under Item 8.01 S - Health and Safety.

b. Water generated during the decontamination process shall be disposed of in accordance with Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

8.01 C1.4 METHOD OF MEASUREMENT

Quantities for non-hazardous contaminated soils shall be measured in tons. The tonnage will be determined by off-site truck scales, as per Subsection 8.01 C1.3.B1, that are capable of generating load tickets.

8.01 C1.5 PRICE TO COVER

A. The unit bid price bid per ton for Item 8.01 C1 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for excavation, handling, transportation, disposal, documentation, fees, permits, loading, stockpiling, hauling, and any other incidentals necessary to complete all the work as specified herein for handling, transporting, and disposal of non-hazardous contaminated soil.

B. Final disposal of hazardous soil shall be paid for under Item 8.01 H – Handling, Transporting and Disposal of Hazardous Soils. Disposal of decontamination water shall be paid for under Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

C. Backfill will be paid for under its respective item as specified in the contract document.

D. The independent Environmental Consultant shall be paid under Item 8.01 S – Health and Safety.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
8.01 C1	Handling, Transporting, and Disposal of Non-Hazardous Contaminated Soil	Tons

ITEM 8.01 C2 SAMPLING AND TESTING OF CONTAMINATED/ POTENTIALLY HAZARDOUS SOIL FOR DISPOSAL PARAMETERS

8.01 C2.1 WORK TO INCLUDE

A. Description

The work shall consist of collecting and analyzing representative soil samples for parameters typically requested by the disposal facilities.

B. Sampling and Laboratory Analysis

1. At least thirty (30) days prior to the commencement of work, the Contractor's independent Environmental Consultant must submit a Soil Sampling Plan/Field Sampling Plan (SSP/FSP) to the Program Management, Office of Environmental and Geotechnical Services (OEGS) for review and approval. The plan shall include the name, address, DOH's ELAP status, and telephone numbers of the proposed laboratory. The plan shall also include training and experience of the personnel who will collect the samples.

2. The Contractor shall sample and analyze representative samples of the contaminated/potentially hazardous soils. For stockpiled soils, the Contractor shall collect and analyze one (1) composite sample per 500 cubic yards or fraction thereof. Each composite sample shall consist of a minimum of five (5) grab samples collected from greater than two (2) feet below the soil surface. For drummed soil, the Contractor shall collect one (1) composite sample per (ten) 10 drums or fraction thereof. Each composite sample shall consist of a grab sample from each of the ten (10) drums or fraction thereof. Each composite sample shall be analyzed for Resource Conservation and Recovery Act (RCRA) hazardous waste characteristics (Ignitability, Reactivity, Corrosivity), Full Toxicity Characteristic Leaching Procedure (TCLP) (including RCRA metals, volatile Organic Compounds (VOCs), Semi-Volatile Organic Compounds (SVOCs), pesticides, herbicides), Total Petroleum Hydrocarbons (TPH) and Polychlorinated Biphenyls (PCBs). All samples collected should be analyzed on a five (5) calendar days turn around time and analytical results must be submitted to Program Management, OEGS upon receipt of the analytical results.

3. All sampling shall be conducted by a person trained in sampling protocols using standard accepted practices for obtaining representative samples.

4. The Contractor must also contact the disposal facility where the waste will be sent for permanent disposal, and arrange to collect any additional samples required by the facility. The cost associated with additional sampling and testing shall be included in the bid price of this Item.

5. The quality of the data from the sampling program is the Contractor's responsibility. The Contractor must furnish all qualified personnel, equipment and instruments necessary to carry out the sampling. Unless directed otherwise, all sampling procedures must follow the DEC sampling guidelines and protocols.

6. All sample containers shall be marked and identified with legible sample labels which shall indicate the project name, sample location and/or container, the sample number, the date and time of sampling, preservatives utilized and other information that may be useful in determining the character of the sample. Chain-of-custody shall be tracked from laboratory issuance of sample containers through laboratory receipt of the samples.

7. The Contractor shall maintain a bound sample logbook. The Contractor shall provide DDC access to it at all times and shall turn it over to the DDC in good condition at the completion of the work. The following information, as a minimum shall be recorded to the log:
    1. Sample identification number
    2. Sample location
    3. Field observation
    4. Sample type
    5. Analyses
    6. Date/time of collection
    7. Collector's name
    8. Sample procedures and equipment utilized
    9. Date sent to laboratory and name of laboratory
8. The City reserves the right to direct the Contractor to conduct alternative sampling in lieu of the parameters described in subsection B2, if the situation warrants. The substitute sampling parameters shall be of equal or lesser monetary value than those described in subsection B2, as determined by industry laboratory pricing standards.
9. Only dedicated sampling equipment may be used to collect these samples. All equipment involved in field sampling must be decontaminated before being brought to the sampling location, and must be properly disposed after use.
10. Soils exceeding any of the hazardous characteristic criteria meet the legal definition of hazardous soils (rather than non-hazardous contaminated soils) and shall be transported or disposed of under Item 8.01 H – Handling, Transporting and Disposal of Hazardous Soils. All analyses must be done by a laboratory that has received approval from the ELAP for the methods to be used. The Contractor must specify the laboratory in the MHP.

8.01 C2.2 METHOD OF MEASUREMENT

Quantities for samples shall be measured as the number of sets of samples that are tested. A set shall be defined as one (1) composite sample analyzed for the full range of parameters as specified in subsection B2.

8.01 C2.3 PRICE TO COVER

The unit price bid per set for Item 8.01 C2 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance necessary for sampling, handling, transporting, testing, documentation, fees, permits and any other incidentals necessary to complete the work as specified herein for sampling and testing of contaminated/potentially hazardous soil.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
8.01 C2	Sampling and Testing of Contaminated/ Potentially Hazardous Soil for Disposal Parameters	Set

ITEM 8.01 H HANDLING, TRANSPORTING, AND DISPOSAL OF HAZARDOUS SOILS

8.01 H.1 WORK TO INCLUDE

General: This work shall consist of the handling, transportation and disposal of soils or materials that are listed as hazardous wastes or exhibit any of the characteristics of a hazardous waste, namely ignitability, corrosivity, reactivity, and toxicity, as defined in 6 NYCRR Part 371, Section 371.3 and 40 CFR Section 261. For the purpose of this specification, soils shall be defined as any materials excavated below the pavement and base for pavement.

Contaminated soils determined to be hazardous under Item 8.01 C2 shall be handled, transported, and disposed of under Item 8.01 H in accordance with the specifications herein.

The independent Environmental Consultant retained by the Contractor, as specified under Item 8.01 S – Health and Safety, shall conduct sampling and analysis of above soils to determine which soils are hazardous.

All work under Item 8.01 H shall be performed under the direct supervision of the Contractor's Environmental Consultant, as approved by the Program Management, Office of Environmental and Geotechnical Services (OEGS).

The Contractor shall ensure that all operations associated with the handling, sampling, loading, transportation, and disposal of hazardous materials are in compliance with the applicable Federal, State, and Local statutes and regulations.

The Contractor shall document the excavation, handling, sampling, and testing, transportation and disposal of hazardous soils. The City shall be listed in the disposal documents as the waste generator.

The Contractor shall supply all equipment, material and labor required to conduct the specified work of this section.

The Contractor shall ensure that all operations associated with the handling, sampling, loading, transportation and disposal of hazardous soils are conducted in a manner to protect site personnel, the public and the environment, in accordance with all applicable Federal, State, and Local laws and regulations.

The Contractor shall decontaminate all equipment prior to its removal from the exclusion zone and/or following contact with hazardous materials, as detailed in Item 8.01 S - Health and Safety. Water generated during the decontamination process shall be disposed of under Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

A. Material Handling Plan: Within forty-five (45) calendar days after award of Contract, the Contractor shall submit to the Program Management, OEGS for review, a Material Handling Plan (MHP). The MHP must be approved by the Program Management, OEGS, prior to the Contractor's commencement of work. The MHP shall, at a minimum, consist of:

   1. The Contractor's procedures for identifying contaminated/potentially hazardous soils during excavation, including instrumentation and calibration procedures to be used.

   2. The Contractor's procedures for safely handling hazardous soils or soils which have not yet been tested but are believed to be potentially hazardous.

   3. Identification of the Contractor's proposed waste transporter(s). This information shall include:

      a. Name and waste transporter permit number

      b. Address

c. Name of responsible contact for the hauler

d. Telephone number for the contact

e. Any and all necessary permit authorizations for each type of waste transported

f. Previous experience in performing the type of work specified herein

4. All staging/stockpiling areas (if stockpiling areas are intended and available), or alternate procedures that will be used. Alternate procedures could include, but are not limited to, agreements from the intended disposal or treatment facilities to accept boring data and/or analytical data previously obtained during the site characterization so that materials may be directly loaded into vehicles for shipment to the disposal facility or the use of off-site stockpiling locations approved by the DEC.

5. A backup facility, should the staging/stockpile areas become unavailable, insufficient in area or not be present by some other unforeseen difficulty.

6. Identification of the Contractor's two proposed United State Environmental Protection Agency (EPA) or DEC approved RCRA TSD facilities for hazardous soils.

7. The Contractor shall submit the following information prior to any transportation of soils regarding the temporary and final off-site TSD or facilities where it is proposing to take hazardous soils. The expense of furnishing all information will be included in the Contractor's bid price:

   a. General Information

      (1) Facility name and the EPA identification number

      (2) Facility location

      (3) Name of responsible contact for the facility

      (4) Telephone number for contact

      (5) Signed letter of agreement to accept waste as specified in this contract

      (6) Signed letter of agreement with a TSD for disposal of waste that may not be land-disposed

      (7) Unit of measure utilized at each facility for costing purposes

   b. A listing of all permits, licenses, letters of approval, and other authorizations to operate, which are currently held and valid for the proposed facility as they pertain to receipt and management of wastes derived from this Contract.

   c. A listing of all permits, licenses, letters of approval, and other authorizations to operate which have been applied for by the proposed facility.

   d. The Contractor shall specify and describe the disposal/containment unit(s) that the proposed facility will use to manage the waste. The Contractor shall identify the capacity available in the units and the capacity reserved for the subject waste.

   e. The Contractor shall provide the date of the proposed facility(ies) last compliance inspection under RCRA.

   f. A list of all active (unresolved) compliance orders, agreements, enforcement notices or notices of violations issued to the proposed facility shall be approved. The source and nature of the cause of violation shall be stated, if known.

8. Description of all sampling and analyses that will be needed to obtain disposal facility approval.

8.01 H.2 MATERIALS

A. Containers shall be watertight as required in the DOT regulations and must meet all applicable regulations including but not limited to those in Attachment 2.

B. Polyethylene (20 mil. thickness minimum) to be placed under and (10 mil. thickness minimum) over soil piles. If soils are placed in drums, polyethylene must be placed over the drums.

8.01 H1.3 CONSTRUCTION DETAILS

A. Material Handling

1. The Contractor shall institute procedures to protect site personnel and the public from the non-hazardous and hazardous materials as described in Section 8.01 S - Health and Safety.
2. The Contractor shall handle hazardous soil as approved in the MHP.
3. Stockpiled materials at the temporary TSD facility shall be handled according to the facility requirements but at a minimum: shall be drummed or placed on and covered with polyethylene to protect against erosion and leaching into surrounding soils, the stockpile area shall be graded for positive drainage away from the pile, and shall be labeled while being held for sampling prior to permanent disposal.
4. Provide any dewatering that is necessary to complete the work. Water shall be disposed of in accordance with Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

B. Off-Site Transportation and Disposal

1. The Contractor shall furnish all labor, equipment and supplies required to transport hazardous materials from the work area to the off-site TSD facility(ies) and to acquire any other items and services required for transporting hazardous materials for storage and/or disposal at an approved off-site facility.
2. Weight Measurement
   a. The Contractor shall submit the name and location of the facility where an off-site scale is located. The Contractor shall also submit a plan to the DDC for review outlining procedures on controlling trucks leaving the work site and on-route to the off-site scale. The Contractor shall be responsible for tracking all materials/vehicles from the site to the off-site scale.
   b. The Contractor shall provide to the DDC certified tare and gross weight slips for each load received at the accepted facility which shall be attached to each returned manifest.
3. General
   a. Manifests: The Contractor shall organize and maintain the material shipment records/manifests required by law.
   b. The Contractor shall coordinate the schedule for truck arrival and material deliveries at the job site to meet the approved project schedule. The schedule shall be compatible with the availability of equipment and personnel for material handling at the job site.

c. The Contractor shall inspect all vehicles leaving the project site to ensure that hazardous soils adhering to the wheels or under carriage are removed prior to the vehicle leaving the site.

d. The Contractor shall obtain letters of commitment from the waste haulers and the TSD facility to haul and accept shipments. The letter shall indicate agreement to handle and accept the specified estimated quantities and types of material during the time period specified in the project schedule and any time extension as deemed as necessary.

4. Hauling

a. The Contractor shall not deliver waste to any facility other than the TSD facility(ies) listed on the shipping manifest.

b. The Contractor shall coordinate manifesting, placarding, of shipments, and vehicle decontamination. All quantities shall also be measured and recorded upon arrival at the TSD facility. If any deviation between the two records occurs, the matter is to be reported immediately to the DDC and to be resolved by the Contractor to the satisfaction of the DDC.

c. The Contractor shall be held responsible, at its own expense, for any and all actions necessary to remedy situations involving material spilled in transit or mud and dust tracked off-site.

d. The Contractor shall ensure that trucks are protected against contamination by properly covering and lining them with compatible material (such as polyethylene) or by decontaminating them prior to any use other than hauling hazardous materials.

e. The Contractor shall be responsible for inspecting the access routes for road conditions, overhead clearance, and weight restrictions.

f. The Contractor shall only use the transporter(s) identified in the MHP for the performance of work. Only a transporter with a current Part 364 Waste Transporter Permit from the DEC may transport this material. Any use of substitute or additional transporters must have previous written approval from the DDC at no additional cost to the City.

g. The Contractor shall develop, document, and implement a policy for accident prevention.

h. The Contractor shall not combine hazardous materials from other projects with material from this project.

i. **The Contractor shall obtain for the City an EPA hazardous waste generator identification number and a representative of Program Management, OEGS will review and sign the manifest as the generator.**

j. No materials shall be transported until approved by the DDC.

5. Off-Site Disposal

a. The Contractor shall be responsible for acceptance of the materials at an approved TSD facility, for ensuring that the facility is properly permitted to accept the stated materials, and that the facility provides the stated storage and/or disposal services.

b. In the event that the identified and approved facility ceases to accept the stated materials or the facility ceases operations, it is the Contractor's responsibility to

locate an alternate approved and permitted facility(ies) for accepting materials. The Contractor is responsible for making the necessary arrangements to utilize the facility(ies), and the alternate facility(ies) must be approved in writing by the DDC in the same manner and with the same requirements as for the original facility(ies). This shall be done with no extra cost or delay to the City.

c. The Contractor shall submit all results and weights to the DDC.

d. **The Contractor is responsible to pay <u>all fees</u> associated with the generation and disposal of all excavated hazardous waste. These fees include, but are not limited to, the <u>New York State Department of Finance and Taxation (DFT) quarterly fees</u> for hazardous waste and the <u>New York State DEC annual hazardous waste regulatory fee program</u>. The Contractor shall submit a copy of proof of payment to the DDC and Program Management, OEGS**.

6. Equipment and Vehicle Decontamination

The Contractor shall design and construct a portable decontamination station to be used to decontaminate equipment and vehicles exiting from the exclusion zone. The cost for this work shall be paid under Item 8.01 S - Health and Safety. Disposal of decontamination liquids is described under Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

7. Record Keeping

The Contractor shall obtain manifest forms, and complete the shipment manifest records required by the appropriate regulatory agencies for verifying the material and quantity of each load in unit of volume and weight. Copies of each manifest shall be submitted to the DDC within four (4) business days following shipment, and within three (3) business days after notification of receipt of the facility. Any manifest discrepancies shall be reported immediately to the DDC and be resolved by the Contractor to the satisfaction of the DDC.

8.01 H.4 METHOD MEASUREMENT

Quantities for hazardous soil shall be measured in tons satisfactorily delivered to the treatment, storage or disposal facility. The tonnage will be determined by off-site truck scales, as per subsection 8.01 H1.3.B.2, that are capable of generating load tickets.

8.01 H.5 PRICE TO COVER

A. The unit price bid per ton for Item 8.01 H shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for excavation, handling, transportation, disposal, documentation, permits, fees, taxes, stockpiling, hauling, and any other incidentals necessary to complete the work as specified herein for handling, transporting and disposal of hazardous soils.

B. Final disposal of non-hazardous materials shall be paid for under Item 8.01 C1 – Handling, Transporting and Disposal of Non-Hazardous Soils. Disposal of decontamination water shall be paid under Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

C The independent Environmental Consultant shall be paid under Item 8.01 S – Health and Safety.

D. Backfill will be paid for under its respective item.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
8.01 H	Handling, Transporting, and Disposal of Hazardous Soils	Tons

ITEM 8.01 S HEALTH AND SAFETY

8.01 S.1 WORK TO INCLUDE

Health and Safety Requirements

A. Scope of Work

It is the Contractor's responsibility to stage and conduct his work in a safe manner. The Contractor shall implement a Health and Safety Plan (HASP) for contaminated/hazardous soil intrusive activities as set forth in Occupational Safety and Health Administration (OSHA) Standards 1910.120 and 1926.650-652. The Contractor shall ensure that all workers have at a minimum hazard awareness training. The Contractor shall segregate contaminated work area in secured exclusion zones. These zones shall limit access to Contractor personnel specifically trained to enter the work area. The exclusion zone shall be set up to secure the area from the public and untrained personnel. The project health and safety program shall apply to all construction personnel including persons entering the work area. In addition, the Contractor shall protect the public from on-site hazards, including subsurface contaminants associated with on-site activities. The HASP shall be signed off by a Certified Industrial Hygienist and reviewed by Program Management, Office of Environmental and Geotechnical Services (OEGS).

Work shall include, but not be limited to:

1. Implementation of a baseline medical program.
2. Providing safety equipment and protective clothing for site personnel, including maintenance of equipment on a daily basis; replacement of disposable equipment as required; decontamination of clothing, equipment and personnel; and providing all other health and safety measures.
3. Providing, installing, operating and maintaining on-site emergency medical first aid equipment as specified in this section for which payment is not provided under other pay items in this Contract.
4. Providing, installing, operating, maintaining and decommissioning all equipment and personnel decontamination facilities specified within this section, including, but not limited to, the decontamination pad, decontamination water supply, decontamination water collection equipment and all other items and services required for the implementation of the health and safety requirements for which pay items are not provided elsewhere in this Contract.
5. Provide the minimum health and safety requirements for excavation activities within the limits of this Contract.
6. Implement and enforce a HASP: The HASP as presented in these specifications is dynamic with provisions for change to reflect new information, new practices or procedures, changing site environmental conditions or other situations which may affect site workers and the public. The HASP will also address measures for community protection, accident prevention, personnel protection, emergency response/contingency planning, air monitoring, odor control and hazardous chemicals expected on site. Providing a Confined Space Entry Program as defined in the Occupational Safety and Health Act, Confined Space Entry Standard, 29 CFR 1910.146.

B. Environmental Consulting Services

The Contractor shall retain an independent Environmental Consultant to obtain all permits and perform all field screening, air monitoring, community air monitoring, soil sampling, and

health and safety services. The independent Environmental Consultant shall at a minimum provide documentation to the Program Management, OEGS demonstrating the minimum requirements as set forth below:

1. The independent Environmental Consultant project supervisor on site and other designated key personnel shall have a minimum of three (3) years experience in the environmental field dealing with issues associated with contaminated soils. Such experience shall include oversight on environmental, specifically volatile organic compound and dust monitoring services as a routine part of its daily operations.

2. The independent Environmental Consultant must be experienced in work of this nature, size, and complexity and must have previous experience in working with the DEC.

3. The independent Environmental Consultant shall furnish a project listing identifying the location, nature of services provided, owner, owner's contact, contact's telephone number, project duration and value for at least five (5) projects within the last three (3) years.

4. If conditions within the exclusion zone are deemed hazardous, then the Contractor and its independent Environmental Consultant shall ensure that all personnel working within identified exclusion zones and/or involved (direct contact) with the handling, storage or transport of hazardous and contaminated materials shall have completed a minimum of forty (40) hours of Health and Safety Training on Hazardous Waste Sites in accordance with 29 CFR 1910.120(e). The training program shall be conducted by a qualified safety instructor. If conditions in the exclusion zone are deemed to be non-hazardous, the independent Environmental Consultant shall provide site specific training.

5. The Contractor shall ensure that on-site management and supervisors directly responsible for or who supervise employees engaged in hazardous waste operations shall receive the training specified in above and at least eight (8) additional hours of specialized training on managing such operations at the time of job assignment.

C. <u>Submittals</u>

1. The Contractor shall submit, within seventy-two (72) hours after the contract award, a written HASP as specified herein, to Program Management, OEGS for review and comment. The Contractor shall make all necessary revisions required by Program Management, OEGS and resubmit the HASP to the Program Management, OEGS for acceptance. Start-up work for the project will not be permitted until written acceptance has been issued by the Program Management, OEGS.

2. Daily safety logs shall be maintained by the Contractor and shall be submitted to the DDC either on request or on completion of the work. Training logs shall be maintained by the Contractor and submitted to the DDC either on request or on completion of the work. Daily logs on air monitoring during excavation activities shall be prepared and maintained by the Contractor and submitted to the DDC either on request or upon completion of the work.

3. A closeout report shall be submitted by the Contractor to the DDC upon completion of the work within the defined exclusion zones. This report shall summarize the daily safety and monitoring logs and provides an overview of the Contractor's performance regarding environmental and safety issues. The report shall carefully document all areas where contamination has been found including pictures, addresses of locations, and potential sources.

4. Medical Surveillance Examinations: The Contractor shall submit to the DDC the name, office address and telephone number of the medical consultant utilized. Evidence of

baseline medical examinations together with the evidence of the ability to wear National Institute for Occupational Safety and Health (NIOSH) approved respirators (as specified in American National Standards Institute (ANSI) Z88.6) shall be provided to the DDC for all construction personnel who are to enter the exclusion zones.

5. Accident Reports: All accidents, spills, or other health and safety incidents shall be reported to the DDC.

D. Health and Safety Plan

The HASP shall comply with OSHA regulations 29 CFR 1910.120/1926.65. This document shall at a minimum contain the following:

1. Description of work to be performed
2. Site description
3. Key personnel
4. Worker training procedures
5. Work practices and segregation of work area
6. Hazardous substance evaluation
7. Hazard assessment
8. Personal and community air monitoring procedures and action levels
9. Personal protective equipment
10. Decontamination procedures
11. Safety rules
12. Emergency procedures
13. Spill control, dust control, vapor/odor suppression procedures
14. Identification of the nearest hospital and route
15. Confined space procedures
16. Excavation safety procedures

8.01 S.2 MEASUREMENT

Health and Safety Requirements

A. 25% of the lump sum price will be paid when the following items are implemented or mobilized:

Medical surveillance program
Health and safety training
Health and safety plan
Environmental and personnel monitoring
Instrumentation
Spill control
Dust control
Personnel and equipment decontamination facilities
Personnel protective clothing
Communications
Mobilization

B. 50% will be paid in proportional monthly amounts over the period of work.

C 25% will be paid when the operation is demobilized and removed from the project site.

8.01 S.3 PRICE TO COVER

Health and Safety Requirements

The lump sum price bid for the health and safety requirements shall include all labor, materials, equipment, and insurance necessary to complete the work in accordance with these specifications. The price bid shall include, but not be limited to, the following:

A. Providing training, safety personnel, air monitoring and medical examinations as specified.

B. Providing safety equipment and protective clothing for site personnel, including maintenance of equipment on a daily basis; replacement of disposable equipment as required; decontamination of clothing, equipment and personnel; and all other health and safety activities or costs not paid for under other pay items in this Contract.

C. Providing, installing, operating and maintaining on-site emergency medical and first aid equipment. This includes all furnishings, equipment, supplies and maintenance of all medical equipment, and all other health and safety items and services for which payment is not provided under other pay items in this Contract.

D. Providing, installing, operating, maintaining, and decommissioning all personnel and equipment decontamination facilities, including decontamination pad, decontamination water supply, and all other items and services required for the implementation of the health and safety requirements for which pay items are not provided elsewhere in this Contract. Vehicle decontamination pads shall be included in the price of this item. Disposal of decontamination fluid shall be paid for under Item 8.01 W1 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

E. Spill Control

1. Payment shall account for furnishing, installing, and maintaining all spill control equipment and facilities. Payment will include equipment and personnel to perform emergency measures required to contain any spillage and to remove spilled materials and soils or liquids that become contaminated due to spillage during work within the exclusion zones and handling of excavated soils and liquids from these areas. This collected spill material will be properly disposed of.

2. Payment under this item shall not include testing, handling, transportation or disposal of petroleum-contaminated/potentially hazardous soils excavated during construction. The price for this work will be paid for under Items 8.01 C1 – Handling, Transporting and Disposal of Non-Hazardous Contaminated Soils, 8.01 C2 – Sampling and Testing of Contaminated/Potentially Hazardous Soil for Disposal Parameters or 8.01 H – Handling, Transporting and Disposal of Hazardous Soils, as appropriate.

F. Dust Control

Payment shall account for furnishing, installing, and maintaining dust control equipment and facilities to be used whenever applicable dust levels are exceeded. Payment will include all necessary labor, equipment, clean water, foam, and all other materials required by the Dust Control Plan. The DOH Community Air Monitoring Plan (CAMP) may be used as guidance.

G. Vapor/Odor Suppression

Payment shall account for furnishing, installing and maintaining vapor/odor control equipment and facilities to be used whenever organic vapor monitoring or the presence of odors indicates that vapor suppression is required to protect workers or the public. Payment will include all

necessary labor, equipment, clean water, foam and all other materials required by the Vapor/Odor Suppression Plan.

H. Mobilization/Demobilization

1. Mobilization

Payment shall include but not be limited to:

a. All work required to furnish, install and maintain all signs, fencing, support zone facilities, parking areas and all temporary utilities;

b. All work required to furnish, install, and maintain an office space with phone and utilities for health and safety personnel;

c. All work required for complete preparation of lay down area for roll-off containers, including sampling, and any required fencing;

d. All direct invoiced cost from bonding companies and government agencies for permits and costs of insurance; and

e. All other items and services required for mobilization and site preparation.

2. Demobilization

Payment shall include but not be limited to: All work required to sample the area; remove from the site all equipment, temporary utilities and supporting facilities; performance of necessary decontamination and repairs; disposal of disposable equipment and protective gear and other items and services required for complete demobilization.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
8.01 S	Health and Safety	Lump Sum

ITEM 8.01 W1 REMOVAL, TREATMENT AND DISCHARGE/DISPOSAL OF CONTAMINATED WATER

8.01 W1.1 WORK TO INCLUDE

General: This work shall consist of the proper removal and disposal of all contaminated groundwater and decontamination water generated during construction operations. The Contractor shall be solely responsible for the proper disposal or discharge of all contaminated water generated at the job site. The Contractor will have the option of treating water on-site for discharge to the combined sanitary/storm sewer system or removing contaminated water for off-site disposal. The Contractor shall be responsible to choose a method compatible to the construction work and shall be compensated on a per day basis regardless of method employed. The Contractor will be compensated for only those days where the system is in full operation.

The Contractor shall retain a dewatering/water treatment Specialist (hereinafter the "Specialist") and laboratory as specified under Item 8.01 W2 – Sampling and Testing of Contaminated Water, to conduct any testing that may be required for disposal of impacted water.

The dewatering/water treatment Specialist is responsible to obtain all permits; perform all water sampling, testing; and provide ancillary services related to dewatering and water treatment. The Specialist shall at a minimum provide documentation to the Program Management, Office of Environmental and Geotechnical Services (OEGS) demonstrating the minimum requirements as set forth below:

1. The Specialist shall demonstrate that it has, at a minimum, three (3) years experience in the design of dewatering plans. The Specialist should demonstrate expertise dealing with issues associated with contaminated water. During that three (3) year period, the Specialist shall demonstrate that it provided dewatering and water treatment systems as a routine part of its daily operations.
2. The Specialist must be experienced in work of this nature, size, and complexity and must have previous experience in working with the DEC.
3. The Specialist shall furnish a project listing identifying the location, nature of services provided, owner, owner's contact, contact's telephone number, project duration and value for at least five (5) projects within the last three (3) years of a similar nature, size, and complexity to this one.
4. If conditions within the exclusion zone are deemed hazardous, then the Contractor and its independent Environmental Consultant shall ensure that all personnel working within identified exclusion zones and/or involved (direct contact) with the handling, storage or transport of hazardous and contaminated material shall have completed a minimum of forty (40) hours of Health and Safety Training on Hazardous Waste Sites in accordance with 29 CFR 1910.120(e). The training program shall be conducted by a qualified safety instructor. If conditions in the exclusion zone are deemed to be non-hazardous, the Specialist shall be responsible to provide site-specific training to its employees and other affected personnel.
5. The Contractor shall ensure that on-site management and supervisors directly responsible for or who supervise employees engaged in hazardous waste operations shall receive the training specified in above and at least eight (8) additional hours of specialized training on managing such operations at the time of job assignment.

The Contractor shall document all operations associated with the handling, sampling and disposal of contaminated water, and ensure that they are in compliance with applicable Federal, State and Local statutes and regulations.

The Contractor shall supply all labor, equipment, transport, plant, material, treatment, and other incidentals required to conduct the specified work of this section.

If water will be disposed of into the combined sanitary/storm sewer system, the Contractor shall ensure the Specialist treats the water to comply with the New York City Department of Environmental Protection (DEP) Sanitary/Combined and Storm Sewer Effluent Limit concentrations prior to discharge. The Contractor is responsible for providing settling or filtering tanks and any other apparatus required by DEP. Alternatively, the Contractor can provide a plan for transport and disposal at an off-site waste disposal facility.

Within forty-five (45) calendar days after award of Contract, the Contractor shall submit to the Program Management, OEGS for review, a Water Handling Plan (WHP). The WHP must be approved by the Program Management, OEGS, prior to the Contractor's commencement of work. The minimum requirements for the WHP are specified herein Item 8.01W 1.2, for each type of disposal (disposal into the combined sanitary/storm sewer or off-site disposal). The Contractor shall maintain a complete, up to date copy of the WHP on the job site at all times.

8.01 W1.2 CONSTRUCTION DETAILS

For each disposal method the Contractor proposes to utilize (disposal to combined sanitary/storm sewer or off-site disposal), the WHP shall include the information required in paragraphs A and B below, as appropriate.

A. <u>On-site treatment and discharge into New York City combined sanitary/storm sewers.</u>

1. Regulations: The Contractor shall comply with all applicable regulations. This includes but may not be limited to:

   Title 15-New DEP Sewer Use Regulations.

2. Permits: The Contractor is solely responsible to obtain all necessary and appropriate Federal, State and Local permits and approvals. The Contractor will be responsible for performing all and any system pilot tests required for permit approval. This includes but may not be limited to:

   a. Industrial waste approval for the New York City sewer system.

   b. Groundwater discharge permit for the New York City sewer system (DEP Division of Sewer Regulation and Control), if discharge to sewer exceeds 10,000 gallons per day.

   c. The Contractor shall comply with DEC State Pollutant Discharge Elimination System (SPDES) Permit Number GP-0-10-001, General Permit for Stormwater Discharges.

   d. Long Island well point permit for Brooklyn and Queens sites, if well points are used for dewatering.

   e. Wastewater quality control application, DEP.

3. The WHP for this portion of the work shall include at a minimum:

a. Identification and design of Contractor's proposed treatment to assure that the water meets the DEP sewer use guidelines prior to discharge to the sewer, including identification of all materials, procedures, settling or filtering tanks, filters and other appurtenances proposed for treatment and disposal of contaminated water.

b. The name, address and telephone number of the contact for the Contractor's proposed chemical laboratory, as well as the laboratory's certifications under Federal, State or non-governmental bodies.

c. The name, address and telephone number of the contact for the Contractor's proposed independent Environmental Consultant.

d. Copies of all submitted permit applications and approved permits the Contractor have received.

4. Materials

The Contractor shall supply all settling or filtering tanks, pumps, filters, treatment devices and other appurtenances for treatment, temporary storage and disposal of contaminated water. All equipment shall be suitable for the work described herein.

5. Execution

a. The Contractor is solely responsible for disposal of all water, in accordance with all Federal, State and Local regulations.

b. The Contractor is solely responsible for any treatment required to assure that water discharged into the sewer is in compliance with all permits and Federal, State and Local statutes and regulations.

c. The Contractor is solely responsible for the quality of the water disposed of into the sewers.

d. The Contractor is responsible for sampling and testing of water for the DEP Sanitary/Combined and Storm sewer Effluent Limit concentrations. The quality of the data is the Contractor's responsibility. Any sampling and testing shall be conducted and paid in accordance with Item 8.01 W2 – Sampling and Testing of Contaminated Water.

e. The Contractor shall be responsible to maintain the discharge rate to the sewer such that all permit requirements are met, the capacity of the sewer is not exceeded and no surcharging occurs downstream due to the Contractor's actions. Dewatering by means of well points or deep wells will not be allowed in the Boroughs of Brooklyn or Queens where the rate of pumping exceeds forty-five (45) gallons per minute unless the appropriate permit has been secured from the DEC.

f. Disposal of Treatment Media

(1) The Contractor shall be responsible for disposal or recycling of treatment media in accordance with all Federal, State and Local regulations.

(2) The Contractor shall provide the DDC with all relevant documentation concerning the disposal of treatment media, including manifests, bills of

lading, certificates of recycling or destruction and other applicable documentation.

(3) **Disposal of treatment media shall not be considered as a separate pay item; instead it shall be considered as incidental work thereto and included in the unit price bid.**

B. Off-Site Disposal

1. Regulations: The Contractor shall conform to all applicable Federal, State and Local regulations pertaining to the transportation, storage and disposal of any hazardous and/or non-hazardous materials as listed in Attachment 2.

2. The following shall be submitted to the DDC prior to initiating any off-site disposal:

a. (1) Name and waste transporter permit number

(2) Address

(3) Name of responsible contact for the hauler

(4) Any and all necessary permit authorizations for each type of waste transported

(5) Previous experience in performing the type of work specified herein

b. General information for each proposed treatment/disposal facility and at least one backup treatment/disposal facility

(1) Facility name and EPA identification number

(2) Facility location

(3) Name of responsible contact for the facility

(4) Telephone number for contact

(5) Unit of measure utilized at facility for costing purposes

c. A listing of all permits, licenses, letters of approval and other authorizations to operate, which are currently held and valid for the proposed facility as they pertain to receipt and management of the wastes derived from this Contract.

d. A listing of all permits, licenses, letters of approval and other authorizations to operate which have been applied for by the proposed facility but not yet granted or issued. Provide dates of application(s) submitted. Planned submittals shall also be noted.

e. The Contractor shall specify and describe the disposal/containment unit(s) that the proposed facility will use to manage the waste and provide dates of construction and beginning of use, if applicable. Drawings may be provided. The Contractor shall identify the capacity available in the units and the capacity reserved for the subject waste.

f. The Contractor shall provide the date of the proposed facility's last compliance inspection.

g. A list of all active (unresolved) compliance orders, agreements, enforcement notices or notices of violations issued to the proposed facility shall be submitted. The source and nature of the cause of violation shall be stated, if known. If groundwater contamination is noted, details of the facility's groundwater monitoring program shall be provided.

h. Description of all sampling and field/laboratory analyses that will be needed to obtain disposal facility approval.

3. Materials

All vessels for temporary storage and transport to an off-site disposal facility shall be as required in DOT regulations.

4. Execution

a. General

(1) The Contractor shall organize and maintain the material shipment records/manifests required by Federal, State and Local law. The Contractor shall include all bills of lading, certificates of destruction, recycling or treatment and other applicable documents.

(2) The Contractor shall coordinate the schedule for truck arrival and material deliveries at the job site to meet the approved project schedule. The schedule shall be compatible with the availability of equipment and personnel for material handling at the job site.

(3) The Contractor shall inspect all vehicles leaving the project site to ensure that contaminated liquids are not spilling and are contained for transport.

(4) The Contractor shall obtain letters of commitment from the waste haulers and the treatment, disposal or recovery facility to haul and accept shipment. The letter shall indicate agreement to handle and accept the specified estimated quantities and types of material during the time period specified in the project schedule and any time extension as deemed as necessary.

(5) The Contractor shall verify the volume of each shipment of water from the site.

(6) The Contractor is responsible for sampling and testing of water for off-site disposal. The quality of the data is the Contractor's responsibility. Any sampling and testing shall be conducted and paid in accordance with Item 8.01 W2 – Sampling and Testing of Contaminated Water.

(7) The Contractor shall be responsible for any additional analyses required by the TSD facility, and for the acceptance of the water at an approved TSD facility.

b. Hauling

(1) The Contractor shall not deliver waste to any facility other than the TSD facility(ies) listed on the shipping manifest.

(2) The Contractor shall coordinate manifesting, placarding of shipments, and vehicle decontamination. All quantities shall also be measured and recorded upon arrival at the TSD facility(ies). If any deviation between the two records occurs, the matter is to be reported immediately to the DDC and shall be resolved by the Contractor to the satisfaction of the DDC.

(3) The Contractor shall be held responsible for any and all actions necessary to remedy situations involving material spilled in transit or mud and dust tracked off-site. This cleanup shall be accomplished at the Contractor's expense.

(4) The Contractor shall be responsible for inspecting the access routes for road conditions, overhead clearance and weight restrictions.

(5) The Contractor shall only use the transporter(s) identified in the WHP for the performance of work. Only a transporter with a current Part 364 Waste Transporter Permit from DEC may transport this material. Any use of substitute or additional transporters must have previous written approval from the DDC at no additional cost to the City.

(6) The Contractor shall develop, document, and implement a policy for accident prevention.

(7) The Contractor shall not combine waste materials from other projects with material from this project.

(8) The Contractor shall obtain for the City a hazardous waste generator identification number and will sign the manifest as the generator, if necessary.

(9) No material shall be transported until approved by the DDC.

c. Disposal Facilities

(1) The Contractor shall use only the TSD facility(ies) identified in the WHP for the performance of the work. Substitutions or additions shall not be permitted without prior written approval from the Program Management, OEGS, and, if approved, shall be at no extra cost to the City.

(2) The Contractor shall be responsible for acceptance of the material at an approved TSD facility, for ensuring that the facility is properly permitted to accept the stated material, and that the facility provides the stated storage and/or disposal services.

(3) The DDC reserves the right to contact and visit the disposal facility and regulatory agencies to verify the agreement to accept the stated material and to verify any other information provided. This does not in any way relieve the Contractor of his responsibilities under this Contract.

(4) In the event that the identified and approved facility ceases to accept the stated materials or the facility ceases operations, it is the Contractor's responsibility to locate an alternate approved and permitted facility(ies) for accepting materials. The Contractor is responsible for making the necessary arrangements to utilize the facility(ies), and the alternate facility(ies) must be

approved in writing by the DDC in the same manner and with the same requirements as for the original facility(ies). This shall be done with no extra cost or delay to the City.

d. Equipment and Vehicle Decontamination

(1) The Contractor shall design and construct a portable decontamination station to be used to decontaminate equipment and vehicles exiting the exclusion zone. The cost for this work shall be paid under Item 8.01 S – Health and Safety.

8.01 W1.3 METHOD OF MEASUREMENT

The quantity for on-site treatment and discharge or off-site disposal shall be on a per day basis.

8.01 W1.4 PRICE TO COVER

A. The per day price bid for Item 8.01 W1 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for handling, transportation, disposal, documentation, permits, hauling, mobilization and demobilization, and any other incidentals thereto to complete the work.

B. The Contractor will not be paid for water that is within the DEP Sewer Discharge Limits.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
8.01 W1	Removal, Treatment and Disposal/Discharge of Contaminated Water	Day

ITEM 8.01 W2 SAMPLING AND TESTING OF CONTAMINATED WATER

8.01 W2.1 WORK TO INCLUDE

A. Description

The work shall consist of sampling and testing of potentially contaminated groundwater, surface runoff within the excavated area and all contaminated water generated during the decontamination process.

B. Sampling and Testing

1. The Contractor is responsible, at a minimum, for sampling and testing of contaminated water for the DEP Sanitary/Combined and Storm Sewer Effluent Limit concentrations as listed in Attachment 1. The quality of the data is the Contractor's responsibility. Any additional testing required by the Federal, State and/or disposal facilities shall be included in the bid price of this Item.

2. All sampling and testing shall be conducted by a person trained in sampling protocols using accepted standard practices and/or the DEC sampling guidelines and protocols.

3. All sample containers shall be marked with legible sample labels which shall indicate the project name, sample location and/or container, the sample number, the date and time of sampling, preservatives utilized, how the sample was chilled to 4 degrees Celsius, and other information that may be useful in determining the character of the sample.

4. Chain-of-custody shall be tracked from laboratory issuance of sample containers through receipt of the samples.

5. The Contractor shall maintain a bound sample log book. The Contractor shall provide the DDC access to it at all times and shall turn it over to the DDC in good condition at the completion of the work. The following information, as a minimum, shall be recorded to the log:

   a. Sample identification number

   b. Sample location

   c. Field observation

   d. Sample type

   e. Analyses

   f. Date/time of collection

   g. Collector's name

   h. Sample procedures and equipment used

   i. Date sent to laboratory/name of laboratory

6. Only dedicated sampling equipment may be used to collect these samples. All equipment involved in field sampling must be decontaminated before being brought to the site, and must be properly disposed of after use.

7. Samples shall be submitted to the Contractor's laboratory within the holding times for the parameters analyzed.
8. All analyses must be done by a laboratory that has received approval from the DOH's ELAP for the methods to be done. The Contractor must specify the laboratory in the WHP.
9. Analytical results for water discharged to the sewer and for off-site disposal must be submitted to the DDC no later than five (5) days after sample collection.
10. The City reserves the right to direct the Contractor to conduct alternative sampling in lieu of the parameters described above, if the situation warrants. The substitute sampling parameters shall be of equal or lesser monetary value than those described above, as determined by industry laboratory pricing standards.

8.01 W2.2 METHOD OF MEASUREMENT

Quantities for samples shall be measured as the number of sets of samples that are tested for the DEP Sanitary/Combined and Storm Sewer Effluent Limit concentrations. A set shall be defined as one (1) representative sample analyzed for the full range of DEP parameters as specified in attachment 1.

8.01 W2.3 PRICE TO COVER

The unit price bid per set for Item 8.01 W2 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for handling, transport, sampling, testing, documentation, permits, other incidentals necessary to complete the work of sampling and testing of contaminated water. Any additional costs incurred by the Contractor for sampling and testing of contaminated water shall be included in the bid price of this Item.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
8.01 W2	Sampling and Testing of Contaminated Water	Set

ATTACHMENT 1

New York City Department of Environmental Protection

Limitations for Discharge To Storm, Sanitary/Combined Sewer

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTEWATER TREATMENT

Limitations for Effluent to Sanitary or Combined Sewers

Parameter[1]	Daily Limit	Units	Sample Type	Monthly Limit
Non-polar material[2]	50	mg/l	Instantaneous	---
pH	5-11	SU's	Instantaneous	---
Temperature	< 150	Degree F	Instantaneous	---
Flash Point	> 140	Degree F	Instantaneous	---
Cadmium	2 0.69	mg/l mg/l	Instantaneous Composite	--- ---
Chromium (VI)	5	mg/l	Instantaneous	---
Copper	5	mg/l	Instantaneous	---
Lead	2	mg/l	Instantaneous	---
Mercury	0.05	mg/l	Instantaneous	---
Nickel	3	mg/l	Instantaneous	---
Zinc	5	mg/l	Instantaneous	---
Benzene	134	ppb	Instantaneous	57
Carbontetrachloride	---	---	Composite	---
Chloroform	---	---	Composite	---
1,4 Dichlorobenzene	---	---	Composite	---
Ethylbenzene	380	ppb	Instantaneous	142
MTBE (Methyl-Tert-Butyl-Ether)	50	ppb	Instantaneous	---
Naphthalene	47	ppb	Composite	19
Phenol	---	---	Composite	---
Tetrachloroethylene (Perc)	20	ppb	Instantaneous	---
Toluene	74	ppb	Instantaneous	28
1,2,4 Trichlorobenzene	---	---	Composite	---
1,1,1 Trichloroethane	---	---	Composite	---
Xylenes (Total)	74	ppb	Instantaneous	28
PCB's (Total)[3]	1	ppb	Composite	---
Total Suspended Solids (TSS)	350[4]	mg/l	Instantaneous	---
CBOD[5]	---	---	Composite	---
Chloride[5]	---	---	Instantaneous	---
Total Nitrogen[5]	---	---	Composite	---
Total Solids[5]	---	---	Instantaneous	---
Other				

1 All handling and preservation of collected samples and laboratory analyses of samples shall be performed in accordance with 40 C.F.R. pt. 136. If 40 C.F.R. pt. 136 does not cover the pollutant in question, the handling, preservation, and analysis must be performed in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater." All analyses shall be performed using a detection level less than the lowest applicable regulatory discharge limit. If a parameter does not have a limit, then the detection level is defined as the least of the Practical Quantitation Limits identified in NYSDEC's Analytical Detectability and Quantitation Guidelines for Selected Environmental Parameters, December 1988

2 Analysis for ***non-polar materials*** must be done by EPA method 1664 Rev. A. Non-Polar Material shall mean that portion of the oil and grease that is not eliminated from a solution containing N–Hexane, or any other extraction solvent the EPA shall prescribe, by silica gel absorption.

3 Analysis for PCB=s is required if ***both*** conditions listed below are met:
1) if proposed discharge ≥ 10,000 gpd;
2) if duration of a discharge > 10 days.
Analysis for PCB=s must be done by EPA method 608 with MDL=<65 ppt. PCB's (total) is the sum of PCB-1242 (Arochlor 1242), PCB-1254 (Arochlor 1254), PCB-1221 (Arochlor 1221), PCB-1232 (Arochlor 1232), PCB-1248 (Arochlor 1248), PCB-1260 (Arochlor 1260) and PCB-1016 (Arochlor 1016).

4 For discharge ≥ 10,000 gpd, the TSS limit is 350 mg/l. For discharge < 10,000gpd, the limit is determined on a case by case basis.

5 Analysis for Carbonaceous Biochemical Oxygen Demand (CBOD), Chloride, Total Solids and Total Nitrogen are required if proposed discharge ≥ 10,000 gpd.

ATTACHMENT 2

Applicable Regulations

Applicable regulations include, but are not limited to:

1. 49 CFR 100 to 179 - DOT Hazardous Materials Transport and Manifest System Requirements
2. New York State Department of Environmental Conservation (DEC), Spills Technology and Remediation Series (STARS) Memo #1
3. 6 NYCRR 360-1 DEC Solid Waste Management Facilities
4. 6 NYCRR 364- Waste Transporter permits
5. Local restrictions on transportation of waste/debris
6. 40 CFR 260 to 272 - Hazardous Waste Management (RCRA)
7. 6 NYCRR 371 - Identification and Listing of Hazardous Wastes
8. 6 NYCRR 372 - Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities
9. 6 NYCRR 373-1 - Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements
10. 6 NYCRR 376 - Land Disposal Restrictions
11. Posted weight limitations on roads or bridges
12. Transportation Skills Programs, Inc. 1985 - Hazardous Materials and Waste Shipping Papers and Manifests
13. Other local restrictions on transportation of waste/debris
14. Occupational Safety and Health Administration (OSHA), Standards and Regulations, 29 CFR 1910 (General Industry)
15. OSHA 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response
16. OSHA Safety and Health Standards 29 CFR 1926 (Construction Industry)
17. OSHA 29 CFR 1910.146 Confined Space Entry Standard
18. Standard Operating Safety Guidelines, EPA Office of Emergency and Remedial Response Publication, 9285.1-03
19. NIOSH / OSHA / USCG / EPA Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (1986)
20. U.S. Department of Health and Human Services (DHHS) "NIOSH Sampling and Analytical Methods," DHHS (NIOSH) Publication 84-100
21. ANSI, Practice for Respiratory Protection, Z88.2 (1980)
22. ANSI, Emergency Eyewash and Shower Equipment, Z41.1 (1983)
23. ANSI, Protective Footwear, Z358.1 (1981)
24. ANSI, Physical Qualifications for Respirator Use, Z88.6 (1984)
25. ANSI, Practice for Occupational and Educational Eye and Face Protection, Z87.1 (1968)
26. Water Pollution Control Federation "Manual of Practice No. 1, Safety in Wastewater Works"

27. NFPA No. 327 "Standard Procedures for Cleaning and Safeguarding Small Tanks and Containers"
28. Occupational Safety and Health Act Confined Space Entry Standard 29 CFR 1910.146.87
29. Department of Transportation 49 CFR 100 through 179
30. Department of Transportation 49 CFR 387 (46 FR 30974, 47073)
31. Environmental Protection Agency 40 CFR 136 (41 FR 52779)
32. Environmental Protection Agency 40 CFR 262 and 761
33. Resource Conservation and Recovery Act (RCRA)
34. Any transporter of hazardous or non-hazardous materials shall be licensed in the State of New York and all other states traversed in accordance with all applicable regulations.

ATTACHMENT 3

Definitions

Contaminated Groundwater and Decontamination Fluids: Groundwater within the excavation trench or decontamination water that contains regulated compounds above the NYCDEP Discharge to Sanitary/Combined Sewer Effluent limits.

Disposal or Treatment Facility: A facility licensed to accept either non-hazardous regulated waste or hazardous waste for either treatment or disposal.

Exclusion Zone: Work area that will be limited to access by Contractor personnel specifically trained to enter the work area only. The exclusion zone will be set up to secure the area from the public and untrained personnel. The project health and safety program will apply to all construction personnel including persons entering the work area.

Hazard Assessment: An assessment of any physical hazards that may be encountered on a work site.

Hazardous Soils: Soils that exhibit any of the characteristics of a hazardous waste, namely ignitability, corrosivity, reactivity, and toxicity, as defined in 6 NYCRR Part 371, Section 371.3 and 40 CFR Section 261.

Hazardous Substance Evaluation: An evaluation of the possible or known presence of any hazardous substances that may be encountered on a job site. This evaluation is included in the Health and Safety Plan and will include the identification and description of any hazardous substances expected to be encountered. Material Safety Data Sheets (MSDS) will be included for each substance.

Health and Safety Plan: A plan employed at a work site that describes all the measures that will be taken to assure that all work is conducted in a safe manner, and that the health of the workers and the public will be insured.

Material Handling Plan: A plan outlining the methods that will be employed to handle, transport and dispose of contaminated materials.

Non-Hazardous Contaminated Soils: Soils which exhibit a distinct chemical or petroleum odor, or exhibit elevated photoionization detector readings but are not classified as hazardous waste under 6 NYCRR Part 371, Section 371.3 and 40 CFR Section 261.

New York State Health Department's Environmental Laboratory Approval Program: A program by which the state of New York approves and accredits environmental testing laboratories.

PCBs: Polychlorinated biphenyls are a group of toxic compounds commonly used as a coolant in transformers and other electrical components.

Photoionization Detector: A hand held instrument used to measure volatile organic compounds in air. The instrument ionizes the organic molecules through the use of an ultraviolet lamp.

RCRA Hazardous Waste Characteristics: Characteristics of a material which may indicate the material is hazardous. These include: ignitability corrosivity, reactivity, and toxicity.

Total Petroleum Hydrocarbons: An analytical procedure used to determine the total amount of petroleum compounds in a material.

(NO TEXT ON THIS PAGE)

ATTACHMENT 10

SPECIFICATIONS FOR PROVISION OF ENVIRONMENTAL TESTING SERVICES CATEGORY OF WORK

ARTICLE 5 The Consultant's Personnel

5.1 Minimum Requirements for Consultant and Testing Laboratory: Minimum requirements are set forth below.

5.1.1 Consultant: The Consultant must, for the five year period prior to the RFP, have been in the business of providing the following services as a routine part of its daily operations: emergency response environmental services, (2) industrial hygiene services, (3) environmental remedial investigation and remediation design and oversight, (4) ambient air quality monitoring (5) asbestos, lead and mold investigation and abatement design hazard investigation in NYS and (6) XRF testing services. The XRF testing services must have involved use of an XRF testing instrument capable of estimating lead concentration in milligrams per square centimeter.

5.1.2 Consultant: The Consultant, in its Proposal for the Contract, demonstrated that it has been licensed as an Asbestos Handler Contractor "Restricted Class" and a Mold Assessment Contractor by the New York State Department of Labor (NYSDOL) and Licensed by the US EPA under 40 CFR 745.226 and under Toxic Substance Control Act (TSCA) Section 402 (a) (1) to conduct lead based activities. The Consultant shall maintain such licenses and certifications for the duration of the contract.

5.1.3 Consultant: The Consultant must, for each of the five years prior to the RFP, demonstrate annual gross revenues of at least $10,000,000 for provision of the sampling and testing services described in paragraph 5.1.1 and 5.1.2 above.

5.1.4 Testing Laboratory: The Consultant, in its Proposal for the Contract, identified the laboratory set forth in Exhibit A and demonstrated that such laboratory is in compliance with the criteria set forth below.

(a) Accredited by ELAP for Environmental Analysis of Solid and Hazardous Wastes, (ELAP is administered by the NYS-DOH);
(b) Accredited by ELAP for Asbestos Fiber Analysis (PLM-Item 198.1, 198.6 & 198.8), (TEM-Item 198.4) and lead in soil and paint chip analysis. (ELAP is administered by the NYS-DOH);
(c) Accredited by the US EPA National Lead Laboratory Accreditation Program (NLLAP) for Lead in Paint Chip and Soil Analysis;
(d) Accredited by the NVLAP for Bulk Asbestos Fiber Analysis (NVLAP is administered by NIST).
(e) Accredited by US EPA National Lead Laboratory Accreditation Program (NLLAP), and (4) American Industrial Hygiene Association ("AIHA").
(f) Such laboratory has participated in and received a current rating of "Proficient" in ten (10) of the twelve (12) most recent rounds of the Proficiency Analytical Testing ("PAT") program administered by the AIHA.
(g) In the event any federal, state or local entity establishes accreditation or certification requirements applicable to the laboratory testing services required hereunder, such laboratory will comply with such requirements.

The laboratory shall maintain such valid accreditations for the duration of the contract. Any proposed replacement for the laboratory set forth in Exhibit A must be approved by the Commissioner and must demonstrate compliance with the criteria set forth herein.

5.2 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide all personnel necessary and required for performance of environmental services and laboratory testing services for emergency response projects, in accordance with Task Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Subconsultants, as set forth in Exhibit A, unless otherwise approved by the Commissioner. The Consultant agrees that its employees, agents,

and Sub-consultants shall possess the education, experience, knowledge, licensures, and character necessary to qualify them individually for the particular duties they perform.

5.2.1 Staffing Requirements: Staffing requirements for personnel for the performance of environmental services have been established by the Commissioner and are set forth in Exhibit B. Such staffing requirements specify the titles of personnel which the Consultant will be required to provide through its own employees.

5.2.2 Minimum Requirements: Individuals provided by the Consultant for required titles of personnel must satisfy the minimum requirements for the title in question, as set forth in Exhibit C. The Consultant shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that each individual provided complies with the minimum requirements per title. In exceptional circumstances, the Commissioner, in his/her sole and absolute discretion, may modify the requirements per title.

5.2.3 Additional Titles: If an additional title(s) of personnel is required for a specific Project, the Commissioner shall establish the following: (1) additional required title(s), (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. The All Inclusive Hourly Rate for the additional required title shall be calculated in accordance with the formula set forth in Article 7. The Commissioner reserves the right to reject any proposed individual for the title in question in accordance with Article 7.

5.3 Subcontracting: Subcontracting is only permitted as set forth in Exhibit A. Provisions regarding subcontracting are set forth in Article 5.6.

5.4 Contract Executive: The name of the individual identified by the Consultant in its Proposal for the Contract as the Contract Executive, as well as his/her qualifications, are set forth in Exhibit A. The Consultant specifically agrees to assign to the Contract for its entire duration the individual identified in Exhibit A as the Contract Executive, unless otherwise approved by the Commissioner. Failure by the Consultant to provide such individual identified in Exhibit A as the Contract Executive shall be grounds for termination for cause. Replacement of such individual will only be permitted in the following circumstances: (1) if the designated individual is no longer in the employ of the Consultant, or (2) if the City fails to direct the Consultant to commence services within nine (9) months of the date the Consultant submitted its technical proposal. Replacement must comply with the conditions set forth below.

5.4.1 The Contract Executive shall serve as the Consultant's principal representative with respect to its obligations under this Contract. Such Contract Executive shall be responsible for the following with respect to Task Orders issued hereunder: (1) submitting and signing proposed Staffing Plans; (2) coordinating the activities of personnel performing services; (3) submitting and signing required reports; (4) submitting and signing requisitions for payment, and (5) providing, on an as needed basis, executive or management expertise and oversight.

5.5 Staffing Plan: A Staffing Plan shall be established on a Task Order basis for the Project(s) specified therein. Such Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services pursuant to the Task Order.

5.5.1 Contents: Such Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those personnel necessary for the provision of the required services. Such Staffing Plan must be numbered, dated and signed by the Contract Executive.

(a) Required titles and specific individual for each title
(b) All Inclusive Hourly Rate for each specified individual. The individual's All Inclusive Hourly Rate shall be the rate set forth in Exhibit B for the title for which the Commissioner determines the individual meets the minimum requirements.
(c) Total estimated hours and amount for each title
(d) Total estimated amount for all required titles of personnel

5.5.2 Payment Limitation: The specific individuals identified in the approved Staffing Plan shall be considered Assigned Employees for the purpose of the Consultant's entitlement to payment for services performed by such individuals hereunder. The Consultant shall not be entitled to payment for the services of: (1) any individual not assigned to the Project and not included in the approved Staffing Plan, or (2) any principal(s), except for the Contract Executive identified in Exhibit A, unless such principal meets the criteria set forth below.

5.5.3 No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties, except for the Contract Executive identified in Exhibit A This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Exhibit C, and (2) such principal is included in the approved Staffing Plan for such title.

5.5.4 Proposed Staffing Plan: Within one (1) business day of a written request from the Commissioner, the Consultant shall submit a proposed Staffing Plan for the Project. Such proposed Staffing Plan shall include the items set forth above. With respect to each proposed individual, the Consultant shall provide: (1) the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications, and (2) the title for which the individual meets the minimum requirements, as set forth in Exhibit C.

5.5.5 Review and Approval of Staffing Plan: The Commissioner shall review the Consultant's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of such review, the Commissioner shall determine: (1) whether each proposed individual meets the minimum requirements for the applicable title, and (2) whether the All Inclusive Hourly Rate for each proposed individual is in accordance with the rate for the title for which the individual meets the minimum requirements. The Consultant shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.5.6 Replacement of Personnel: No substitutions for approved personnel shall be permitted unless approved, in advance, by the Commissioner. Any proposed replacement for approved personnel must possess qualifications substantially similar to those of the personnel being replaced and are subject to the prior written approval of the Commissioner. If it is not feasible to obtain advance approval of the proposed replacement, notice of the same must be provided to the Commissioner within twenty-four hours. In addition, at the Commissioner's request at any time, the Consultant shall remove any personnel and substitute another employee of the Consultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, at his sole discretion.

5.5.7 Revisions to Staffing Plan: The Commissioner may, at any time, direct revisions to the Staffing Plan, including without limitation, increasing or decreasing the specified personnel, based upon the scope of required services. The Consultant shall increase or decrease the specified personnel, as directed by the Commissioner.

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

5.6.1 Subconsultants Identified in Proposal: The Consultant shall engage such Subconsultants as may be necessary for the performance of all required services for the Project. The Consultant specifically agrees to engage the Subconsultants set forth in Exhibit A. Such Subconsultants were identified by the Consultant in its Proposal for the Contract. Failure by the Consultant to provide such Subconsultants shall be grounds for termination for cause. The Consultant shall be responsible for the performance of services by all its Subconsultants, including maintenance of schedules, correlation of their work and resolution of all differences between them.

5.6.2 Approval: Provisions regarding subcontracting, including the requirements for approval, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

5.6.3 Replacement Subconsultants: No substitution for any Subconsultant shall be permitted unless approved in advance in writing by the Commissioner. Such approval will only be granted in the case of extenuating circumstances. Any proposed replacement Subconsultant must possess qualifications and experience substantially similar to those of the Subconsultant being replaced. In addition, at the Commissioner's request at any time, the Consultant shall remove any Subconsultant and substitute another Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, if, in his sole opinion, he determines that any Subconsultant may be unable to satisfactorily provide the required services in a timely fashion.

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

ARTICLE 6 - Scope of Services

6.1 General: The Consultant shall provide comprehensive environmental services and laboratory testing on-call services for emergency response incidents at various locations, as specified by the Commissioner on a Task Order basis. The Consultant's services shall be provided in accordance with all terms and conditions set forth in this Contract. As further described below, the Consultant shall determine whether any environmental contaminants are present and shall identify what actions are necessary to remediate, abate, enclose, encapsulate, remove, store, transport and dispose or otherwise control such contaminants in accordance with the following: (1) the requirements of Federal, State and Local laws, rules and regulations, and (2) DDC standards and procedures. Environmental contaminants shall include, without limitation, the following: asbestos containing materials, lead-based paint, lead dust, mold or other biological substances, chemical and or physical agents.

6.1.1 Location: The Consultant's services shall be provided for Projects located in the Borough(s) specified in Exhibit A; provided, however, the Commissioner reserves the right to issue Task Orders to the Consultant for required services for Projects located in other Boroughs.

6.1.2 Conflicts of Interest: The Consultant shall fully and fairly represent the interest of DDC in the performance of services under this Contract without conflict of interest or breach of confidentiality. Prior to the commencement of services hereunder, the Consultant shall notify DDC in writing whether or not it has performed, or is currently performing work for any contractor, subcontractor, or material supplier which has performed or is performing work on any New York City project. Throughout this Contract, the Consultant shall notify DDC in writing of its intent to perform work on any City project(s) which are not part of this contract. The Consultant shall include these provisions in all subcontracts for services performed by subcontractors or subconsultants.

6.1.3 Performance of Services: The Consultant agrees to provide all required personnel for the performance of services hereunder on a twenty four hour basis if needed, as set forth in Article 5.

6.1.4 Review and Acceptance of Deliverables: All Deliverables and/or reports set forth herein are subject to review and written acceptance by the Commissioner. The Consultant shall revise the Deliverable and/or report to incorporate all required corrections. As set forth in Article 7, the Consultant shall not be entitled to payment for time spent revising and/or correcting Deliverables and/or reports, unless the Commissioner determines that such revisions and/or corrections are not attributable to unsatisfactory performance by the Consultant.

6.2 Abbreviations: The following abbreviations are used throughout the Contracts.

- American Industrial Hygiene Association (AIHA)
- American Society of Testing Materials (ASTM)

- Certified Industrial Hygienist (CIH)
- Certified Hazardous Materials Manager (CHMM)
- Certified Safety Professional (CSP)
- Certified Health Physicist (CHP)
- Environmental Laboratory Accreditation Program (ELAP)
- Fire Department of New York (FDNY)
- Federal Highway Administration (FHWA)
- National Lead Laboratory Accreditation Program (NLLAP)
- National Voluntary Laboratory Accreditation Program (NVLAP)
- New York City Department of Environmental Protection (DEP)
- New York State Department of Environmental Conservation (NYS-DEC)
- New York State Department of Health (NYS-DOH)
- New York State Department of Labor (NYSDOL)
- National Institute of Occupational Health and Safety (NIOSH)
- Occupational Safety and Health Administration (OSHA)
- United States Environmental Protection Agency (USEPA)

6.3 Services for the Inspection and Assessment of Structures

6.3.1 General: The Consultant shall provide all environmental services necessary to study, identify, locate and quantify environmental contaminants that may be disturbed or released during construction activities involving buildings, temporary structures or other project locations.

6.3.2 Sampling Plan: The Consultant shall submit a Sampling Plan indicating all sampling services, as well as all laboratory testing services, necessary to confirm the presence of environmental contaminants. The Sampling Plan is subject to approval by the Commissioner. Following such approval, the Consultant shall proceed with the specified services in accordance with applicable regulatory provisions and DDC requirements.

6.3.3 Health and Safety Plan: The Consultant shall submit a site specific Health and Safety Plan (HASP) identifying the level of personal protective equipment to be employed during the physical assessment and the collection of samples. Such plan must be prepared by a Certified Industrial Hygienist (CIH).

6.4 Services for the Inspection and Assessment of Surface Conditions and Debris Removal

6.4.1 General: The Consultant shall provide all environmental assessment services necessary to identify, characterize and evaluate environmental contaminants that may be disturbed or released during or as a result of the emergency incident or the cleanup of debris.

6.4.2 Sampling Plan: The Consultant shall submit a sampling plan and protocol for surface contamination characterization and delineation, specific to each site location at the same time as the submission of the proposed Staffing Plan. A site sampling plan may include, but is not limited to: bulk sampling location plan, air sampling location plan, sampling protocol and procedures for contamination delineation and debris handling, quality assurance/quality control (QA/QC) plan. All applicable regulatory guidelines and industry standards shall be utilized in developing the protocol and evaluating the site location.

6.4.3 Record Keeping: The Consultant shall maintain and submit to the Commissioner records of all field activities, including but not limited to, the items set forth below.

(a) Date and time of sampling
(b) Sampling location diagram
(c) Sample depth(s)
(d) Unique sample number
(e) Weather conditions (if applicable)
(f) Visual observations such as soil discoloration, sheen, odor, etc.

(g) Data logging
(h) Waste Manifests

6.4.4 Work Plan: The Consultant as a result of the testing data shall prepare a work plan for ongoing environmental monitoring and debris characterization, storage, transport and disposal.

6.5 Services for the Inspection and Assessment of Subsurface Conditions

6.5.1 General: The Consultant shall provide all environmental assessment services necessary to identify, evaluate and characterize environmental contaminants that may be disturbed or released during or as a result of the emergency incident.

6.5.2 Sampling Plan: The Consultant shall submit a work plan and protocol for subsurface characterization specific to each site at the same time as the submission of the proposed Staffing Plan. A site work plan may include, but is not limited to: a boring location plan, sampling protocol and procedures, quality assurance/quality control (QA/QC) plan, drilling methodology (i.e., auger boring and sampling, drive sample boring, well installation, etc.). All applicable regulatory guidelines and industry standards shall be utilized in developing the protocol and evaluating the project site.

6.5.3 Field Screening For Contaminants: The Consultant shall develop boring logs and field screen soil/groundwater for contaminants (i.e., photo-ionization detector (PID) colorimetric detector tubes or similar devices). Boring logs shall be developed using Unified Soil Classification System (USCS) or equal, which describes soil size, texture, color, moisture and other characteristics which may determine the extent or transport rate of contamination. Logs shall provide detailed geological conditions, including PID readings, blow counts and groundwater level, if determined. Logs shall be typed and included as an appendix to the required report.

6.5.4 Record Keeping: The Consultant shall maintain and submit to the Commissioner records of all field activities, including but not limited to, the items set forth below.

(a) Date and time of sampling
(b) Boring location diagram
(c) Sample depth(s)
(d) Unique sample number
(e) Weather conditions (if applicable)
(f) Visual observations such as soil discoloration, sheen, odor, etc.
(g) Groundwater elevation

6.6 Sampling Services / Laboratory Testing Services

6.6.1 General: The Consultant shall provide all sampling services, as well as all laboratory testing services, necessary to confirm the presence of environmental contaminants. Testing Services shall include the tests set forth in Exhibit D and any other tests or probes specified in the Task Order. Payment for tests listed in Exhibit D shall be on a unit price basis. Other tests and/or probes not listed shall be paid for as a Reimbursable Service. Payment for environmental services in connection with testing, including collecting samples and providing Test Reports, shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit B. Prior to performing sampling and/or testing services, the Consultant shall submit a Sampling Plan for approval by the Commissioner.

6.6.2 Conformance: The Consultant shall ensure that all sampling services, as well as all laboratory testing services, conform to the criteria set forth below.

(a) The Consultant must ensure that all services are provided in accordance with all laws, rules, regulations, and requirements applicable to the work. The Consultant must utilize the most current procedure and/or practice mandated by law, or accepted as the professional standard in the environmental industry.

(b) The Consultant must ensure that all services are performed by licensed or certified technicians / inspectors / investigators, as required by regulatory agencies having jurisdiction for the applicable test procedure.

(c) The Consultant must submit a prepare and submit a site specific Health and Safety Plan for the sampling of specific contaminants, and follow safe work practices and protocols applicable to the work.

6.6.3 Laboratory: The Consultant shall provide testing services through the laboratory set forth in Exhibit A, or such other laboratory as approved by the Commissioner. Requirements for the laboratory are set forth in Article 5.1.

6.6.4 Destructive Testing: Many tests and sampling methods require limited destruction to the site. The Consultant shall be responsible for the following: (a) ensuring that all testing and sampling is performed in such a way so as to minimize damage to the site, and (b) restoring any damaged areas to a state that is structurally sound and aesthetically pleasing.

6.6.5 Limiting Costs: As directed by the Commissioner, the Consultant shall discontinue testing services at the first "positive" result. The intent is to minimize the costs incurred by the City for unnecessary or redundant testing while improving the "turn-around" time for analysis. The Consultant is advised that no payment will be made for unnecessary testing. The Consultant shall comply with regulatory requirements for the collection and analysis of blank samples; however, the Consultant shall not be entitled to payment for blank samples collected and analyzed.

6.6.6 Soil/Groundwater Samples For Laboratory Analysis: All sampling procedures for subsurface contaminants shall be conducted in accordance with applicable industry standards and guidelines set forth by the USEPA, NYSDEC, NYSDOH, ASTM and any other entity having jurisdiction. In general, upon retrieval of a soil sample it shall be placed into a clean laboratory-grade sample jar and preserved on ice. The samples shall be collected using disposable gloves, or a clean stainless steel spatula or spoon. The samples shall be labeled, placed in a proper container, and accompanied by a chain of custody form for shipment to the laboratory. The container, at a minimum, shall contain the site name, date and time of sample collection, analytical parameters, a unique sample number and sampler's initials.

6.6.7 Test Reports: For each test performed by the laboratory and/ or direct read instrumentation the Consultant shall provide a Test Report that addresses all of the items set forth below, as well as any other relevant information. The Test Report shall be sent to the City by email or facsimile within 24 hours of the test date (when applicable) or analytical result date.

(a) Test type, identity of material subject to test, name of person operating test equipment, description of test equipment, including manufacturer, model number & serial number
(b) Copy of the test data, along with the interpretations of these data
(c) Brief statement describing the means and methods of the performance of the test
(d) Procedures for and frequency of calibration of the equipment used in the test
(e) Photographic documentation substantiating the inspector's interpretations of the test results, where appropriate
(f) Signature sheet certifying test results signed by operator of test equipment, Consultant's representative and other witnesses.

6.7 Design Services

6.7.1 General: The Consultant shall, through its Asbestos Project Designer and The Registered Design Professional (when applicable), provide all design services necessary for the abatement of asbestos, lead, mold or the remediation of specific environmental contaminants in locations specified by the Commissioner on a Task Order basis. Design services shall include the preparation of design documents (drawings and specifications) and cost estimates for the required work. All work shall be properly coordinated so as to prevent, as much as possible, changes, adjustments, or extra Task Orders during construction.

6.7.2 Sources: The Consultant shall prepare design documents using information from various sources, including: (1) survey report(s) prepared by the Consultant, (2) survey report(s) and other information furnished by another consultant(s), and/or (3) information applicable to the Project supplied by the DDC or another City Agency.

(a) Survey reports furnished by others will contain information relating to the type of environmental contaminants, the extent of contamination and recommended methods for remediation and/or abatement. Prior to commencing design services for remediation and/or abatement, the Consultant must confirm findings in reports prepared by others. The Consultant shall confirm such findings by field surveys, lab data pack analysis, or other means including replicate sampling.

6.7.3 Final Design Documents: The final design documents, including all charts, drawings, tables, and photographs, shall be approved, ordered modified, or rejected by the Commissioner. An Acceptance Letter shall be issued to the Consultant upon approval of the final design document(s). Upon approval of the final design documents, the Consultant shall submit original drawings and specifications ready to be reproduced as printed bid documents.

(a) For Asbestos Projects all drawings shall bear the signature of the Asbestos Project Designer, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.
(b) For Lead Based Paint projects all drawings shall bear the signature of the Lead Risk Assessor, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.
(c) For Mold Abatement projects all drawings shall bear the signature of the Mold Assessor, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.
(d) For environmental remediation projects all drawings shall bear the signature of the respective environmental professional, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.
(e) The Consultant shall review shop drawings submitted by contractors when ordered, prepare all supplementary drawings that may be necessary for the enlargement and clarification of the drawings and shall examine and approve all materials samples.

6.7.4 CADD Drawings: Design drawings and sketches shall be developed on a CADD drawing system, except for manual drawings and sketches, which are normally prepared during the conceptual or schematic phase of a project.

(a) The Consultant must furnish CADD Drawing files on CD's, in addition to the printed drawings required, when submitting documents for review and for the final record. CADD files shall be readable and compatible with the Agency current version of Auto-CADD®.
(b) The Consultant may be directed to update all of the Consultant's CADD drawings after receiving the contractor's record of "As Built" drawings from NYC-DDC.

6.8 Construction Related Services

6.8.1 General: The Consultant shall provide construction related services, including project monitoring and /or construction oversight for emergency remediation and/or abatement projects, demolition, debris sorting, transportation, storage and disposal at various locations. Such services may include the following:

(a) Develop Site Specific Health and Safety Plans (HASP) and Job Hazard Analysis (JHA) for Contractors and Sub Contractor to follow.
(b) Develop work schedules, work methods, and standard operating procedures.
(b) Provide project supervision and/or management services, including acting as the on-site representative and/or the Resident Engineer for the Commissioner.

(c) Perform inspection, engineering or scientific services to ensure overall quality of work, adherence to HASP's and regulatory compliance.
(d) Perform environmental testing and monitoring services of the work area and its boundaries
(e) Monitor and direct the progress of a remediation contractor(s) or other consultant(s).
(f) Provide interpretation and/or clarification of design documents, regulations, standards, etc.
(g) Review and evaluate change orders, claims, cost estimates and requests for extra work by contractors.
(h) Review and evaluate shop drawings, schedules, field records, submittals, filings, materials, programs, procedures, variances, permits, etc.
(i) Conduct continuous environmental testing and analysis as directed by the Commissioner.

6.8.2 Work Place Safety Plan – Tenant Protection Plan: The Consultant shall provide a Registered Design Professional, as defined in Title XV, Chapter I of RCNY, to prepare a Work Place Safety Plan and Tenant Protection Plan required for an asbestos abatement work permit prior to construction. The Registered Design Professional shall submit signed and sealed documents as required by the NYCDEP for review and final approval.

6.8.3 Special Inspections: All inspections required pursuant to Title 28 of the RCNY including, but not limited to special inspections required by Chapter 17 of the Building Code, shall be performed by the Registered Design Professional. A final inspection shall be performed by the Registered Design Professional after all work authorized by the Asbestos Abatement Work Permit is completed. The Registered Design Professional shall file the signed and sealed inspection report with the NYCDEP on the ATR1 form in accordance with Title XV, Chapter 1 of the RCNY.

6.9 Consulting Services

6.9.1 General: The Consultant shall provide consulting services as directed by the Commissioner. Such consulting services may include the items set forth below.

6.9.2 Environmental Investigations: The Consultant shall provide services for the environmental assessment of various contaminants, including without limitation the following:

(a) Environmental Site Investigations consistent with the most recent version of ASTM standard.
(b) Infrastructure Corridor Environmental Assessments and Subsurface Corridor Investigation in accordance with guidance and protocols provided by the Commissioner.
(c) Biological or Radiation Assessment Surveys

6.9.3 Review of Documents Prepared by Others: The Consultant shall review documents prepared by DDC or other consultants. Such documents may include surveys, environmental assessments, and design documents. The Consultant shall submit a report evaluating such documents, including noted deficiencies, suggested changes or other findings.

6.9.4 Evaluation of Construction Hazards: The Consultant shall provide inspection, and assessment services to ascertain the presence of hazards created by the means and methods of construction, demolition or debris handling. The Consultant shall also assess the level of compliance with applicable construction safety standards, including, but not limited to, OSHA, FHWA and New York City Department of Buildings Subchapter 19[C26-1900 to C26-1903] and Reference Standard 19.

6.10 Deliverables

6.10.1 General: The Consultant shall prepare all deliverables in a format and quantity that complies with requirements set forth in Article 6.19.

6.10.2 Timing: The Consultant shall complete all services and supply all deliverables within the time limits set forth in the Task Order.

6.10.3 Based on the required services, the Consultant may be directed to prepare written reports, minutes of meetings, weekly project status updates, summaries, analytical results, interim reports, etc. The specifics of these reports shall be described in the Task Order.

(a) In general, all services shall require the delivery of "DRAFT" and "FINAL" reports, drawings or other documents. Documents shall be prepared using software specified by the Commissioner.

(b) DRAFT reports shall be delivered within the consecutive calendar days (ccd's) identified in the Task Order and shall be approved, rejected completely, or ordered to be modified by the Commissioner. Once approved, the Consultant shall prepare a "FINAL" report.

(d) The Consultant shall also supply all project correspondence and other written materials on a Compact Disc (CD) compatible with DDC word processing, spreadsheet, CADD, or graphics software or in portable document format (PDF).

6.10.4 <u>Asbestos, Lead and/or Mold Survey Reports</u>

(a) Environmental Reports, at a minimum, shall include the following:

(1) Cover / Title Page indicating Project name, address and borough of the facility or location, project number, Task Order number, Contract Registration Number and date. The version of the report (DRAFT or FINAL) must be clearly shown on the cover.

(2) Executive Summary, not to exceed two typed pages, indicating scope of work, findings, conclusions, and cost estimate for the abatement or remediation.

(3) Main Report including the following: Background, Scope of Work, Source of Information (e.g., drawings, designs, etc.), Findings, Recommendations, Cost Estimate, Sampling Locations and Results (including lab certificates, chain of custody, and license numbers), and if applicable, Inventory of Environmental Contaminants.

(4) Appendices as needed for forms (e.g., DEP, NYSDOL, FDNY, USEPA, etc.), photographs, sketches and drawings showing sampling / test locations, etc., and any other documentation required by law or standard practice.

(5) Photographs detailing existing conditions that will be impacted by the proposed scope of work (e.g. above suspended ceilings, kitchens, roofs, etc.).

(6) Certification Sheet with original signatures of and seal of Certified Asbestos Investigator, Lead Inspector/Risk Assessor, Mold Assessor, or Environmental Professional Laboratory Analyst or Director and Senior Project Manager and Project Manager, listing certificates and license numbers applicable to the report.

(b) Environmental Assessment & Remedial Action Report

(1) Main report in accordance with the most recent ASTM standards including the following: Background, Scope of Work, Site Description and Adjoining Properties, Physical Setting, Summary, Site Investigation Protocol, Investigation and Sampling Results, Site Contamination Delineation, and Remedial Action Plan, signature page. In addition to the most recent requirements of ASTM, should address the following concerns: wetlands determination, *NYCDOB "E" designation, FEMA flood maps, asbestos containing material, lead based paint, polychlorinated biphenyls, mold* and water intrusion, radon and any additional information that the Commissioner may request.

(2) Appendices including the following where applicable: Figure(s) depicting the site location on a topographic map, figure(s) depicting the site plan, photographs, Sampling location plan, Contamination Delineation, qualifications of environmental professionals, and any other relevant documentation.

(c) Environmental Subsurface Investigation

(1) Main report including the following: Background, Scope of Work, Summary of Prior Reports, Site Description, Physical Setting, Description of Field Activities, Findings, Conclusions and Recommendations, and signature page.

(2) Appendices including the following where applicable: Figure(s) depicting the site location on a topographic map, figure(s) depicting the site plan and sample locations, tables with sample results, photographs, soil boring logs, groundwater sampling logs, laboratory analytical data report, bills of lading for any derived waste, qualifications of environmental professionals, and any other relevant documentation.

(d) The Consultant shall prepare the report so that each page includes the project name and Task Order Letter number, Consultant's name and the date of the submission. Each page in the report must be consecutively numbered. These items shall be formatted as part of the page header or page footer and shall be plainly visible regardless of the report binding.

(e) DRAFT reports shall be approved, rejected, or ordered to be modified by the Commissioner within seven (7) consecutive calendar days (ccd's) after receipt. The Consultant shall be provided with a written list of all necessary modifications. The Consultant shall make all changes and deliver the FINAL Report within three (3) ccd's.

(f) The FINAL report shall be bound in such a manner as to maintain a cohesive document with a pocket folder to hold the compact disc (CD). The method of binding is at the discretion of the Commissioner. The binding shall not interfere with the reader's ability to view the entire report including appendices. The Consultant must also submit an unbound original for internal reproduction.

(g) An Acceptance Letter shall be issued to the Consultant upon approval of the FINAL document(s).

6.10.5 Records of Field Activities: The Consultant shall maintain and submit to the Commissioner records of all field activities.

6.10.6 Asbestos Regulatory Filings: The Consultant shall prepare any and all regulatory filings, when directed by the Commissioner, including, without limitation, the following:

(a) DEP ACP forms 5, 7, 8, 9 and 15
(b) Work Place Safety Plan
(c) Tenant protection Plan
(d) Final Inspection and ATR1 form
(e) NYSDOL Notifications
(f) USEPA National Emissions Standard for Hazardous Air Pollutants Notifications.

6.10.7 Asbestos, Lead and Mold Abatement Project Close-Out Reports: All abatement and remediation projects for which the Consultant supplies Oversight or Resident Engineer services, regardless of scope or size, shall require a "close-out" report at the completion of the project. This report shall chronicle, in sufficient detail, all activities that occurred during the project, tabulate all test results and provide adequate documentation. Asbestos, Lead and Mold Abatement Project closeout reports shall be prepared in accordance with the template provided by DDC.

6.11 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project. If so directed, the Consultant shall provide such Reimbursable Services through entities approved by the Commissioner. Payment for Reimbursable Services shall be in accordance

with the terms set forth in Article 7.

6.11.1 No Reimbursable Services shall be provided by the Consultant, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of *$150*, such written authorization must be provided in advance of the expenditure.

6.11.2 The Consultant shall utilize the method of procurement directed by the Commissioner. If so directed, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds $5,000.

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

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

(a) Long Distance Travel: In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant's home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
(b) Testing services, other than the testing services set forth in Exhibit D.
(c) Printing of documents, deliverables and/or reports in excess of the requirements set forth in this Article
(d) Any other services, determined by the Commissioner to be necessary for the Project

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

6.12 Non-Reimbursable Services: Throughout the Contract and regardless of whether specified in any Task Order issued hereunder, the Consultant shall be responsible for providing the non-reimbursable items and/or services set forth below. All costs for such services are deemed included in payments to the Consultant as set forth in Article 7.

6.12.1 Transportation: The Consultant shall provide transportation for all personnel performing services, including without limitation: (a) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.5), (b) expenses for time spent by personnel commuting or traveling, and (c) expenses for parking and tolls.

6.12.2 Printing: The Consultant shall provide printing of documents, deliverables and/or reports in accordance with the requirements set forth in this Article.

6.12.3 Equipment: The Consultant shall provide the equipment set forth below. Such equipment is required for all personnel performing services.

(a) Communications equipment and service, including without limitation cellular smart telephones. The telephone numbers of all such personnel shall be submitted to the Commissioner.

(b) Hand tools, ladders, sample media, containers and other supplies for collecting samples of environmental contaminants.
(c) Digital camera capable of recording images in indoor/outdoor applications.
(d) Measuring and detection instruments, including without limitation, 100 foot tape measure, engineers scale, 6' folding ruler, water level indicator for borings, drafting triangle
(e) Safety and/or personal protective equipment (Level A, B, C & D) as required by City, State and/or Federal requirements.
(f) Health and Safety plans or other documents required under City, State and/or Federal law for the Consultant's performance of environmental investigations, abatement projects and remediation activities.
(g) Fees for any and all permit or licenses required by Federal, State, and/or local regulatory agencies.

6.12.4 Office: The Consultant shall provide all necessary office supplies and/or tools, including computers.

6.12.5 Quality Assurance Protocol: The Consultant shall provide all services in connection with its Quality Assurance Protocol, as described below:

(a) Quality Assurance Protocol: For all services provided hereunder the Consultant shall adhere to its Quality Assurance Protocol (QAP). The Consultant's QAP is subject to review and approval by the Commissioner. The Consultant shall submit its QAP at the Contract Kick-off Meeting. The QAP shall establish the Consultant's Quality Assurance (QA) policy, management structure and procedures for document control and monitoring that will ensure the reliability and validity of environmental, health and safety data submitted by the Consultant. Services in connection with the Consultant's QAP are non-reimbursable. All costs for such services are deemed included in payments to the Consultant as set forth in Article 7.

(b) The Consultant's QAP shall establish document control and routine monitoring procedures that address the following:

1. Field sampling procedures
2. Documentation of field sampling activities
3. Recording data
4. Chain-of-custody process
5. Sample labeling
6. Sample handling
7. Sampling quality control requirements (e.g., field equipment and trip blanks and field duplicates)
8. Analytical methods requirements
9. Instruments/equipment testing, inspection and maintenance requirements
10. Instrument calibration and frequency
11. Data review, verification, and validation
12. Corrective action process

(c) Subconsultants: The Consultant shall ensure that all Sub-consultants, subcontractors, and laboratories performing services hereunder adhere to a QAP which is substantially similar to the Consultant's QAP.

6.21. Project Work Documentation: The Consultant, its Sub-consultants, subcontractors, and laboratories must maintain and provide to the Commissioner upon project completion, documents and records associated with the services provided. Such documents shall include, without limitation, the following:

(a) Field notebooks or field data sheets
(b) Field equipment calibration / maintenance logs
(c) Chain-of-custody records
(d) Field Standard Operating Procedures (SOP's)

(e) Laboratory QA manuals
(f) Laboratory SOP's
(g) Laboratory procedures
(h) Laboratory data reports
(i) Instrument printouts
(j) Laboratory equipment maintenance logs
(k) Laboratory calibration records
(l) Results of inspections conducted by regulatory agencies
(m) Corrective action documentation

6.18 Requirements for Deliverables and Submissions

6.18.1 General: All deliverables and/or submissions must be clearly labeled and accompanied by a Transmittal Letter which includes the information set forth below.

(a) Consultant Name & Project Manager
(b) DDC Project Name & FMS ID Number
(c) OEGS Project Manager & Task Order Number
(d) Nature / Type of Submission , Phase
(e) Date of Submission – Transmittal

6.19.2 Submission Requirements: The Consultant shall comply with the submission requirements set forth below.

Deliverable	Draft Submission	Final Submission
Survey / Assessment	Original plus one copy Electronic media	Original (Unbound) plus one bound with two CD's and Electronic FTP
Inspection Report / Test Results	Original plus one copy Electronic media	Original (Unbound) plus one bound with two CD's and Electronic FTP
Preliminary Design Submittal copies	Original plus one copy Electronic media	Original (Unbound) plus two bound with two CD's and Electronic FTP
Final Design Submittal	Original plus one copy Electronic media	Original (Unbound) plus one bound with two CD's Original mylar prints
Construction Services / Work Place Safety Plan/ Tenant protection Plan/ ATR1 Plan	Original plus one copy Electronic media	Original (Unbound) plus two copies with two CD's and Electronic FTP
Construction Services / Closeout Report	Original plus one copy Electronic media	Original (Unbound) plus two bound with two CD's and Electronic FTP

"Electronic FTP Upload" means transfer through the Internet of PC-compatible documents in compressed format to the DDC managed FTP-CDE web site.

"Electronic Media" means PC-compatible documents transferred onto CD-ROM media.

6.19.3 Electronic submissions must include all documents in compatible formats, for example:

Submission	Format
Text Reports	.doc - MS-Word 2010®
Tables / Spreadsheets	.xls - MS-Excel 2010®
Presentations	.ppt – MS-PowerPoint 2010®
Drawings, sketches	.dwg - Auto-CAD 2010® (use of X-REF's is prohibited)
Digital Photos	.jpeg – MS-Photo Editor®
Other components or Scanned documents	.pdf – Adobe 6.0® or .tiff – TWAIN® compliant.

6.19.4 Packaging Requirements

(a) Drawings must be rolled into a convenient size, packaged in white or brown wrapping paper and clearly labeled on the exterior surface with the Consultant's Name, DDC Project Name & FMS-ID Number and the Type & Date of Submission

(b) Electronic media (CD-ROM) must be delivered in compatible envelope attached to the back page of the document, clearly labeled on both the case and the disk with the Consultant's Name, DDC Project Name & FMS-ID Number and the Type & Date of Submission.

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

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

6.21 Services for the Handling, Transportation and Disposal for Non-Hazardous Contaminated Soils

6.21.1 General: This work shall consist of the handling, transportation and disposal of non-hazardous contaminated soils. The materials covered by this item are soils that are contaminated with petroleum or chemical products, or impacted by metals, but cannot be classified as hazardous waste. For the purpose of this item and specification, soil shall be defined as any earthy material excavated below the pavement and base for pavement.

6.21.2 Non-hazardous contaminated soils are defined as soils exhibiting one or more of the following characteristics:

(a) Elevated Photo-Ionization Detector (PID) readings, subsequently confirmed by lab analysis

(b) Visual evidence of contamination

(c) Petroleum and/or chemical odors

(d) Soils that have been documented as contaminated in previous environmental reports

6.21.3 The Contractor shall ensure that all operations associated with the handling, sampling, loading, transportation, and disposal of non-hazardous contaminated soils are in compliance with all applicable Federal, State, and Local statutes and regulations, as well as the DDC-approved project documents. The Contractor shall supply all equipment, materials and labor required to conduct the specified work of this Item.

6.21.4 Excavated non-hazardous contaminated soils shall be delivered to the disposal or treatment facility within thirty (30) calendar days after excavation. Prior to off-site disposal, excavated non-hazardous contaminated soils must be stockpiled securely at an approved off-site location or on-site by the Contractor, meeting all required Federal, State and Local stipulations. Sampling and laboratory analysis must be conducted in accordance with item 6.21.9 – Sampling and Testing of Contaminated/Potentially Hazardous Soils for Disposal Parameters to determine if the soils to be excavated are non-hazardous contaminated or hazardous, unless an alternative procedure presented in the Field Sampling Plan (FSP) has been agreed upon by treatment/disposal facilities. Contaminated soils determined to be non-hazardous shall be handled in accordance with the specifications herein for Item 8.01 C1. Contaminated soils determined to be hazardous shall be handled in accordance with the specifications for Item 8.01 H – Handling, Transporting and Disposal of Hazardous Soils.

6.21.5 The Contractor shall retain the services of an independent Environmental Consultant, as specified under Item 6.19 – Health and Safety, to oversee the work required under this Item. The Contractor's Environmental Consultant shall oversee and document the excavation, handling, transportation and disposal of non-hazardous contaminated soils. The Contractor's Environmental Consultant shall conduct sampling and analysis of the excavated soils as specified under Item 6.21.9 – Sampling and Testing of Contaminated/Potentially Hazardous Soils for Disposal Parameters. The laboratory results and a letter from the Environmental Consultant determining whether the soils will be handled and disposed of as non-hazardous contaminated soils or hazardous waste shall be forwarded to DDC Program Management, Office of Environmental and Geotechnical Services (OEGS) for review . No other soils shall be sampled or analyzed without DDC's approval or direction.

6.21.6 Material Handling Plan: Within forty-five (45) calendar days after award of Contract, the Contractor shall submit to DDC Program Management OEGS for review a Material Handling Plan (MHP). The MHP must be approved by the Program Management OEGS, prior to the Contractor's commencement of work. The MHP is intended to be followed along with the approved Site-Specific Health and Safety Plan (HASP) and the Field Sampling Plan (FSP). At a minimum, the MHP shall consist of:

(a)The Contractor's screening procedures, based on PID readings, visual observations, and odor, for identifying non-hazardous contaminated soils during excavation, including the specific model and manufacturer of intended organic vapor monitoring equipment and calibration procedures to be used. It should also include the training and experience of the personnel who will operate the equipment.

(b) The Contractor's procedures for safely handling non-hazardous contaminated soils with safety and health considerations for the public and site personnel, as well as environmental protection. These procedures shall also cover storm water pollution prevention, dust and odor control, contingency plan, etc.

(c) The New York State Department of Environmental Conservation (DEC) Soil Cleanup Objective (SCO) to be established for the project clean up goal. It shall match the end use of the project site, and the quality of the imported fill shall match such a goal.

(d) The project requirements for off-site transport of excavated materials from the site to the disposal facility.

(e) The oversight and documentation responsibility of the Contractor's Environmental Consultant during excavation, load out and departure, and backfilling.

(f) The project requirements for any reuse of soil originated from the site. The expected location for placement of reused material shall be shown in the MHP. Reuse of any soil that does not meet the SCO established for the site must be approved by the DEC before anu reuse activities begin.

(g) The name, address, New York State Department of Health's (DOH) Environmental Laboratories Accreditation Program (ELAP) status, and telephone number of the proposed laboratory for analysis of representative soil samples. The ELAP for the intended analysis must approve the laboratory.

(h) Identification of the Contractor's proposed waste transporter(s). This information shall include:

1. Name and Waste Transporter Permit Number
2. Address
3. Name of responsible contact for the hauler
4. Telephone number for the contact
5. Any and all necessary permit authorizations for each type of waste transported
6. Previous experience in performing the type of work specified herein.
7. Stockpiling procedures and locations of all staging and stockpiling areas (if stockpiling areas are intended and available), or alternate procedures that will be used. Alternate procedures may include, but are not limited to, agreements from the intended disposal or treatment facilities to accept boring data and/or analytical data previously obtained during the site characterization, so that materials may be directly loaded into vehicles for shipment to the disposal facility.
8. A backup stockpiling area for situations when the staging/stockpile areas become unavailable, insufficient in area or not be present by some other unforeseen difficulty.
9. The quantities of each type of waste to be disposed of off-site.
10. The project requirements for and the volume of imported fill materials to be used as backfill.
11. The project requirements for fluid management, such as during dewatering
12. Identification of the Contractor's two proposed Treatment Storage or Disposal (TSD) facilities for non-hazardous contaminated soils (primary and back-up) for final disposal of the soils. The primary TSD shall be an approved soil recycling/treatment facility. The backup facility may be a recycling/treatment facility or a DEC-approved lined landfill or other facility approved by DEC to accept this material. The information required for each facility shall include:

    (a)Facility name and the State identification number
    (b) Facility location
    (c) Name of responsible contact for the facility
    (d) Telephone number for contact
    (e) Signed letter of agreement to accept waste as specified in this contract
    (f) Unit of measure utilized at facility for costing purposes

13. A listing of all permits, licenses, letters of approval, and other authorizations to operate, which are currently held and valid for the proposed facility.

14. A listing of all permits, licenses, letters of approval, and other authorizations to operate which have been applied for by the proposed facility but not yet granted or issued.

15. The Contractor shall specify and describe the disposal/containment unit(s) that the proposed facility will use to manage the waste.

16. The Contractor shall identify the capacity available in the units and the capacity reserved for the subject waste. The Contractor shall provide the date of the proposed facility's last compliance inspection.

17. A list of all active (unresolved) compliance orders (or agreements), enforcement notices, or notices of violations issued to the proposed facility shall be provided. The source and nature of the cause of violation shall be stated, if known.

18. The Contractor shall submit the name and location of the facility where an off-site scale is located. The Contractor shall also submit a plan to the DDC for review outlining procedures on controlling trucks leaving the work site and en-route to the off-site scale.

6.21.7 Materials

(a) Containers shall be as required in the United State Department of Transportation (DOT) regulations.

(b) Polyethylene shall be placed under (20 mil. thickness minimum) and over (10 mil. thickness minimum) soil stockpiles.

(c) The Contractor shall assure that the waste hauler's appropriate choice of vehicles and operating practices shall prevent spillage or leakage of contaminated material from occurring en route.

(d) The Contractor shall provide, install and maintain any temporary loading facilities on site as required until completion of material handling activities. The location and design of any facilities shall be included in the MHP and be approved by the DDC Program Management OEGS.

6.21.8 Construction Details

(a) Material Handling

1. Immediately after excavation of non-hazardous contaminated soil, the Contractor shall:

   a. Load material directly onto trucks/tankers/roll offs for disposal off site; or

   b. If interim stockpiling is required, place material on a minimum of 20 mil. or equivalent polyethylene sheeting and cover it securely by a minimum of 10 mil. polyethylene sheeting or equivalent to protect against leaching or runoff of contaminants onto nearby areas or into groundwater or nearby water or storm water features. Stockpiles shall be located at least 50 feet away from any water bodies. Weigh or secure the sheeting by appropriate means and seal seams as approved by the DDC to prevent tearing or removal by weather. Grade surrounding surface to provide for positive drainage away from stockpiles. Stockpile volume shall not exceed 100 cubic yards.

2. Institute appropriate procedures and security measures to ensure the protection of site personnel and the public from contaminated materials, as described in the approved MHP and Item 6.19 - Health and Safety.

3. Any soil encountered that appears to contain unknown contaminants (based on visual, odor, or other observation), or that vary substantially from the material originally identified must be segregated in stockpiles and the independent Environmental Consultant promptly notified. Construct stockpiles to the same requirements as stated in subsection 8.01 C1.3 A.1.b above.

4. Provide any dewatering that is necessary to complete the work. Contaminated water shall be disposed of in accordance with Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

5. Provide and field screen excavated soil using a PID or a flame ionization detector (FID) to detect general organic vapor levels at intervals of approximately fifty (50) cubic yards of soil excavated, when visual or odor observations indicate the material may substantially differ from the soil previously excavated, and/or as directed by the Contractor's Environmental Consultant.

6. Soil and fill originated from the site that meets the SCO established in the MHP may be reused on-site. The Contractor's Environmental Consultant will ensure that reused materials are segregated from other materials and that procedures defined in the MHP are followed.

7. Organic matter (wood, roots, stumps, etc.) or other waste derived from clearing and grubbing of the Site will not be buried on-Site.

(b) Off-Site Transportation to Disposal or Treatment Facility

General: The Contractor shall furnish all labor, equipment, supplies and incidental costs required to transport contaminated material from the work area to the off-site disposal or treatment facility, and any other items and services required for transporting contaminated material for disposal at an off-site facility.

1. The Contractor shall be responsible for tracking all material/vehicles from the site to the off-site scale.

2. The Contractor shall provide to the DDC certified tare and gross weight slips for each load received at the accepted facility which shall be attached to each returned manifest.

3. The Contractor shall coordinate the schedule for truck arrival and material deliveries at the job site to meet the approved project schedule.

4. The Contractor shall inspect all vehicles leaving the project site to ensure that contaminated soils adhering to the wheels or undercarriage are removed prior to the vehicles leaving the site.

5. The Contractor shall obtain letters of commitment from the waste haulers and the treatment, disposal or recovery facility to haul and accept shipments. The letter shall indicate agreement to handle and accept the specified estimated quantities and types of material during the time period specified in the project schedule and any time extension as deemed necessary.

6. The DDC Program Management OEGS shall review and approve waste profiles before transportation to the TSD facility.

(c) Hauling

1. The Contractor shall coordinate manifesting, placarding of shipments, and vehicle decontamination. All quantities shall also be measured and recorded upon arrival at the disposal or treatment facility. If any deviation between the two records occurs, the matter is to be reported immediately to the DDC and to be resolved by the Contractor to the satisfaction of the DDC.

2. The Contractor shall be held responsible, at its own cost for any and all actions necessary to remedy situations involving material spilled in transit or mud and dust tracked off-site.

3. The Contractor shall ensure that trucks are protected against contamination by properly covering and lining them with a minimum of 10 mil of polyethylene sheeting or by decontaminating them prior to and between acceptances of loads.

4. The Contractor shall be responsible for inspecting the access routes for road conditions, overhead clearance, and weight restrictions.

5. The Contractor shall only use the transporter(s) identified in the approved MHP for the performance of work. Any use of substitute or additional transporters must have previous written approval from the DDC Program Management OEGS at no additional cost to the City.

6. The Contractor shall develop, document, and implement a policy for accident prevention.

7. The Contractor shall not combine contaminated materials from other projects with material from this project.

8. No material shall be transported until approved by the DDC.

(d) Off-Site Disposal

1. The Contractor shall use only the facility(ies) identified in the MHP for the performance of the work. Substitutions or additions shall not be permitted without prior written approval from the DDC Program Management OEGS, and if approved, shall be at no extra cost to the City.

2. The Contractor shall be responsible for acceptance of the materials at an approved facility, for ensuring that the facility is properly permitted to accept the stated materials, and that the facility provides the stated treatment and/or disposal services.

3. The DDC reserves the right to contact and visit the disposal or treatment facility and regulatory agencies to verify the agreement to accept the stated materials and to verify any other information provided.

4. In the event that the identified and approved facility ceases to accept the stated materials or the facility ceases operations, it is the Contractor's responsibility to locate an alternate approved and permitted facility(ies) for accepting materials. The alternate facility(ies) must be approved in writing by the DDC in the same manner and with the same requirements as for the original facility(ies). This shall be done at no extra cost or delay to the City.

5. The Contractor shall obtain manifest forms, and complete the shipment manifest records required by the appropriate regulatory agencies for verifying the material and quantity of each load in unit of volume and weight. Copies of each manifest shall be submitted to the DDC within four (4) business days following shipment, and within three (3) business days after notification of receipt of the facility. Any manifest discrepancies shall be reported immediately to the DDC and be resolved by the Contractor to the satisfaction of the DDC.

(e) Equipment and Vehicle Decontamination

1. The Contractor shall design and construct a portable decontamination station to be used to decontaminate equipment and vehicles exiting from the exclusion zone. The cost for this work will be paid under Item 6.19 - Health and Safety.

2. Water generated during the decontamination process shall be disposed of in accordance with Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

(f) Method of Measurement

Quantities for non-hazardous contaminated soils shall be measured in tons. The tonnage will be determined by off-site truck scales, as per Subsection 6.21, that are capable of generating load tickets.

(g) Price to Cover

1. The unit price bid per ton for Item 6.21 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for excavation, handling, transportation, disposal, documentation, fees, permits, loading, stockpiling, hauling, and any other incidentals necessary to complete all the work as specified herein for handling, transporting, and disposal of non-hazardous contaminated soil.

2. Final disposal of hazardous soil shall be paid for under Item 6.21 – Handling, Transporting and Disposal of Hazardous Soils. Disposal of decontamination water shall be paid for under Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

3. Backfill will be paid for under its respective item as specified in the contract document.

4. Services provided by the independent Environmental Consultant shall be paid under Item 6.19 – Health and Safety.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
6.21	Handling, Transporting, and Disposal of Non-Hazardous Contaminated Soil	Tons

6.21.9 Sampling and Testing of Contaminated / Potentially Hazardous Soil for Disposal Parameters

(a) Description

The work shall consist of evaluating existing subsurface data from previous DDC Phase II Subsurface Corridor Investigations in Attachment 4, if available, and collecting and analyzing additional representative soil samples for parameters typically requested by the disposal facilities.

(b) Field Sampling Plan

1. At least forty five (45) days prior to the commencement of work, the Contractor must submit a FSP to DDC Program Management OEGS for review and approval. The plan shall include sampling protocol and frequency; laboratory analyses to be performed; the name, address, NYCDOH's ELAP status, and telephone numbers of the proposed laboratory. The plan shall also include training and experience of the personnel who will collect the samples.

2. Prior to preparing the FSP, the Contractor shall evaluate existing subsurface data from previous DDC Phase II Subsurface Corridor Investigations in Attachment 4, if available, to determine if additional sampling and analyses shall be performed to fill data gap and characterize the soil to be excavated and groundwater to be removed. The Contractor shall not hold DDC responsible or liable for any inaccuracies, limitations, or incompleteness in the subsurface data provided in previous Phase II Subsurface Corridor Investigations.

3. The Contractor shall provide field sampling protocol on characterizing impacted or excavated soil from the site, and description of all sampling and field/laboratory analyses that will be needed to obtain disposal facility approval.

4. The Contractor shall provide field sampling protocol and endpoint sampling methodologies on delineating hazardous soil before and during excavation at the site. The name, address, DOH ELAP status, and telephone number of the proposed laboratory for analysis of representative soil samples. The ELAP for the intended analysis must approve the laboratory.

5. The Contractor shall sample and analyze representative samples of the contaminated/potentially hazardous soils to be excavated. For stockpiled soils, the Contractor shall collect and analyze one (1) composite sample per 500 cubic yards or fraction thereof. Each composite sample shall consist of a minimum of five (5) grab samples collected from greater than two (2) feet below the soil surface. For drummed soil, the Contractor shall collect one (1) composite sample per (ten) 10 drums or fraction thereof. Each composite sample shall consist of a grab sample from each of the ten (10) drums or fraction thereof. Each composite sample shall be analyzed for Resource Conservation and Recovery Act (RCRA) hazardous waste characteristics (Ignitability, Reactivity, Corrosivity), Full Toxicity Characteristic Leaching Procedure (TCLP) (including RCRA metals, Volatile Organic Compounds (VOCs), Semi-Volatile Organic Compounds (SVOCs), pesticides, herbicides), Total Petroleum Hydrocarbons (TPH) and Polychlorinated Biphenyls (PCBs). All samples collected should be analyzed on a five (5) calendar days turn-around time and analytical results must be submitted to DDC Program Management OEGS upon receipt of the analytical results.

6. All sampling shall be conducted by the Contractor's Environmental Consultant, who is trained in sampling protocols using standard accepted practices for obtaining representative samples.

7. The Contractor must also contact and obtain approval from the disposal facility where the waste will be sent for permanent disposal, and arrange to collect any additional samples required by the facility. The cost associated with additional sampling and testing shall be included in the bid price of this Item.

8. The quality of the data from the sampling program is the Contractor's responsibility. The Contractor must furnish all qualified personnel, equipment and instruments necessary to carry out the sampling. Unless directed otherwise, all sampling procedures must follow the DEC Technical Guidance for Site Investigation and Remediation DER-10 sampling guidelines and protocols.

9. All sample containers shall be laboratory grade and marked and identified with legible sample labels which shall indicate the project name, sample location and/or container, the sample number, the date and time of sampling, preservatives utilized and other information that may be useful in determining the character of the sample. Chain-of-custody shall be tracked from laboratory issuance of sample containers through laboratory receipt of the samples.

10. The Contractor shall maintain a bound sample logbook. The Contractor shall provide DDC access to it at all times and shall turn it over to the DDC in good condition at the completion of the work. The following information, as a minimum, shall be recorded to the log:

    1. Sample identification number
    2. Sample location
    3. Field observation
    4. Sample type
    5. Analyses
    6. Date/time of collection
    7. Collector's name
    8. Sample procedures and equipment utilized
    9. Date sent to laboratory and name of laboratory

11. The City reserves the right to direct the Contractor to conduct alternative sampling in lieu of the parameters described in item 6.21.9, if the situation warrants. The substitute sampling parameters shall be of equal or lesser monetary value than those described in item 6.21.9.1 B.5, as determined by industry laboratory pricing standards.

12. Only dedicated sampling equipment may be used to collect these samples. All non-disposable equipment involved in field sampling must be decontaminated before being brought to the sampling location, and must be properly disposed after use.

13. Soils exceeding any of the hazardous characteristic criteria meet the legal definition of hazardous soils (rather than non-hazardous contaminated soils) and shall be transported or disposed of under Item 8.01 H – Handling, Transporting and Disposal of Hazardous Soils. All analyses must be done by a laboratory that has received approval from the ELAP for the methods to be used and the laboratory shall be included in the approved MHP.

14. If the Contractor collects and analyzes additional samples beyond the number of samples approved by the DDC, the Contractor will not be compensated for the cost of sample collection and analyses.

6.21.10

Quantities for samples shall be measured as the number of sets of samples that are tested. A set shall be defined as one (1) composite sample analyzed for the full range of parameters as specified in subsection 8.01C2.1 B.5.

6.21.11 PRICE TO COVER

The unit price bid per set for Item 6.21.9 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance necessary for sampling, handling, transporting, testing, documentation, fees, permits and any other incidentals necessary to complete the work as specified herein for sampling and testing of contaminated/potentially hazardous soil.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
6.21.9	Sampling and Testing of Contaminated/ Potentially Hazardous Soil for Disposal Parameters	Set

6.14 Handling Transporting and Disposal of Hazardous Soils

6.18.1 General: This work shall consist of the handling, transportation and disposal of soils or materials that are listed as hazardous wastes or exhibit any of the characteristics of a hazardous waste, namely ignitability, corrosivity, reactivity, and toxicity, as defined in 6 NYCRR Part 371, Section 371.3 and 40 CFR Section 261. For the purpose of this item and specification, soils shall be defined as any earthy materials excavated below the pavement and base for pavement.

(a) Contaminated soils determined to be hazardous under Item 6.21.9 shall be handled, transported, and disposed of under Item 8.01 H in accordance with the specifications herein.
(b) The independent Environmental Consultant retained by the Contractor, as specified under Item 6.19 – Health and Safety, shall conduct sampling and analysis of impacted and excavated soils in accordance with item 6.21.9 to determine which soils are hazardous.
(c) All work under Item 8.01 H shall be performed under the direct supervision of the Contractor's Environmental Consultant, as approved by the DDC Program Management OEGS.
(d) The Contractor shall ensure that all operations associated with the handling, sampling, loading, transportation, and disposal of hazardous materials are in compliance with the applicable Federal, State, and Local statutes and regulations.

(e)The Contractor's Environmental Consultant shall document the excavation, handling, sampling, and testing, transportation and disposal of hazardous soils. The City shall be listed in the disposal documents as the waste generator.

(f) The Contractor shall supply all equipment, material and labor required to conduct the specified work of this section.

(g) The Contractor shall ensure that all operations associated with the handling, sampling, loading, transportation and disposal of hazardous soils are conducted in a manner to protect site personnel, the public and the environment, in accordance with all applicable Federal, State, and Local laws and regulations.

(h) The Contractor shall decontaminate all equipment prior to its removal from the exclusion zone and/or following contact with hazardous materials, as detailed in Item 6.19 - Health and Safety. Water generated during the decontamination process shall be disposed of under Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

6.18.2 Material Handling Plan: Within forty-five (45) calendar days after award of Contract, the Contractor shall submit to the DDC Program Management OEGS for review, a Material Handling Plan (MHP). The MHP must be approved by the DDC Program Management OEGS prior to the Contractor's commencement of work. The MHP is intended to be followed along with the approved Site-Specific HASP and the FSP. The MHP shall, at a minimum, consist of:

(a) The Contractor's screening procedures for identifying hazardous soils during excavation, including the specific model and manufacturer of intended organic vapor monitoring equipment and calibration procedures to be used. It shall also include the training and experience of the personnel who will operate the equipment.

(b) The Contractor's procedures for safely handling hazardous soils with considerations for the public and site personnel safety and health, as well as environmental protection. These procedures shall also cover storm water pollution prevention, dust and odor control, contingency plan, etc.

(c) The project requirements for off-site transport of excavated hazardous materials from the site to the disposal facility.

(d) The oversight and documentation responsibility of the Contractor's Environmental Consultant during excavation, load out and departure, and backfilling.

(e) Identification of the Contractor's proposed waste transporter(s). This information shall include:

1.Name and Waste Transporter Permit Number

2.Address

3.Name of responsible contact for the hauler

4. Telephone number for the contact

5. Any and all necessary permit authorizations for each type of waste transported

(f) Previous experience in performing the type of work specified herein.

(g) Stockpiling procedures and locations of all staging and stockpiling areas (if stockpiling areas are intended and available), or alternate procedures that will be used. Alternate procedures may include, but are not limited to, agreements from the intended disposal or treatment facilities to accept boring data and/or analytical data previously obtained during the site characterization, so that materials may be directly loaded into vehicles for shipment to the disposal facility.

(h) A backup stockpiling area in case of the staging/stockpile areas become unavailable, insufficient in area or not be present by some other unforeseen difficulty.

(i) The quantities of hazardous waste to be disposed of off-site.

(j) The project requirements for and the volume of imported fill materials to be used as backfill.

(k) The project requirements for fluid management, such as during dewatering.

(l) Identification of the Contractor's two proposed TSD facilities for hazardous soils (primary and back-up) for final disposal of the soils. The primary TSD shall be an approved soil recycling/treatment facility. The backup facility may be a recycling/treatment facility or a DEC approved lined landfill or other facility approved by DEC to accept this material. The information required for each facility shall include:

1. Facility name and the State identification number

2. Facility location

3. Name of responsible contact for the facility

4. Telephone number for contact

5. Signed letter of agreement to accept waste as specified in this contract

6. Unit of measure utilized at facility for costing purposes

7. A listing of all permits, licenses, letters of approval, and other authorizations to operate, which are currently held and valid for the proposed facility.

8. A listing of all permits, licenses, letters of approval, and other authorizations to operate which have been applied for by the proposed facility but not yet granted or issued.

9. The Contractor shall specify and describe the disposal/containment unit(s) that the proposed facility will use to manage the waste. The Contractor shall identify the capacity available in the units and the capacity reserved for the subject waste.

10. The Contractor shall provide the date of the proposed facility's last compliance inspection.

11. A list of all active (unresolved) compliance orders (or agreements), enforcement notices, or notices of violations issued to the proposed facility shall be provided. The source and nature of the cause of violation shall be stated, if known.

(m) The Contractor shall submit the name and location of the facility where an off-site scale is located. The Contractor shall also submit a plan to the DDC for review outlining procedures on controlling trucks leaving the work site and on-route to the off-site scale. The Contractor shall be responsible for tracking all materials/vehicles from the site to the off-site scale.

6.18.3 MATERIALS

(a) Containers shall be watertight as required in the DOT regulations and must meet all applicable regulations including but not limited to those in Attachment 2.

(b) Polyethylene (20 mil. thickness minimum) shall be placed under and (10 mil. thickness minimum) over soil stockpiles. If soils are placed in drums, polyethylene must be placed over the drums.

(c) The Contractor shall assure that the waste hauler's appropriate choice of vehicles and operating practices shall prevent spillage or leakage of hazardous material from occurring en route.

6.18.4 Construction Details

(a) Material Handling

1. The Contractor shall institute procedures to protect site personnel, the public, and the environment from the non-hazardous and hazardous materials as described in Section 6.19 - Health and Safety.

2. The Contractor shall handle hazardous soil as approved in the MHP. Immediately after excavation of hazardous materials, the Contractor shall load material directly onto trucks/tankers/roll offs for disposal off site. Reuse of any hazardous soil or materials are prohibited.

3. If interim stockpiling is required, stockpiled materials at the temporary TSD facility shall be handled according to the facility requirements, but at a minimum, shall be drummed or placed on and covered with polyethylene to protect against erosion and leaching into surrounding soils or into groundwater or nearby water or storm water features. Stockpiles shall be located at least 50 feet away from water bodies. Weight or secure the sheeting by appropriate means and seal seams as approved by the DDC to prevent tearing or removal by weather. Stockpile areas shall be graded for positive drainage away from the pile, and shall be labeled while being held for sampling prior to permanent disposal. Stockpile volume shall not exceed 100 cubic yards.

4. If hot spot removal of hazardous materials is required, endpoint sampling shall be performed in accordance with the endpoint sampling procedures in the approved FSP.

5. Provide any dewatering that is necessary to complete the work. Water shall be disposed of in accordance with Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

(b) Off-Site Transportation and Disposal

1. General

a. The Contractor shall furnish all labor, equipment and supplies required to transport hazardous materials from the work area to the off-site TSD facility(ies) and to acquire any other items and services required for transporting hazardous materials for storage and/or disposal at an approved off-site facility.

b. The Contractor shall provide to the DDC certified tare and gross weight slips for each load received at the accepted facility which shall be attached to each returned manifest.

d. The Contractor shall organize and maintain the material shipment records/manifests required by law.

e. The Contractor shall coordinate the schedule for truck arrival and material deliveries at the job site to meet the approved project schedule. The schedule shall be compatible with the availability of equipment and personnel for material handling at the job site.

f. The Contractor shall inspect all vehicles leaving the project site to ensure that hazardous soils adhering to the wheels or under carriage are removed prior to the vehicle leaving the site.

g. The Contractor shall obtain letters of commitment from the waste haulers and the TSD facility to haul and accept shipments. The letter shall indicate agreement to handle and accept the specified estimated quantities and types of material during the time period specified in the project schedule and any time extension as deemed as necessary.

h. The DDC Program Management OEGS shall review and approve waste profiles before transportation to the TSD facility.

(c) Hauling

1. The Contractor shall not deliver waste to any facility other than the TSD facility(ies) listed on the shipping manifest.

2. The Contractor shall coordinate manifesting, placarding, of shipments, and vehicle decontamination. All quantities shall also be measured and recorded upon arrival at the

TSD facility. If any deviation between the two records occurs, the matter is to be reported immediately to the DDC and to be resolved by the Contractor to the satisfaction of the DDC.

3. The Contractor shall be held responsible, at its own expense, for any and all actions necessary to remedy situations involving material spilled in transit or mud and dust tracked off-site.

4. The Contractor shall ensure that trucks are protected against contamination by properly covering and lining them with plastic material (such as polyethylene) or by decontaminating them prior to any use other than hauling hazardous materials.

5. The Contractor shall be responsible for inspecting the access routes for road conditions, overhead clearance, and weight restrictions.

6. The Contractor shall only use the transporter(s) identified in the approved MHP for the performance of work. Only a transporter with a current Part 364 Waste Transporter Permit from the DEC may transport this material. Any use of substitute or additional transporters must have previous written approval from the DDC Program Management OEGS at no additional cost to the City.

7. The Contractor shall develop, document, and implement a policy for accident prevention.

8. The Contractor shall not combine hazardous materials from other projects with material from this project.

9. The Contractor shall obtain for the City an EPA hazardous waste generator identification number and a representative of DDC Program Management OEGS will review and sign the manifest as the Agent for the City.

10. No materials shall be transported until approved by the DDC.

(d) Off-Site Disposal

1. The Contractor shall be responsible for acceptance of the materials at an approved TSD facility, for ensuring that the facility is properly permitted to accept the stated materials, and that the facility provides the stated storage and/or disposal services.

2. In the event that the identified and approved facility ceases to accept the stated materials or the facility ceases operations, it is the Contractor's responsibility to locate an alternate approved and permitted facility(ies) for accepting materials. The Contractor is responsible for making the necessary arrangements to utilize the facility(ies), and the alternate facility(ies) must be approved in writing by the DDC in the same manner and with the same requirements as for the original facility(ies). This shall be done with no extra cost or delay to the City.

3. The Contractor shall submit all results and weights to the DDC.

4. The Contractor is responsible to pay all fees associated with the generation and disposal of all excavated hazardous waste. These fees include, but are not limited to, the New York State Department of Finance and Taxation (DFT) quarterly fees for hazardous waste and the New York State DEC annual hazardous waste regulatory fee program. The Contractor shall submit a copy of proof of payment to the DDC.

(e) Equipment and Vehicle Decontamination

1. The Contractor shall design and construct a portable decontamination station to be used to decontaminate equipment and vehicles exiting from the exclusion zone. The cost for this work shall be paid under Item 6.19 - Health and Safety. Disposal of decontamination liquids is described under Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

(f) Record Keeping

1. The Contractor shall obtain manifest forms, and complete the shipment manifest records required by the appropriate regulatory agencies for verifying the material and quantity of each load in unit of volume and weight. Copies of each manifest shall be submitted to the DDC within four (4) business days following shipment, and within three (3) business days after notification of receipt of the facility. Any manifest discrepancies shall be reported immediately to the DDC and be resolved by the Contractor to the satisfaction of the DDC.

(g) Method of Measurement

Quantities for hazardous soil shall be measured in tons satisfactorily delivered to the treatment, storage or disposal facility. The tonnage will be determined by off-site truck scales, as per subsection 8.01 H1.3.B.2, that are capable of generating load tickets.

(h) Price to Cover

1. The unit price bid per ton for Item 8.01 H shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for excavation, handling, transportation, disposal, documentation, permits, fees, taxes, stockpiling, hauling, and any other incidentals necessary to complete the work as specified herein for handling, transporting and disposal of hazardous soils.
2. Final disposal of non-hazardous materials shall be paid for under Item 8.01 C1 – Handling, Transporting and Disposal of Non-Hazardous Soils. Disposal of decontamination water shall be paid under Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.
3 The independent Environmental Consultant shall be paid under Item 6.19 – Health and Safety.
4. Backfill will be paid for under its respective item.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
6.18	Handling, Transporting, and Disposal of Hazardous Soils	Tons

6.15 HEALTH AND SAFETY PLAN

6.19.1 Work to Include

Health and Safety Requirements

(a) Scope of Work

It is the Contractor's responsibility to stage and conduct his/her work in a safe manner. The Contractor shall implement a Site-Specific HASP for non-hazardous contaminated/hazardous soil intrusive activities as set forth in Occupational Safety and Health Administration (OSHA) Standards 1910.120 and 1926.650-652. The Contractor shall ensure that all workers have, at a minimum, hazard awareness training. The Contractor shall segregate contaminated work area in secured exclusion zones. These zones shall limit access to Contractor personnel specifically trained to enter the work area. The exclusion zone shall be set up to secure the area from the public and untrained personnel. The project health and safety program shall apply to all construction personnel including persons entering the work area. In addition, the Contractor shall protect the public from on-site hazards, including subsurface contaminants associated with on-site activities. The Site-Specific HASP shall be signed off by a Certified Industrial Hygienist and reviewed by DDC Program Management OEGS.

Work shall include, but not be limited to:

1. Implementation of a baseline medical program.
2. Providing safety equipment and protective clothing appropriate for site activities for site personnel, including maintenance of equipment on a daily basis; replacement of disposable equipment as required; decontamination of clothing, equipment and personnel; and providing all other health and safety measures.
3. Providing, installing, operating and maintaining on-site emergency medical first aid equipment as specified in this item for which payment is not provided under other pay items in this Contract.
4. Providing, installing, operating, maintaining and decommissioning all equipment and personnel decontamination facilities specified within this item, including, but not limited to, the decontamination pad, decontamination water supply, decontamination water collection equipment and all other items and services required for the implementation of the health and safety requirements for which pay items are not provided elsewhere in this Contract.
5. Providing the minimum health and safety requirements for construction activities within the limits of this specification.
6. Implement and enforce a Site-Specific HASP: The Site-Specific HASP as presented in this item shall be dynamic with provisions for change to reflect new information, new practices or procedures, changing site environmental conditions or other situations which may affect site workers and the public. The Site-Specific HASP shall also address measures for community protection, accident prevention, personnel protection, emergency response/contingency planning, air monitoring, odor control and hazardous chemicals expected on site. Provide a Confined Space Entry Program as defined in the Occupational Safety and Health Act, Confined Space Entry Standard, 29 CFR 1910.146.

(b) Environmental Consulting Services

The Contractor shall retain an independent Environmental Consultant to obtain all permits and perform all field screening, air monitoring, community air monitoring, field sampling, and health and safety services, in accordance with the Federal, State, and Local regulations, as well as DDC-approved project documents. The independent Environmental Consultant shall, at a minimum, provide documentation to the DDC Program Management OEGS demonstrating the minimum requirements as set forth below:

1. The independent Environmental Consultant project supervisor on site and other designated key personnel shall have a minimum of five (5) years of experience in the environmental field dealing with issues associated with contaminated soils. Such experience shall include oversight on environmental cleanup projects, specifically with soil screening, and volatile organic compound and dust monitoring services as a routine part of its daily operations.

2. The independent Environmental Consultant must be experienced in work of this nature, size, and complexity and must have previous experience in working with the DEC.

3. The independent Environmental Consultant shall furnish a project listing identifying the project name, location, nature of services provided, project owner, owner's name and telephone number, project duration and value for at least five (5) projects within the last three (3) years.

4. If conditions within the exclusion zone are deemed hazardous, in accordance with the applicable regulations in Attachment 2, the Contractor and its independent Environmental Consultant shall ensure that all personnel working within identified exclusion zones and/or involved (direct contact) with the handling, storage or transport of non-hazardous contaminated, and hazardous materials shall have completed a minimum of forty (40) hours of Health and Safety Training on Hazardous Waste Sites and annual eight (8) hours of Refresher, in accordance with 29 CFR 1910.120(e), prior to working at the site. The training program shall be conducted by a qualified safety instructor. If conditions in the exclusion zone are deemed to be non-hazardous, the independent Environmental Consultant shall provide site-specific training.

5. The Contractor shall ensure that on-site management and supervisors directly responsible for or who supervise employees engaged in hazardous waste operations shall receive the training specified in above and at least eight (8) additional hours of specialized training on managing such operations at the time of job assignment.

(c) Submittals

1. The Contractor shall submit, within forty-five (45) calendar days after the contract award, a written Site-Specific HASP as specified herein, to DDC Program Management OEGS for review and comment. The Contractor shall make all necessary revisions required by DDC Program Management OEGS and resubmit the Site-Specific HASP to the DDC Program Management OEGS for acceptance. Start-up work for the project will not be permitted until written acceptance has been issued by the DDC Program Management OEGS.

2. Daily safety and training logs shall be maintained by the Contractor and shall be submitted to the DDC either on request or on completion of the work. Daily logs on air monitoring during excavation activities shall be prepared and maintained by the Contractor and submitted to the DDC either on request or upon completion of the work.

3. A closeout report shall be submitted by the Contractor to the DDC upon completion of the work within the defined exclusion zones. This report shall summarize the daily safety and monitoring logs and provides an overview of the Contractor's performance regarding environmental and safety issues. The report shall carefully document all areas where contamination has been found including pictures, addresses of locations, and potential sources.

4. Medical Surveillance Examinations: The Contractor shall submit to the DDC the name, office address and telephone number of the medical consultant utilized. Evidence of baseline medical examinations together with the evidence of the ability to wear National Institute for Occupational Safety and Health (NIOSH) approved respirators (as specified in American National Standards Institute (ANSI) Z88.6) shall be provided to the DDC for all construction personnel who are to enter the exclusion zones.

5. Accident Reports: All accidents, spills, or other health and safety incidents shall be reported to the DDC immediately.

(d) Site-Specific Health and Safety Plan

The Site-Specific HASP shall comply with OSHA regulations 29 CFR 1910.120/1926.65. This document shall, at a minimum, contain the following:

1. Description of work to be performed
2. Site description
3. Key personnel and responsibility
4. Worker training procedures
5. Work practices and segregation of work area
6. Hazardous substance evaluation
7. Hazard assessment

8. Personal and community air monitoring procedures and action levels
9. Personal protective equipment
10. Decontamination procedures
11. Safety rules
12. Project personnel contact information
13. Emergency procedures
14. Spill control, dust control, vapor/odor suppression procedures
15. Identification of the nearest hospital and route
16. Confined space procedures
17. Excavation safety procedures

6.19.2 Measurement

Health and Safety Requirements

(a) 25% of the lump sum price will be paid when the following items are implemented or mobilized:

Medical surveillance program
Health and safety training
Health and safety plan
Environmental and personnel monitoring
Instrumentation
Spill control
Dust control
Personnel and equipment decontamination facilities
Personnel protective clothing
Communications
Mobilization

(b) 50% will be paid in proportional monthly amounts over the period of work.

(c) 25% will be paid when the operation is demobilized and removed from the project site.

6.19.3 PRICE TO COVER

Health and Safety Requirements

The lump sum price bid for the health and safety requirements shall include all labor, materials, equipment, and insurance necessary to complete the work in accordance with these specifications. The price bid shall include, but not be limited to, the following:

(a) Providing training, safety personnel, air monitoring and medical examinations as specified.

(b) Providing safety equipment and protective clothing for site personnel, including maintenance of equipment on a daily basis; replacement of disposable equipment as required; decontamination of clothing, equipment and personnel; and all other health and safety activities or costs not paid for under other pay items in this Contract.

(c) Providing, installing, operating and maintaining on-site emergency medical and first aid equipment. This includes all furnishings, equipment, supplies and maintenance of all medical equipment, and all other health and safety items and services for which payment is not provided under other pay items in this Contract.

(d) Providing, installing, operating, maintaining, and decommissioning all personnel and equipment decontamination facilities, including decontamination pad, decontamination water supply, and all other items and services required for the implementation of the health and safety requirements for which pay items are not provided elsewhere in this Contract. Vehicle decontamination pads shall be included in the price of this item. Disposal of decontamination fluid shall be paid for under Item 6.20 – Removal, Treatment and Discharge/Disposal of Contaminated Water.

(e) Spill Control

1. Payment shall account for furnishing, installing, and maintaining all spill control equipment and facilities. Payment will include equipment and personnel to perform emergency measures required to contain any spillage and to remove spilled materials and soils or liquids that become contaminated due to spillage during work within the exclusion zones and handling of excavated soils and liquids from these areas. This collected spill material will be properly disposed of off-site.

2. Payment under this item shall not include testing, handling, transportation or disposal of contaminated/potentially hazardous soils excavated during construction. The price for this work will be paid for under Items 8.01 C1 – Handling, Transporting and Disposal of Non-Hazardous Contaminated Soils, 6.21.9 – Sampling and Testing of Contaminated/Potentially Hazardous Soil for Disposal Parameters or 8.01 H – Handling, Transporting and Disposal of Hazardous Soils, as appropriate.

(f) Dust Control

Payment shall account for furnishing, installing, and maintaining dust control equipment and facilities to be used whenever applicable dust levels are exceeded. Payment will include all necessary labor, equipment, clean water, foam, and all other materials required by the Dust Control Plan. The DOH Generic Community Air Monitoring Plan (CAMP) may be used as guidance.

(g) Vapor/Odor Suppression

Payment shall account for furnishing, installing and maintaining vapor/odor control equipment and facilities to be used whenever organic vapor monitoring or the presence of odors indicates that vapor suppression is required to protect workers or the public. Payment will include all necessary labor, equipment, clean water, foam and all other materials required by the MHP.

(h) Mobilization/Demobilization

1. Mobilization

Payment shall include, but not be limited to:

a. All work required to furnish, install and maintain all signs, fencing, support zone facilities, parking areas and all temporary utilities;

b. All work required to furnish, install, and maintain an office space with phone and utilities for health and safety personnel;

c. All work required for complete preparation of lay down area for roll-off containers, including sampling, and any required fencing;

d. All direct invoiced cost from bonding companies and government agencies for permits and costs of insurance; and

e. All other items and services required for mobilization and site preparation.

2. Demobilization

Payment shall include, but not be limited to, all work required to clean up and restore the area; remove from the site all equipment, temporary utilities and supporting facilities; performance of necessary decontamination and repairs; disposal of disposable equipment and protective gear and other items and services required for complete demobilization.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
6.19	Health and Safety	Lump Sum

ITEM 6.20 REMOVAL, TREATMENT AND DISCHARGE/DISPOSAL OF CONTAMINATED WATER

6.20.1 Work to Include

General: This work shall consist of the proper removal and disposal of all contaminated groundwater and decontamination water generated during construction operations. For this purpose of this item, water shall be defined as water, groundwater, wastewater, or surface water originated from the site. The Contractor shall be solely responsible for the proper disposal or discharge of all contaminated water generated at the job site. The Contractor will have the option of treating water on-site for discharge to the combined sanitary/storm sewer system or removing contaminated water for off-site disposal. The Contractor shall be responsible to choose a method best suitable to the construction work and shall be compensated on a per day basis regardless of method employed. The Contractor will be compensated for only those days where the system is in full operation.

6.20.2 The Contractor shall retain a dewatering/water treatment Specialist (hereinafter the "Specialist") and laboratory as specified under Item 6.21 – Sampling and Testing of Contaminated Water, to conduct any testing that may be required for disposal of impacted water.

6.20.3 The dewatering/water treatment Specialist is responsible to obtain all permits; perform all water sampling, testing; and provide ancillary services related to dewatering and water treatment. The Specialist shall, at a minimum, provide documentation to the DDC Program Management OEGS demonstrating the minimum requirements as set forth below:

(a) The Specialist shall demonstrate that he/she has, at a minimum, five (5) years of experience in the design of dewatering plans. The Specialist should demonstrate expertise dealing with issues associated with contaminated water. During that three (3) year period, the Specialist shall demonstrate that he/she provided, operated, and maintained dewatering and water treatment systems as a routine part of its daily operations.

(b) The Specialist must be experienced in work of this nature, size, and complexity and must have previous experience in working with the New York City Department of Environmental Protection (DEP).

(c) The Specialist shall furnish a project listing identifying the project name, location, nature of services provided, project owner, owner's name and telephone number, project duration and value for at least five (5) projects within the last three (3) years of a similar nature, size, and complexity to this project site.

(d) If conditions within the exclusion zone are deemed hazardous, in accordance with the applicable regulations in Attachments 2, the Contractor and its independent Environmental Consultant shall ensure that all personnel working within identified exclusion zones and/or involved (direct contact) with the handling, storage or transport of hazardous and contaminated material shall have completed a minimum of forty (40) hours of Health and Safety Training on Hazardous Waste Sites, plus the annual eight (8) hours Refresher, in accordance with 29 CFR 1910.120(e), prior to working at the site. The training program shall be conducted by a qualified safety instructor. If conditions in the exclusion zone are deemed to be non-hazardous, the Specialist shall be responsible to provide site-specific training to its employees and other affected personnel.

(e) The Contractor shall ensure that on-site management and supervisors directly responsible for or who supervise employees engaged in hazardous waste operations shall receive the training specified in above and at least eight (8) additional hours of specialized training on managing such operations at the time of job assignment.

6.20.4 The Contractor shall document all operations associated with the handling, sampling and disposal of contaminated water, and ensure that they are in compliance with applicable Federal, State and Local statutes and regulations.

6.20.5 The Contractor shall supply all labor, equipment, transport, plan, material, treatment, and other incidentals required to conduct the specified work of this section.

6.20.6 If water will be disposed of into the combined sanitary/storm sewer system, the Contractor shall ensure the Specialist treats the water to comply with the DEP Sanitary/Combined and Storm Sewer Effluent Limit concentrations prior to discharge. The Contractor is responsible for providing settling or filtering tanks and any other apparatus required by DEP. Alternatively, the Contractor can provide a plan for transport and disposal at an off-site waste disposal facility.

6.20.7 Within forty-five (45) calendar days after award of Contract, the Contractor shall submit to the DDC Program Management OEGS for review a Water Handling Plan (WHP), which shall be incorporated into the MHP. The WHP must be approved by the DDC Program Management OEGS, prior to the Contractor's commencement of work. The minimum requirements for the WHP are specified herein Item 8.01W 1.2, for each type of disposal (disposal into the combined sanitary/storm sewer or off-site disposal). The Contractor shall maintain a complete, up to date copy of the WHP on the job site at all times.

6.20.8 Construction Details

For each disposal method the Contractor proposes to utilize (disposal to combined sanitary/storm sewer or off-site disposal), the WHP shall include the information required in paragraphs A and B below, as appropriate.

(a) On-site treatment and discharge into New York City combined sanitary/storm sewers

1. Regulations: The Contractor shall comply with all applicable regulations. This includes but may not be limited to:

   Title 15-New DEP Sewer Use Regulations.

2. Permits: The Contractor is solely responsible to obtain all necessary and appropriate Federal, State and Local permits and approvals. The Contractor shall be responsible for performing all and any system pilot tests required for permit approval. This includes but may not be limited to:

   a. Industrial waste approval for the New York City sewer system.

   b. Groundwater discharge permit for the New York City sewer system (DEP Division of Sewer Regulation and Control), if discharge to sewer exceeds 10,000 gallons per day.

   c. The Contractor shall comply with DEC State Pollutant Discharge Elimination System (SPDES) Permit Number GP-0-10-001, General Permit for Stormwater Discharges.

   d. Long Island well point permit for Brooklyn and Queens sites, if well points are used for dewatering.

   e. NYCDEP Wastewater quality control application.

3. The WHP for this portion of the work shall include, at a minimum:

   a. Description of the design, components, and operation of Contractor's proposed treatment and discharge system to assure that the effluent meets the DEP sewer use guidelines prior to discharge to the sewer, including identification of all materials, procedures, settling or filtering tanks, filters and other appurtenances proposed for treatment and disposal of contaminated water.

   b. The name, address and telephone number of the contact for the Contractor's proposed chemical laboratory, as well as the laboratory's certifications under Federal, State or non-governmental bodies.

c. The name, address and telephone number of the contact for the Contractor's proposed independent Environmental Consultant.

d. Copies of all submitted permit applications and approved permits the Contractor have received.

(b) Materials

The Contractor shall supply all settling or filtering tanks, pumps, filters, treatment devices and other appurtenances for treatment, temporary storage and disposal of contaminated water. All equipment shall be suitable for the work described herein.

(c) Execution

1. The Contractor is solely responsible for disposal of all water, in accordance with all Federal, State and Local regulations.

2. The Contractor is solely responsible for any treatment required to assure that effluent discharged into the sewer or other approved point of discharge is in compliance with all permits and Federal, State and Local statutes and regulations.

3. The Contractor is solely responsible for the quality of the water disposed of into the sewers or other approved point of discharge.

4. The Contractor is responsible for sampling and analysis of water for the DEP Sanitary/Combined and Storm sewer Effluent Limit concentrations. The quality of the data is the Contractor's responsibility. Any sampling and testing shall be conducted and paid in accordance with Item 6.21 – Sampling and Testing of Contaminated Water.

5. The Contractor shall be responsible to maintain the discharge rate to the sewer such that all permit requirements are met, the capacity of the sewer is not exceeded and no surcharging occurs downstream due to the Contractor's actions. Dewatering by means of well points or deep wells will not be allowed in the Boroughs of Brooklyn or Queens where the rate of pumping exceeds forty-five (45) gallons per minute unless the appropriate permit has been secured from the DEC.

(d) Disposal of Treatment Media

1. The Contractor shall be responsible for disposal or recycling of treatment media in accordance with all Federal, State and Local regulations.

2. The Contractor shall provide the DDC with all relevant documentation concerning the disposal of treatment media, including manifests, bills of lading, certificates of recycling or destruction and other applicable documentation.

3. Disposal of treatment media shall not be considered as a separate pay item; instead it shall be considered as incidental work thereto and included in the unit price bid.

(f) Off-Site Disposal

1. Regulations: The Contractor shall conform to all applicable Federal, State and Local regulations pertaining to the transportation, storage and disposal of any hazardous and/or non-hazardous materials as listed in Attachment 2.

2. The following shall be provided in the MHP and submitted to the DDC Program Management OEGS for written approval, prior to initiating any off-site disposal:

a. (1) Name and waste transporter permit number

(2) Address

(3) Name of responsible contact for the hauler

(4) Any and all necessary permit authorizations for each type of waste transported

(5) Previous experience in performing the type of work specified herein

b. General information for each proposed treatment/disposal facility and at least one backup treatment/disposal facility

(1) Facility name and EPA identification number

(2) Facility location

(3) Name of responsible contact for the facility

(4) Telephone number for contact

(5) Unit of measure utilized at facility for costing purposes

c. A listing of all permits, licenses, letters of approval and other authorizations to operate, which are currently held and valid for the proposed facility as they pertain to receipt and management of the wastes derived from this Contract.

d. A listing of all permits, licenses, letters of approval and other authorizations to operate which have been applied for by the proposed facility but not yet granted or issued. Provide dates of application(s) submitted. Planned submittals shall also be noted.

e. The Contractor shall specify and describe the disposal/containment unit(s) that the proposed facility will use to manage the waste and provide dates of construction and beginning of use, if applicable. Drawings may be provided. The Contractor shall identify the capacity available in the units and the capacity reserved for the subject waste.

f. The Contractor shall provide the date of the proposed facility's last compliance inspection.

g. A list of all active (unresolved) compliance orders, agreements, enforcement notices or notices of violations issued to the proposed facility shall be submitted. The source and nature of the cause of violation shall be stated, if known. If groundwater contamination is noted, details of the facility's groundwater monitoring program shall be provided.

h. Description of all sampling and field/laboratory analyses that will be needed to obtain disposal facility approval.

3. Materials

All vessels for temporary storage and transport to an off-site disposal facility shall be as required in DOT regulations.

4. Execution

a. <u>General</u>

(1) The Contractor shall organize and maintain the material shipment records/manifests required by Federal, State and Local law. The Contractor shall include all bills of lading, certificates of destruction, recycling or treatment and other applicable documents.

(2) The Contractor shall coordinate the schedule for truck arrival and material deliveries at the job site to meet the approved project schedule. The schedule shall be compatible with the availability of equipment and personnel for material handling at the job site.

(3) The Contractor shall inspect all vehicles leaving the project site to ensure that contaminated liquids are not spilling and are contained for transport.

(4) The Contractor shall obtain letters of commitment from the waste haulers and the treatment, disposal or recovery facility to haul and accept shipment. The letter shall indicate agreement to handle and accept the specified estimated quantities and types of material during the time period specified in the project schedule and any time extension as deemed as necessary.

(5) The Contractor shall verify the volume of effluent discharged from the site.

(6) The Contractor is responsible for sampling and testing of water for off-site disposal. The quality of the data is the Contractor's responsibility. Any sampling and testing shall be conducted and paid in accordance with Item 6.21 – Sampling and Testing of Contaminated Water.

(7) The Contractor shall be responsible for any additional testing required by the TSD facility, and for the acceptance of the water at an approved TSD facility.

b. Hauling

(1) The Contractor shall not deliver waste to any facility other than the TSD facility(ies) listed on the shipping manifest.

(2) The Contractor shall coordinate manifesting, placarding of shipments, and vehicle decontamination. All quantities shall also be measured and recorded upon arrival at the TSD facility(ies). If any deviation between the two records occurs, the matter is to be reported immediately to the DDC and shall be resolved by the Contractor to the satisfaction of the DDC.

(3) The Contractor shall be held responsible for any and all actions necessary to remedy situations involving material spilled in transit or mud and dust tracked off-site. This cleanup shall be accomplished at the Contractor's expense.

(4) The Contractor shall be responsible for inspecting the access routes for road conditions, overhead clearance and weight restrictions.

(5) The Contractor shall only use the transporter(s) identified in the WHP for the performance of work. Only a transporter with a current Part 364 Waste Transporter Permit from DEC may transport this material. Any use of substitute or additional transporters must have previous written approval from the DDC at no additional cost to the City.

(6) The Contractor shall develop, document, and implement a policy for accident prevention.

(7) The Contractor shall not combine waste materials from other projects with material from this project.

(8) The Contractor shall obtain for the City a hazardous waste generator identification number and will sign the manifest as the Agent for the City , if necessary.

(9) No material shall be transported until approved by the DDC.

c. Disposal Facilities

(1) The Contractor shall use only the TSD facility(ies) identified in the WHP for the performance of the work. Substitutions or additions shall not be permitted without prior written approval from the DDC Program Management OEGS, and, if approved, shall be at no extra cost to the City.

(2) The Contractor shall be responsible for acceptance of the material at an approved TSD facility, for ensuring that the facility is properly permitted to accept the stated material, and that the facility provides the stated storage and/or disposal services.

(3) The DDC reserves the right to contact and visit the disposal facility and regulatory agencies to verify the agreement to accept the stated material and to verify any other information provided. This does not in any way relieve the Contractor of his/her responsibilities under this specification.

3

(4) In the event that the identified and approved facility ceases to accept the stated materials or the facility ceases operations, it is the Contractor's responsibility to locate an alternate approved and permitted facility(ies) for accepting materials. The Contractor is responsible for making the necessary arrangements to utilize the facility(ies), and the alternate facility(ies) must be approved in writing by the DDC in the same manner and with the same requirements as for the original facility(ies). This shall be done with no extra cost or delay to the City.

d. Equipment and Vehicle Decontamination

(1) The Contractor shall design and construct a portable decontamination station to be used to decontaminate equipment and vehicles exiting the exclusion zone. The cost for this work shall be paid under Item 6.19 – Health and Safety.

6.20.3 METHOD OF MEASUREMENT

The quantity for on-site treatment and discharge or off-site disposal shall be on a per day basis.

6.20.4 Price to Cover

A. The per day price bid for Item 6.20 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for handling, transportation, disposal, documentation, permits, hauling, mobilization and demobilization, and any other incidentals thereto to complete the work.

B. The Contractor will not be paid for the handling and discharge of water that is within the DEP Sewer Discharge Limits.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
6.20	Removal, Treatment and Disposal/Discharge of Contaminated Water	Day

ITEM 6.21 SAMPLING AND TESTING OF CONTAMINATED WATER

6.21.1 Work to Include

(a) Description

The work shall consist of sampling and testing of potentially contaminated water, wastewater, groundwater, surface runoff within the excavated area and all contaminated water generated during the decontamination process. For this purpose of this item, water shall be defined as water, wastewater, groundwater, or surface runoff originated from the site.

(b) Sampling and Testing

1. The Contractor is responsible, at a minimum, for sampling and testing of contaminated water for the DEP Sanitary/Combined and Storm Sewer Effluent Limit concentrations as listed in Attachment 1. The quality of the data is the Contractor's responsibility. Any additional testing required by the Federal, State and/or disposal facilities shall be included in the bid price of this Item.

2. All sampling and testing shall be conducted by the Contractor's Environmental Consultant and is trained in sampling protocols using accepted standard practices and/or the DEC sampling guidelines and protocols.

3. All sample containers shall be laboratory grade and marked with legible sample labels indicating the project name, sample location and/or container, the sample number, the date and time of sampling, preservatives utilized, how the sample was chilled to 4 degrees Celsius, and other information that may be useful in determining the character of the sample.

4. Chain-of-custody shall be tracked from laboratory issuance of sample containers through receipt of the samples.

5. The Contractor shall maintain a bound sample log book. The Contractor shall provide the DDC access to it at all times and shall turn it over to the DDC in good condition at the completion of the work. The following information, as a minimum, shall be recorded to the log:

   a. Sample identification number

   b. Sample location

   c. Field observation

   d. Sample type

   e. Analyses

   f. Date/time of collection

   g. Collector's name

   h. Sample procedures and equipment used

   i. Date sent to laboratory/name of laboratory

6. Only dedicated sampling equipment may be used to collect these samples. All non-disposable equipment involved in field sampling must be decontaminated before being brought to the site, and must be properly disposed of after use.

7. Samples shall be submitted to the Contractor's laboratory within the holding times for the parameters analyzed.

8. All analyses must be done by a laboratory that has received approval from the DOH's ELAP for the methods to be done. The Contractor must specify the laboratory in the WHP.

9. Analytical results for water discharged to the sewer and for off-site disposal must be submitted to the DDC no later than five (5) days after sample collection.

10. The City reserves the right to direct the Contractor to conduct alternative sampling in lieu of the parameters described above, if the situation warrants. The substitute sampling parameters shall be of equal or lesser monetary value than those described above, as determined by industry laboratory pricing standards.

6.21.2 Method of Measurement

Quantities for samples shall be measured as the number of sets of samples that are tested for the DEP Sanitary/Combined and Storm Sewer Effluent Limit concentrations. A set shall be defined as one (1) representative sample analyzed for the full range of DEP parameters as specified in Attachment 1.

6.21.3 Price to Cover

The unit price bid per set for Item 6.21 shall include the cost of furnishing all labor, materials, equipment, plan, and insurance for handling, transport, sampling, testing, documentation, permits, other incidentals necessary to complete the work of sampling and testing of contaminated water. Any additional costs incurred by the Contractor for sampling and testing of contaminated water shall be included in the bid price of this Item.

Payment will be made under:

ITEM NUMBER	ITEM	PAYMENT UNIT
6.21	Sampling and Testing of Contaminated Water	Set

ATTACHMENT 1

New York City Department of Environmental Protection

Limitations for Discharge To Storm, Sanitary/Combined Sewer

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTEWATER TREATMENT

Limitations for Effluent to Sanitary or Combined Sewers

Parameter[1]	Daily Limit	Units	Sample Type	Monthly Limit
Non-polar material[2]	50	mg/l	Instantaneous	---
pH	5-11	SU's	Instantaneous	---
Temperature	< 150	Degree F	Instantaneous	---
Flash Point	> 140	Degree F	Instantaneous	---
Cadmium	2 0.69	mg/l mg/l	Instantaneous Composite	--- ---
Chromium (VI)	5	mg/l	Instantaneous	---
Copper	5	mg/l	Instantaneous	---
Lead	2	mg/l	Instantaneous	---
Mercury	0.05	mg/l	Instantaneous	---
Nickel	3	mg/l	Instantaneous	---
Zinc	5	mg/l	Instantaneous	---
Benzene	134	ppb	Instantaneous	57
Carbontetrachloride	---	---	Composite	---
Chloroform	---	---	Composite	---
1,4 Dichlorobenzene	---	---	Composite	---
Ethylbenzene	380	ppb	Instantaneous	142
MTBE (Methyl-Tert-Butyl-Ether)	50	ppb	Instantaneous	---
Naphthalene	47	ppb	Composite	19
Phenol	---	---	Composite	---
Tetrachloroethylene (Perc)	20	ppb	Instantaneous	---
Toluene	74	ppb	Instantaneous	28
1,2,4 Trichlorobenzene	---	---	Composite	---
1,1,1 Trichloroethane	---	---	Composite	---
Xylenes (Total)	74	ppb	Instantaneous	28
PCB's (Total)[3]	1	ppb	Composite	---
Total Suspended Solids (TSS)	350[4]	mg/l	Instantaneous	---
CBOD[5]	---	---	Composite	---
Chloride[5]	---	---	Instantaneous	---
Total Nitrogen[5]	---	---	Composite	---
Total Solids[5]	---	---	Instantaneous	---
Other				

1 All handling and preservation of collected samples and laboratory analyses of samples shall be performed in accordance with 40 C.F.R. pt. 136. If 40 C.F.R. pt. 136 does not cover the pollutant in question, the handling, preservation, and analysis must be performed in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater." All analyses shall be performed using a detection level less than the lowest applicable regulatory discharge limit. If a parameter does not have a limit, then the detection level is defined as the least of the Practical Quantitation Limits identified in NYSDEC's Analytical Detectability and Quantitation Guidelines for Selected Environmental Parameters, December 1988

2 Analysis for ***non-polar materials*** must be done by EPA method 1664 Rev. A. Non-Polar Material shall mean that portion of the oil and grease that is not eliminated from a solution containing N–Hexane, or any other extraction solvent the EPA shall prescribe, by silica gel absorption.

3 Analysis for PCB=s is required if ***both*** conditions listed below are met:
1) if proposed discharge ≥ 10,000 gpd;
2) if duration of a discharge > 10 days.
Analysis for PCB=s must be done by EPA method 608 with MDL=<65 ppt. PCB's (total) is the sum of PCB-1242 (Arochlor 1242), PCB-1254 (Arochlor 1254), PCB-1221 (Arochlor 1221), PCB-1232 (Arochlor 1232), PCB-1248 (Arochlor 1248), PCB-1260 (Arochlor 1260) and PCB-1016 (Arochlor 1016).

4 For discharge ≥ 10,000 gpd, the TSS limit is 350 mg/l. For discharge < 10,000gpd, the limit is determined on a case by case basis.

5 Analysis for Carbonaceous Biochemical Oxygen Demand (CBOD), Chloride, Total Solids and Total Nitrogen are required if proposed discharge ≥ 10,000 gpd.

ATTACHMENT 2

Applicable Regulations

Applicable regulations include, but are not limited to:

1. 49 CFR 100 to 179 - DOT Hazardous Materials Transport and Manifest System Requirements
2. New York State Department of Environmental Conservation (DEC), Spills Technology and Remediation Series (STARS) Memo #1
3. 6 NYCRR 360-1 DEC Solid Waste Management Facilities
4. 6 NYCRR 364- Waste Transporter permits
5. Local restrictions on transportation of waste/debris
6. 40 CFR 260 to 272 - Hazardous Waste Management (RCRA)
7. 6 NYCRR 371 - Identification and Listing of Hazardous Wastes
8. 6 NYCRR 372 - Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities
9. 6 NYCRR 373-1 - Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements
10. 6 NYCRR 376 - Land Disposal Restrictions
11. Posted weight limitations on roads or bridges
12. Transportation Skills Programs, Inc. 1985 - Hazardous Materials and Waste Shipping Papers and Manifests
13. Other local restrictions on transportation of waste/debris
14. Occupational Safety and Health Administration (OSHA), Standards and Regulations, 29 CFR 1910 (General Industry)
15. OSHA 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response
16. OSHA Safety and Health Standards 29 CFR 1926 (Construction Industry)
17. OSHA 29 CFR 1910.146 Confined Space Entry Standard
18. Standard Operating Safety Guidelines, EPA Office of Emergency and Remedial Response Publication, 9285.1-03
19. NIOSH / OSHA / USCG / EPA Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (1986)
20. U.S. Department of Health and Human Services (DHHS) "NIOSH Sampling and Analytical Methods," DHHS (NIOSH) Publication 84-100
21. ANSI, Practice for Respiratory Protection, Z88.2 (1980)
22. ANSI, Emergency Eyewash and Shower Equipment, Z41.1 (1983)
23. ANSI, Protective Footwear, Z358.1 (1981)
24. ANSI, Physical Qualifications for Respirator Use, Z88.6 (1984)
25. ANSI, Practice for Occupational and Educational Eye and Face Protection, Z87.1 (1968)
26. Water Pollution Control Federation "Manual of Practice No. 1, Safety in Wastewater Works"
27. NFPA No. 327 "Standard Procedures for Cleaning and Safeguarding Small Tanks and Containers"
28. Occupational Safety and Health Act Confined Space Entry Standard 29 CFR 1910.146.87
29. Department of Transportation 49 CFR 100 through 179
30. Department of Transportation 49 CFR 387 (46 FR 30974, 47073)
31. Environmental Protection Agency 40 CFR 136 (41 FR 52779)
32. Environmental Protection Agency 40 CFR 262 and 761

33. Resource Conservation and Recovery Act (RCRA)

34. Any transporter of hazardous or non-hazardous materials shall be licensed in the State of New York and all other states traversed in accordance with all applicable regulations.

ATTACHMENT 3

Definitions

Contaminated Groundwater and Decontamination Fluids: Groundwater within the excavation trench or decontamination water that contains regulated compounds above the NYCDEP Discharge to Sanitary/Combined Sewer Effluent limits.

Disposal or Treatment Facility: A facility licensed to accept either non-hazardous regulated waste or hazardous waste for either treatment or disposal.

Exclusion Zone: Work area that will be limited to access by Contractor personnel specifically trained to enter the work area only. The exclusion zone will be set up to secure the area from the public and untrained personnel. The project health and safety program will apply to all construction personnel including persons entering the work area.

Hazard Assessment: An assessment of any physical hazards that may be encountered on a work site.

Hazardous Soils: Soils that exhibit any of the characteristics of a hazardous waste, namely ignitability, corrosivity, reactivity, and toxicity, as defined in 6 NYCRR Part 371, Section 371.3 and 40 CFR Section 261.

Hazardous Substance Evaluation: An evaluation of the possible or known presence of any hazardous substances that may be encountered on a job site. This evaluation is included in the Health and Safety Plan and will include the identification and description of any hazardous substances expected to be encountered. Material Safety Data Sheets (MSDS) will be included for each substance.

Health and Safety Plan: A plan employed at a work site that describes all the measures that will be taken to assure that all work is conducted in a safe manner, and that the health of the workers and the public will be insured.

Material Handling Plan: A plan outlining the methods that will be employed to handle, transport and dispose of contaminated materials.

Non-Hazardous Contaminated Soils: Soils which exhibit a distinct chemical or petroleum odor, or exhibit elevated photoionization detector readings but are not classified as hazardous waste under 6 NYCRR Part 371, Section 371.3 and 40 CFR Section 261.

New York State Health Department's Environmental Laboratory Approval Program: A program by which the state of New York approves and accredits environmental testing laboratories.

PCBs: Polychlorinated biphenyls are a group of toxic compounds commonly used as a coolant in transformers and other electrical components.

Photoionization Detector: A hand held instrument used to measure volatile organic compounds in air. The instrument ionizes the organic molecules through the use of an ultraviolet lamp.

RCRA Hazardous Waste Characteristics: Characteristics of a material which may indicate the material is hazardous. These include: ignitability corrosivity, reactivity, and toxicity.

Total Petroleum Hydrocarbons: An analytical procedure used to determine the total amount of petroleum compounds in a material.

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

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

THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF INFRASTRUCTURE

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

CONSTRUCTION MANAGEMENT DESIGN BUILD FOR DISASTER RECOVERY: ON-CALL CONTRACTS FOR PROJECT MANAGEMENT AND RELATED SERVICES FOR EMERGENCY WORK INVOLVING DESIGN, CONSTRUCTION, CONSTRUCTION MANAGEMENT SERVICES, AND PROCUREMENT OF GOODS

PROJECT: Project Management and Related Services

FMS NUMBER: _____

REGISTRATION

NUMBER: _____

PIN: **850**_____

E-PIN: **850**_____

CONTRACTOR: _____
_____
_____

Telephone: _____
Fax: _____
E-Mail: _____

THIS AGREEMENT, made and entered into this _____day of _____, 20___ (the "**Agreement**" or "**Contract**"), by and between the City of New York (the "**City**") acting by and through the Commissioner (the "**Commissioner**") of the Department of Design and Construction ("**DDC**"), located at 30-30 Thomson Avenue, Long Island City, New York 11101, and

_____(the "**Contractor**"), located at _____.
[The City (the Commissioner, DDC), the Contractor may collectively be referred to as the "**Parties**".]

WITNESSETH

WHEREAS, the City desires to award contracts in advance for pre-event and pre-negotiated emergency service contracts to support the City's needs to respond to natural, or man-made disasters that impact any Borough or section of the City of New York where time is of the essence to, among other things, re-open roadway/transportation corridors or facilities, perform other construction and demolition services post a disaster, or where the need to prevent imminent failure exists, as further described within this Contract;

WHEREAS, the contracts may be used by the City only when acting pursuant to a State or local declaration of an emergency pursuant to New York State Executive Law, in which either the Mayor of the City or the Governor of the State of New York declares an emergency;

WHEREAS, the City is awarding this Contract and similar contracts for any and all such declared emergencies, for services which may include, but are not limited to:

- Critical Public Facility Restoration;
- Temporary Restoration of Housing;
- Construction Support for Urban Search and Rescue;
- Debris Removal;
- Debris Removal – Marine Transportation;
- Provision of Medical Space and/or Shelters;
- Communications/IT Services Restoration;
- Provision of Environmental Testing Services; and
- Supervision, Management and Administration Services

WHEREAS, these 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 a City or New York State declared emergency;

WHEREAS, the Contractor shall perform or cause to be performed the services described in **Exhibit A** together with such additional services as agreed to in writing by the parties in a Task Order issued by the City;

WHEREAS, the Contractor's services may include, but not be limited to, construction management, construction and construction-related services, and other services as the City may require;

WHEREAS, by definition, emergency stabilization and recovery services will be required by the City on an irregular basis;

WHEREAS, the DDC has developed a contractor registry with awarded and registered contracts to assist the City with its disaster response mission;

WHEREAS, the DDC uses its engineering and contracting capabilities, in a wide variety of missions during natural and man-made disasters, to support the efforts of the following governmental entities:

Office of Emergency Management ("**OEM**"),
New York Police Department ("**NYPD**"),
New York Fire Department ("**FDNY**"),
Department of Sanitation ("**DOS**"),
Department of Transportation ("**DOT**"),
Department of Environmental Protection ("**DEP**"),
Department of Parks and Recreation ("**DPR**"),
Department of Citywide Administrative Services ("**DCAS**"), and
Any other New York City Mayoral agency, and
Other City government agencies

WHEREAS, the Contractor has been selected based upon and in consideration, among other things, of its representation that it can perform the required services in a timely manner;

NOW, THEREFORE, the Parties to this Contract, in consideration of the mutual covenants, conditions, and agreements contained herein, agree as follows:

ARTICLE 1
OBJECTIVE

1.1 The City has established a declared emergency on-call contractor registry to allow the City to quickly provide services during emergency. During these Emergency situations, the City will be unable to comply with normal purchasing, bidding, and contracting requirements but will nevertheless have a need to quickly and efficiently contract for services. Therefore, the objective of this Agreement is for the Contractor to provide such emergency services described in **Exhibit A** on a Task Order basis until such time as the City can provide services through normal purchasing, bidding, and contracting procedures.

1.2. Task Orders under this Contract will be issued only when a New York State or City Emergency Declaration is issued pursuant to New York State Executive Law, and after approval for emergency procurements is obtained pursuant to the New York City Charter, although the work of the Task Order

may extend beyond the period of the Emergency Declaration.

ARTICLE 2
DEFINITIONS

2.1 "**Agreement**" shall mean this Agreement which has been signed by the parties and each of the various parts of this Agreement set forth below, both as a whole and severally, whether or not existing in final approved form at the time of execution of this Agreement. In the event of any conflict between this Agreement and Contractor's Proposal, this Agreement shall prevail.

2.1.1 The Agreement
2.1.2 The Budget Director's Certificate
2.1.3 Exhibit A: Scope of Work Information;
2.1.4 Exhibit B: Key Personnel
2.1.5 Exhibit C: All-Inclusive Hourly Rates, Unit Price Schedule with Specifications (if applicable)
2.1.6 Exhibit D: Partial Payment for Stored Materials
2.1.7 Exhibit E: Safety Requirements
2.1.8 Exhibit F: Form of Bid, Performance and Payment Bond
2.1.9 Exhibit G: NOT USED
2.1.10 Exhibit H: Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts
2.1.11 Exhibit I: Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Rider; FEMA Rider; and Federal Exhibits 1 and 2
2.1.12 Exhibit J: Whistleblower Protection Expansion Act Notice
2.1.13 Notice of Award
2.1.14 Request for Proposals for the Contract, if any
2.1.15 Contractor's Proposal submitted for the Contract, if any
2.1.16 All provisions required by law to be inserted in this Agreement, whether actually inserted or not

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

2.3 "**Agency Chief Contracting Officer**" ("**ACCO**") shall mean the person designated by the Commissioner to exercise such powers and duties with respect to procurement as are set forth in the Procurement Policy Board Rules.

2.4 "**Allowance**" shall mean those contract funds allocated for the payment of specific costs and expenses, in accordance with the Contract.

2.5 "**Business Day**" shall mean a day other than a Saturday, Sunday or a day on which the executive offices of the Department are not officially open for business.

2.6 "**City**" shall mean the City of New York.

2.7 "**Commissioner**" or "**Agency Head**" shall mean the Commissioner of the Department of Design and Construction of the City of New York, his/her successors, or duly authorized representative(s).

2.8 "**Commissioner's Representative**" shall mean the Project Manager designated by the Commissioner or any successor or alternate representative selected by the Commissioner.

2.9 "**Comptroller**" shall mean the Comptroller of the City of New York, his/her successors, or duly authorized representatives.

2.10 "**Consultant**" or "**Consultant(s)**" shall mean any person, firm, partnership or corporation engaged by the Contractor to furnish architectural, engineering, design, or any other consulting services for the Program. Also see definition of "Contractor" below.

2.11 "**Construction Documents**" shall mean the final plans, drawings and specifications and all modifications thereto prepared by consultant(s) engaged by the Contractor and approved in writing by the Commissioner. Upon such approval, the Construction Documents shall become part of this Agreement, as set forth in the Contract.

2.12 "**Contract**" or "**Contract Documents**" shall mean each of the various parts of the Agreement set forth in the Contract.

2.13 "**Contract Work**" shall mean everything required to be furnished and done by the Contractor pursuant to the Agreement, except Extra Work.

2.14 "**Contractor**" shall mean the entity which executed this Contract, whether a corporation, firm, partnership, joint venture, individual, or any combination thereof, and its, their, his or 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 party of the second part under this Contract. If the Contractor self-performs any tasks in Article 13, then the Contractor shall be bound by the duties and responsibilities of the Subcontractor, and all terms and conditions required of the Subcontractor shall be required of the Contractor, unless the context dictates otherwise. If the Contractor performs any tasks listed in Articles 12 and 14, then the Contractor shall be bound by the duties and responsibilities of the Consultant, and all terms and conditions required of the Consultant shall be required of the Contractor, unless the context dictates otherwise.

2.15 "**Day**" or "**Days**" shall mean, unless otherwise indicated, calendar days.

2.16 "**Department**" or "**DDC**" shall mean the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or his/her duly authorized representative.

2.17 **"Disaster Readiness and Mobilization Plan"** shall mean a course of action plan prepared by the Contractor upon the award and registration of the Agreement, and approved by the Commissioner, specifying the Contractor's planned response in the event a Task Order is issued to the Contractor for emergency construction and construction-related services.

2.18 "**Drawings**" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the Work as detailed and designated in the

Construction Documents.

2.19 **"Emergency"** shall mean a natural or man-made disaster resulting in a declaration by the Mayor of the City or the Governor of the State of New York to declare a local or state emergency pursuant to New York State Executive Law;

2.20 **"Emergency Declaration"** or **"Declaration of Emergency"** shall mean a local or state declaration issued by either the Mayor of the City or the Governor of the State of New York pursuant to New York State Executive Law, after the occurrence of a natural or man-made disaster;

2.21 "**Extra Work**" shall mean work not reasonably foreseeable at the time of the execution of this Agreement or not reasonably inferable from the Agreement.

2.22 "**Final Acceptance**" shall mean acceptance of all the Work specified in the Task Order, as determined by the Commissioner.

2.23 "**Final Approved Punch List"** shall mean a list, approved pursuant to the Contract, specifying those items of Work to be completed by the Contractor after Substantial Completion and dates for the completion of each item of Work.

2.24 "**Government Entity**" shall mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.

2.25 "**Law(s)**" shall mean each and every law, rule, regulation, order or ordinance of any kind whatsoever issued by any Government Entity, common law, in effect from the date hereof through Final Acceptance, applicable to or affecting the Project, the Site(s), the Construction Documents, the Work, and all employees engaged in Work hereunder.

2.26 "**Lien**" shall mean any and every lien, lease, security interest, or encumbrance of any kind whatsoever including, but not limited to, a Mechanic's Lien.

2.27 "**Materialman**" shall mean any person, firm, or corporation, 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, material or equipment to be incorporated into the Work.

2.28 "**Mayor**" shall mean the Mayor of the City of New York, his successors or duly authorized representatives.

2.29 "**Means and Methods of Construction**" shall mean the labor, materials in temporary structures, tools, plant and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Agreement.

2.30 "**Modification**" shall mean any written amendment of this Agreement signed by both the Department and the Contractor.

2.31 "**Program**" shall mean all of the Projects assigned to the Contractor pursuant to this Agreement.

2.32 "**Project**" shall mean all of the emergency Work for which emergency construction and

construction-related services are required, as specified by the Commissioner on a Task Order basis.

2.33 "**Project Executive**" shall mean the person designated by the Contractor to provide, on an as needed basis, executive or management expertise and oversight with respect to the Program. The person so designated shall be identified as the Project Executive in Exhibit B and in the staffing plan approved by the Commissioner in accordance with the Contract.

2.34 "**Safety Standards**" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date hereof through Final Acceptance, pertaining to worker safety and accident prevention applicable to the Projects and/or the Work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

2.35 "**Samples**" shall mean physical examples or specimens, intended to demonstrate workmanship or the characteristics of materials and equipment and/or to establish standards by which the Work will be judged. "Samples" includes (but is not limited to) raw materials, assemblies, completed items, working components or parts thereof, required under this Agreement or by the City to ascertain whether the kind, quality, assembly, construction, workmanship, finish, color, texture, grade or other characteristics of Work submitted by the Contractor conforms to the requirements of the Agreement.

2.36 "**Shop Drawing**" shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the Work.

2.37 "**Site(s)**" shall mean the area(s) upon or in which the Contractor's operations hereunder are carried on, and such other areas adjacent thereto as may be designated by the Commissioner's Representative.

2.38 "**Specifications**" shall mean all of the directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.

2.39 "**Subcontractor**" shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his Subcontractors to furnish, or actually furnishes consulting services, labor, or labor and materials, or labor and equipment, at the Site or in the performance of any of the Work hereunder. All Subcontractors are subject to the prior written approval of the Commissioner. Also see definition of "Contractor" above.

2.40 "**Substantial Completion**" shall mean the written determination by the Commissioner's Representative that the Work required is substantially, but not entirely, complete and the approval of the Final Approved Punch List.

2.41 "**Task Order**" shall mean a written directive by the Commissioner by which a Project is assigned to the Contractor.

2.42 "**Unavoidable Delay**" shall mean any delay or obstruction whatsoever in the Work resulting from any act or event which has had (or may reasonably be expected to have) a material adverse effect on Contractor's ability to perform its obligations under this Agreement, if such act or event is beyond the reasonable control of Contractor and such act or event was not (and would not have been) separately or concurrently caused by a negligent or willful act or omission of Contractor and/or could not have been

prevented by reasonable actions on Contractor's part. Unavoidable Delay shall include without limitation:

2.41.1 Acts of God;
2.41.2 Unforeseeably severe weather conditions;
2.41.3 Fire, earthquake, explosion, landslide, lightning or flood;
2.41.4 Epidemic;
2.41.5 Strikes or lockouts;
2.41.6 Riots, civil disturbance, insurrection, enemy action or war;
2.41.7 Injunctions or orders of any Government Entity;
2.41.8 Embargoes or blockades.

2.43 "**Utilities**" shall mean any and all utility services and installations whatsoever including, but not limited to, gas, water, electricity, telephone, other telecommunications, steam, sewer and storm sewer, and all piping, wiring, conduit and/or other fixtures of every kind whatsoever related thereto or used in connection therewith.

2.44 "**Work**" shall mean all tasks and services required to complete the Program.

ARTICLE 3
COMPLIANCE WITH LAWS

3.1 The Contractor shall comply with all local, State and Federal laws, rules and regulations applicable to this Agreement and to the work to be done hereunder, including but not limited to, Uniform Federal Contract Provision for Federally Funded Procurement Contracts (attached hereto as Exhibit H), Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Rider; FEMA Rider; and Federal Exhibits I and II (attached hereto as Exhibit I), and 48 CFR 52.230-5, Administration of Cost Accounting Standards.

3.2 To the extent applicable, the Contractor shall comply with the Rules of the Procurement Policy Board of the City of New York ("PPB Rules).

3.3 The Contractor shall give or cause to be given all necessary notices, obtain or cause to be obtained all permits, and pay or cause to be paid all fees required in connection with the Work, and comply with all local, state and federal laws, rules and regulations affecting work of this character. These laws, rules and regulations shall take precedence over any requirements of this Contract where a conflict occurs. Nothing herein contained shall, however, be construed as permitting the use of material and equipment of lesser quality than specified hereunder, unless the specified material or equipment violates such laws, rules or regulations.

3.4 The Contractor shall be responsible for applying for and obtaining the required approval of all federal, state and local agencies having jurisdiction over the subject matter hereof. As provided in the Contract, such approvals are required for a determination of Substantial Completion.

3.5 In accordance with Section 165 of the New York State Finance Law, the Contractor agrees that tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be utilized in the performance of this Contract, except as the same are permitted by the foregoing provision of law.

ARTICLE 4
TERM OF AGREEMENT

4.1 This Contract shall commence on the date of registration pursuant to Charter §328, and shall remain in effect for **730** consecutive calendar days unless otherwise terminated by the Commissioner pursuant to the terms of this Contract. The City, at its sole option, has the unilateral right to extend the term of the Contract for one (1) year.

4.2 In the event (1) services are required for a Project, (2) a Task Order for the Project is issued by the Commissioner during the term of the Contract, including the last day thereof, and (3) the time frame for completion of the Project extends beyond the term of the Contract, the Contract shall remain in effect for purposes of such Task Order through the time frame for completion of the Project, as set forth in the Task Order or any Supplementary Task Order required to complete the Project. For the purpose of this provision, the term of the Contract shall mean whichever of the following is the latest and actual final period of the Contract: (1) the term of the Contract, (2) the renewal term of the Contract (if any), or (3) the extended term of the Contract.

ARTICLE 5
TIME OF ESSENCE

5.1 In performing the Work under any Task Order, the Contractor and the City shall place emphasis on considerations which will aid in expediting the emergency services required under this Contract. The Contractor agrees to use all resources at its command so that each Task Order is completed in an expeditious fashion by the various Subcontractors and to this end, it shall give constant attention to the adequacy of its own and each Subcontractor's planning, personnel, equipment and the availability of materials and supplies.

5.2 The Contractor and the City acknowledge that time will be of the essence for each Task Order and will use their best efforts to prevent delays. If a situation cannot be resolved, the Contractor shall bring it to the immediate attention of the Commissioner.

ARTICLE 6
AGREEMENT TO SERVE

6.1 The City hereby retains the Contractor to perform the Work hereinafter described, on the terms and conditions specified herein, and the Contractor hereby agrees to so serve. The Contractor is familiar with the terms of this Agreement. The Contractor hereby certifies that it has the necessary experience, expertise, personnel and resources to fulfill its obligations under this Agreement competently and efficiently. The Contractor agrees to use its best efforts to complete each Task Order as soon as possible, in a manner meeting the highest professional standards.

6.2 Contractor agrees to perform such emergency services for the City as requested from time to time, and as designated by separate Task Orders.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 The Contractor warrants and represents as follows:

7.1.1 That it is financially solvent and sufficiently experienced and competent to perform the Work required by this Agreement, or to cause the same to be performed.

7.1.2 That its employees, agents, Consultants possess the requisite expertise, skill, experience and financial resources to perform the Work as required by this Agreement.

7.1.3 That it is not in arrears to the City of New York upon debt, contract, or taxes.

7.1.4 That it is not a defaulter, as surety or otherwise, upon any obligation of the City of New York.

7.1.5 That it has not been declared not responsible or disqualified by any agency of the City of New York or State of New York, and it is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department of agency.

7.1.6 That there is not any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts,

7.2 The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

7.2.1 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all moneys paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

7.3 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.

7.3.1 Consistent with City Charter § 2604 and other related provisions of the City Charter, the City Administrative 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.

7.3.2 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 City Charter.

7.4 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:

7.4.1 The prices in this Contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;

7.4.2 Unless otherwise required by law, the prices which have been quoted in this contract and in the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other proposer or to any other competitor, and

7.4.3 No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

7.4.4 The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not, without more, constitute a disclosure within the meaning of the above.

ARTICLE 8
OVERVIEW OF CONTRACTOR'S SERVICES

8.1 The Contractor shall provide such emergency services as necessary and required, and as specified in a Task Order issued by the Commissioner for the Project. The Contractor's services may include without limitation, investigation, planning, pre-construction, construction, management, supervision and coordination of all work necessary and required for the Project, to effectuate its timely completion.

8.2 Records/Documents: Any and all material records or documents prepared by or for the Contractor pursuant to this Agreement, including, but not limited to, office diaries, field diaries, daily records of labor, materials and equipment used, notes, reports, including laboratory and plant inspection reports, designs, drawings, tracings, estimates, specifications, schedules, and/or photographs, shall be the property of the City.

8.2.1 During the term of this Agreement and at any time within six (6) years thereafter, the Contractor shall, upon demand, promptly deliver such records or documents to the Commissioner, or make such records or documents available to the Commissioner or his authorized representatives for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such records or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional

compensation to the Contractor.

8.3 Contractor's General Capability Requirements:

8.3.1 The Contractor shall provide a telephone number where it can be reached 24 hours/7 days a week/365 days a year in order to respond to a call for services.

8.3.2 The Contractor shall have adequate numbers of trained staff with the skills and experience to assess access, recovery, stabilization, debris removal, de-watering, etc.

8.3.3 The Contractor shall have scalable capability and resources (e.g., facilities, man power, management, equipment, small and large tools, supplies, transport, freezers and heaters, and logistics, etc.) to manage all types of emergencies.

8.3.4 The Contractor may be required to work with other contractors under contracts with the City, including, and not limited to, resident engineering inspection firms, construction firms, architectural or engineering firms, environmental services firms.

8.4 Contractor's General Administrative Requirements:

8.4.1 The Contractor shall manage the total work effort associated with the required services to meet all objectives. Such management includes but is not limited to planning, scheduling, cost projecting and accounting, establishing and maintaining documentation and records, report preparation, and quality control.

8.4.2 The Contractor shall implement all necessary work control procedures to ensure timely accomplishment of work, as well as to permit tracking and reporting work in progress. The Contractor shall plan and schedule work to ensure material, labor, equipment, and supplies are available to meet the work requirements within the specified time limits and in conformance with the quality standards established.

8.4.3 The Contractor shall establish and maintain an internal, comprehensive quality control program. The Quality Control program shall provide an effective means of identifying and correcting problems throughout the entire scope of operations. The Contractor's failure to implement and maintain its quality control program effectively through the duration of rendering services may result in other appropriate action by the Commissioner including deductions from invoices or a decision not to award the next Task Order. The quality control program will apply to all services rendered.

8.4.3.1 Accurate documentation of work processes, procedures, costs, and output measures.

8.4.3.2 A systematic procedure for assessing compliance with performance objectives and standards defined in the Task Order.

8.4.3.3 Accurate documentation of quality inspections conducted throughout the execution of work.

8.4.3.4 Assessment-driven corrective action and process adjustments as appropriate.

8.4.4 The Contractor shall be responsible for assigning sufficient personnel to the performance of this Contract to ensure timely completion of all requirements. Staff reductions shall not be used as a rationale for services not being performed. Contractor shall ensure adequate staffing levels at all times.

8.4.5 The Contractor shall obtain all required permits, licenses, certifications, and authorizations to perform work under this Contract and comply with all applicable federal, state, and local laws and regulations. The Contractor shall provide evidence of such permits and licenses to the DDC at any time at the request of the DDC.

8.4.6 The Contractor shall make all necessary arrangements through the appropriate office as necessary to obtain access to buildings, facilities, and any other work areas, and when required, to arrange for them to be opened and closed.

8.4.7 The Contractor has developed and maintains a site safety program to promote safety, ensure accident prevention, provide incentive to work safely, and reduce potential for personnel or property damage.

8.4.8 The Contractor shall have all staff with the necessary qualifications and skills or shall have a network of vendors in place or who can be quickly placed under contract for additional resources, as agreed upon by the City in accordance with the terms of this Contract.

ARTICLE 9
PROGRESS SCHEDULE

9.1 To enable the Work to be performed in an orderly and expeditious manner, the Contractor, within twenty-four (24) hours after being issued a Task Order, unless otherwise directed by the Commissioner, shall submit a proposed progress schedule for the assigned Work. The progress schedule shall indicate the information specified below:

9.1.1 The anticipated time of commencement and completion of each of the various operations to be performed;

9.1.2 The sequence and inter relationship of each these operations with the others;

9.1.3 The estimated time required for fabrication or delivery, or both, of all materials and equipment required for the work.

9.2 The proposed schedule shall be revised as directed by the Commissioner's Representative, until finally approved by him, and after such approval, shall, subject to the provisions of Article 22, be strictly adhered to by the Contractor.

9.3 If the Contractor shall fail to adhere to the approved progress schedule, or to the schedule as revised pursuant to Article 22 hereof, it must promptly adopt such other or additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.

ARTICLE 10
DISASTER READINESS AND MOBILIZATION PLAN

10.1 Within one (1) month of Contract registration, the City shall issue to the Contractor a request for a proposal for the preparation and maintenance of a Disaster Readiness and Mobilization Plan.

10.1.1 The City's request for a proposal shall require the Contractor to prepare a proposal for the preparation and maintenance of a Disaster Readiness and Mobilization Plan for the category of work indicated in Exhibit A, subject to the Commissioner's approval.

10.2 Within two (2) weeks of City's issuance of the request for proposal, the Contractor shall respond to the City's request for services in writing and provide the Contractor's proposal for the preparation and maintenance of a Disaster Readiness and Mobilization Plan. The Contractor's proposal must contain the following:

10.2.1(a) Description of Contractor's current disaster readiness and mobilization plan, if any;

10.2.1(b) Contractor's proposed approach to develop (or tailor Contractor's existing) Disaster Readiness and Mobilization Plan to the type of service(s) indicated in Exhibit A;

10.2.1(c) Contractor's price and basis for such pricing to develop and maintain a Disaster Readiness and Mobilization Plan; and

10.2.1(d) Contractor's estimated time for performance.

10.3 The City shall review the Contractor's proposal and shall negotiate a fixed fee for the preparation and maintenance of the Disaster Readiness and Mobilization Plan.

10.3.1 The City may determine that the Contractor is in default if it fails to respond to the request for the proposal without an adequate explanation for such failure.

10.4. Upon negotiating and agreeing upon the fixed fee for the preparation and maintenance of the Disaster Readiness and Mobilization Plan, the City shall issue a Task Order to the Contract requiring the Contractor to prepare a Disaster Readiness and Mobilization Plan.

10.4.1 The Task Order shall establish performance requirements, including milestones and delivery schedules for the deliverables for the Disaster Readiness and Mobilization Plan. The Task Order shall provide for liquidated damages and/or other remedies for Contractor's failure to comply with the performance requirements.

10.5 The Disaster Readiness and Mobilization Plan shall include, at minimum:

10.5.1 The Contractor's proposed course of action in response to the category of work indicated in Exhibit A.

10.5.1(a) The Contractor shall address and review possible disaster scenarios related to the category of work indicated in Exhibit A.

10.5.1(b) The Contractor shall determine in advance what remedies are available for any aspect of the recovery work, recovery protocols, equipment, and materials.

10.5.2 The Contractor's anticipated insurance strategies required for the category of work indicated in Exhibit A.

10.5.3 A communications plan, as well as supplies and equipment to be used, the various sizes of staff needed for various sizes of disasters

10.5.4 The Contractor's Staffing Plan appropriate for the category of work indicated in Exhibit A.

10.5.4(a) Minimum Requirements for the individuals included in the Contractor's Staffing Plan.

10.6 Throughout the term of the Agreement, the Contractor shall be required to maintain its Disaster Readiness and Mobilization Plan.

10.6.1 The City may require the Contractor to revise or amend its Disaster Readiness and Mobilization Plan.

10.7 The method of payment for the Disaster Readiness and Mobilization Plan will be a fixed fee for fixed scope of services, as set forth in Article 45.

10.7.1. Payment will be based on completion of deliverables as set forth in the Task Order.

10.8 For Contractors providing Supervision, Management and Administrative Services, as indicated in Exhibit A, within a time specified by the Commissioner, the City shall also issue to the Contractor a request for a proposal to review, assist in reviewing, recommend for approval or disproval, and any other services that may be necessary to aid the Commissioner in evaluating the Disaster Readiness and Mobilization Plans prepared by other contractors.

10.8.1 The City's request for a proposal shall require the Contractor to prepare a proposal review, assist in reviewing, recommend for approval or disproval, and any other services that may be necessary to aid the Commissioner in evaluating up to twenty-four (24) separate Disaster Readiness and Mobilization Plans, as directed by the Commissioner.

10.8.2 Within two (2) weeks of City's issuance of the request for proposal, the Contractor shall respond to the City's request for services in writing and provide the Contractor's proposal for the requested services. The Contractor's proposal must contain the following:

10.8.2(a) Contractor's proposed approach to reviewing and recommending Disaster Readiness and Mobilization Plan to the type of service(s) indicated in Exhibit A;

10.8.2(b) Contractor's price and basis for the pricing to review and assess other contractors' Disaster Readiness and Mobilization Plan(s); and

10.8.2(c) Contractor's estimated time for performance.

10.8.3 The City shall review the Contractor's proposal and shall negotiate a fixed fee for the services.

10.8.3(a) The City may determine that the Contractor is in default if it fails to respond to the request for the proposal without an adequate explanation for such failure.

10.8.4. Upon negotiating and agreeing upon the fixed fee for the services, the City shall issue a Task Order to the Contract requiring the Contractor to commence its review, assistance in reviewing, recommendations for approval or disproval, and any other services that may be necessary to aid the Commissioner in evaluating for up to twenty-four (24) Disaster Readiness and Mobilization Plans.

10.8.4(a) The Task Order shall establish performance requirements, including milestones and delivery schedules for the deliverables for the review of the Disaster Readiness and Mobilization Plan. The Task Order shall provide for liquidated damages and/or other remedies for Contractor's failure to comply with the performance requirements.

10.8.5 Throughout the term of the Agreement, the Contractor shall be required to review, assist in reviewing, recommend for approval or disproval, and any other services that may be necessary to aid the Commissioner in evaluating amended and/or revised Disaster Readiness and Mobilization Plans prepared by other contractors.

10.8.6 The method of payment for the services will be a fixed fee for fixed scope of services, as set forth in Article 45.

10.8.6(a) Payment will be based upon reaching specific milestones and/or deliverables set forth in the Task Order

ARTICLE 11
CONTRACTOR SELECTION FOR EMERGENCY WORK AND TASK ORDER PROCESS

11.1 General: The Contractor shall provide, to the satisfaction of the Commissioner, emergency construction and construction-related services in accordance with the Task Order process outlined below. The services to be provided by the Contractor may include, without limitations, the design services set forth in Article 12, construction services set forth in Article 13 and the construction management services set forth in Article 14, as specified in the Task Order.

11.2 Method of Payment: The method of payment for the performance of emergency construction and construction-related services by the Contractor shall be in accordance with Article 45, and as further specified in the Task Order.

11.3 Selection Process: DDC intends to award up to twenty-seven (27) Task Order contracts, with up to three (3) Task Order contracts for each scope of work category listed in Exhibit A. The selection of the Contractor to perform services for a Project pursuant to this Contract shall be in accordance with the process set forth below, which shall be conducted prior to issuance of a Task Order. The Project for which services are required may be located in any of the five boroughs.

11.3.1 The Commissioner, in his sole discretion, shall determine what disaster response services are necessary. Upon such determination, the Commissioner shall notify each contractor holding a contract within the specified scope of work category as listed in Exhibit A, and solicit responses from

those contractors for the proposed Task Order, unless the exigent need is so great that it is necessary to contact fewer than all of the contractors within a specific category.

11.3.2 The Task Order award will be determined through competition by price and/or combination of other factors, including, but not limited to, capacity, contractor's location, and experience.

11.3.2(a) If applicable, the Unit Price Items listed in Exhibit C shall be used by Contractor in preparing its response to the proposed Task Order.

(a) The Unit Price Items listed in Exhibit C shall be valid for the base term of the Contract.
(b) In the event of Contract renewal and/or extension, the Commissioner, in his/her sole discretion, may negotiate any increase(s) to the Unit Price Items.

11.3.3 The Commissioner reserves the right to direct the Contractor to perform Work in any location within the five boroughs.

11.3.4 Multiple contractors may be awarded Task Orders to perform similar Work in the same general locations.

11.3.5 The Commissioner reserves the right not to issue a Task Order to the Contractor, if the Commissioner, in his/her sole opinion, determines that the Contractor may be unable to provide the required services in a satisfactory and timely manner.

11.3.6 If the selected Contractor is unable to perform the services on an individual Task Order because of lack of capacity, or conflict of interest, DDC may disqualify the contractor for purposes of that Task Order and select another contractor.

11.3.7 Each Contractor is required to respond to every request for solicitation for an individual Task Order for which it is being solicited. The ACCO may determine that the Contractor is in default if it fails to propose without an adequate explanation for such failure

11.4 Task Order Notification: The Commissioner may initially notify the Contractor(s) by phone or email, or any other available method, of the need for Contractor's emergency services.

11.4.1 Upon notification by the City of the proposed scope of Work for a Task Order, the Contractor(s) shall respond to the City's request for services in writing by email or via telephone, and the Contractor's representative(s) shall be on-site(s) as soon as possible but no later than 24 hours after the initial notification. If possible at the time of the City's notification, the Contractor(s) may also provide the City:

11.4.1(a) Contractor's price and basis for such pricing to perform the work; and
11.4.1(b) Contractor's estimated time for performance.

11.4.2 Depending on the extent of the disaster, the Contractor shall follow the Disaster Readiness and Mobilization Plan to provide proposed course of action for the most practical and efficient options for the work to be done, and in consultation with the City, make a comprehensive damage assessment. This activity may occur before the Task Order is issued, but these services will be included in a Task Order when issued.

11.4.3 As soon as possible, but no later than seventy-two (72) hours after the initial notification, Contractor and City shall agree on scope of work to be turned into a written Task Order that will include Work and pricing plan, which may be amended as the work progresses. Task Order shall incorporate by reference all applicable provisions of this Agreement.

11.4.4 The Contractor may begin work under the terms of this Contract without an authorized written Task Order. A Task Order may be verbal but will be followed up by a written Task Order within seventy-two (72) hours of the City's notification of the need for the Contractor's services.

11.4.5 The Contractor shall enact emergency stabilization and recovery services scaled to the size of the emergency no later than 24 hours of initial notification by the DDC, unless the DDC asks for immediate lighting and any equipment to assist in the search for victims. It is understood that transportation may be an issue and the Parties will work together on the logistics of delivery the lighting and other equipment at the appropriate site, which may involve law enforcement.

11.5 Preparation of Task Order

11.5.1 The City will define the work to be done but may only provide general direction for accomplishing the work. Generally, the Contractor must select the means and methods to be used. Depending on the nature of the emergency situation, the Parties will work closely together on accomplishing the work and if the police, fire, or emergency services agencies are involved, the Parties will work closely with all emergency service agencies while performing the Work under any Task Order.

11.5.2 After approval by the City of any plan of action, the Contractor will immediately obtain and identify the resources – staffing, subcontractors, and materials – to accomplish the work.

11.6 Task Order: Contractor shall provide services on a Task Order basis for the types of tasks and services described in **Exhibit A**, and as fully described in the Task Order.

11.6.1 Contractor shall include without limitation, investigation, planning, pre-construction, design, construction, management, supervision and coordination of all Work necessary and required for any Project or Task Order assigned hereunder to effectuate its timely completion.

11.6.2 The Contractor and City will meet regularly at the Site(s) or elsewhere. Regularly may include meetings more than once a day such as in the morning, afternoon, and evening if the operation is a 24-hour 7-day a week operation.

11.6.3 After the site(s) are stabilized and secure, the Contractor will work with the City to draft a recovery plan for the damaged properties and provide professional advice on the most practical and efficient operations for the recovery and re-building operations.

11.6.4 The Contractor will work with the City and any auditors as documentation is reviewed.

11.7 Task Order Completion Time: The completion time for all Work under this Contract may not be known until after Work has begun. However, once a completion schedule/performance requirement is accepted by all the Parties, an amended Task Order will be issued. If a completion schedule is known at the start of the work, then the project schedule will be contained in the initial Task Order. The Task Order may provide for liquidated damages and/or other remedies for failure to meet performance requirements.

11.7.1 The Parties agree that the start and/or completion dates may be adversely and materially affected by the Emergency circumstances and conditions requiring Contractor's services.

11.7.2 The Contractor shall work in good faith to complete the Task Order in a timely manner under the circumstances.

11.8 The Commissioner reserves the right not to utilize this Contract and to proceed with an emergency procurement for the required services, or to have the services performed by another contractor(s), or by City employees, if the Commissioner, in his/her sole opinion, determines that it would be in the best interest of the City to do so.

ARTICLE 12
DESIGN SERVICES

12.1 The Contractor may be required to provide design services, as directed by the Commissioner in the Task Order. If design services are needed, the Contractor may perform in-house if it has the appropriate licensed individuals in the State of New York to perform design/engineering services and have documents prepared in accordance with all laws. The Contractor may subcontract the design services and, through its design Consultant, provide all design services that may be required for Projects, as directed by the Commissioner.

12.2 Due to the Emergency nature of this Contract, the process delineated below may not apply. The Task Order issued to the Contractor will instruct the Contractor whether compliance with the process below is required.

12.2.1 Approval of Consultants and Subconsultants: Professional design services required hereunder must be provided by persons or firms licensed by the State of New York. All Consultants/Subconsultants performing such Work are subject to the written approval of the Commissioner. However, due to the Emergency condition, the approval may occur after Work has started or has been completed.

12.2.1.1 If an approved Consultant elects to subcontract any portion of its subcontract, the proposed subconsultant is subject to the prior written approval of the Commissioner. The Commissioner's approval of a Consultant or subconsultant shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder.

12.2.1.2 Due to the emergency nature of all Work, if possible, the Contractor will conduct a competitive solicitation and this may be done by telephone or other

means. Ideally, Contractor should contact three (3) firms but it does not have to get three (3) proposals. It may not be possible to seek proposals from more than one (1) firm and the Parties will discuss this possibility before the Contractor contacts the firm.

12.2.2 Removal of Consultants: An approved Consultant performing professional design services hereunder shall not be removed without the prior written approval of the Commissioner. The Commissioner reserves the right to require the Contractor to remove and replace an approved Consultant.

12.2.3 Contractor's Responsibility for Consultants: The Contractor shall be solely responsible to the City for the acts, defaults, errors or omissions of its Consultants and of such Consultant's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.

12.2.4 Design Compliance: All required design services shall be in accordance with: (1) criteria provided by DDC, and (2) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code and construction requirements in HUD or FEMA Notices, if applicable.

12.2.5 Approvals of Design: Final design documents are subject to: (1) written approval by the Commissioner, and (2) approval by all regulatory agencies whose approval of the design is required, including without limitation the New York State Department of Environmental Conservation ("**DEC**"), the City's Department of Environmental Protection ("**DEP**"), the City's Fire Department ("**FDNY**"), and the City's Department of Buildings ("**DOB**"). All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect of Record, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.

12.2.6 Review of Design Documents: If applicable, and possible, throughout the design process, the Contractor shall review and comment on the design, with special attention to the following issues: (1) constructability; (2) coordination; (3) economy and efficiency; (4) minimization of impact on agency operations; (5) division of the work for bidding purposes; (6) time of performance; (7) compliance with the required scope of Work; (8) compliance with DDC criteria, and (9) avoidance of inconsistencies, problems, delays and change orders during the construction process. At the time of submission of final design documents, the Contractor shall provide written comments addressing the above issues.

12.2.7 Submission and Approval of Final Design Documents: If possible, the following guidelines will be followed. Due to the emergency nature, it may not be possible for these time provisions or steps to be followed. In that case, the Parties will agree on the work flow and reduce the agreement to writing in the Task Order. The provisions set forth below shall apply to the submission, review and resubmission of final design documents.

12.2.7.1 Within the time specified in the Task Order, the Commissioner shall: (1) approve the same in writing, or (2) approve the same as noted and indicate whether resubmission is required, or (3) disapprove the same and transmit changes or comments to the Contractor.

12.2.7.2 In the event the final design documents are not approved, the Contractor shall, within the time specified in the Task Order, revise such documents and resubmit the same to the Commissioner for written approval.

12.2.7.3 The day on which the final design documents are actually received by the respective party shall be considered the first consecutive calendar day for the purpose of calculating the submission, resubmission and review times set forth above; provided, however, documents received after 3:00 P.M. shall be deemed received the next consecutive calendar day.

12.1.7.4 Upon resubmission of final design documents, the Contractor shall not make any changes from the original submission, unless such changes are in response to comments by the Commissioner or are specifically noted in a written cover letter.

12.2.8 Subcontract Requirements: The subcontract(s) between the Contractor and the Consultant(s) hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Commissioner.

(a) Such subcontracts shall require that all design services comply with all criteria and requirements set forth in this Contract.

(b) Such subcontracts shall contain provisions approved in advance by the Commissioner regarding the time for completion of all required design services.

(c) Such subcontracts shall require that the Consultant carry the following types and amounts of insurance, unless an exemption is expressly authorized in advance in writing by the Commissioner: (1) commercial general liability insurance with coverage at least as broad as ISO Form CG 0001, occurrence (rather than claims-based) in the minimum amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate, with the City of New York named as additional insured thereunder with coverage at least as broad as ISO Form CG 20 26; (2) workers compensation insurance, disability benefits insurance, and employer's liability insurance, as required by New York State Law; and (3) professional liability insurance, as set forth in the Contract, Article 27. All policies shall be in compliance with the requirements of the Contract, except as otherwise provided in this paragraph, and shall be issued by companies that meet the criteria set forth in such article. Proof of Insurance shall be provided to DDC in accordance with the Contract.

(d) Such subcontracts shall contain a provision regarding the resolution of disputes between the Subcontractor and the Contractor. Such provision shall conform to the requirements set forth in the Contract.

(e) Such subcontracts shall require that the Consultant agree not to make any claims against the City, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to disputes submitted by Consultant pursuant to dispute resolution provisions contained in the subcontract.

(f) Such subcontracts shall include a provision requiring the Subcontractor to make payment to each of its Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth in the Contract ("Prompt Payment").

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

12.3.1 The Contractor shall be solely responsible for and shall defend, indemnify, and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) and judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its Subcontractors and/or Consultants in the performance or completion of the Work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law. The Contractor's contract with the Consultant shall contain a provision that the Consultant will indemnify and hold harmless the City and in the same manner as the Contractor must pursuant to the Contract.

12.4 Standard of Care - Design services provided under this Agreement will conform to the generally accepted standard of care, skill and diligence as would be provided by a prudent architectural or engineering firm experienced in supplying such services in the New York City area on projects of similar size and complexity ("**Standard of Care**"). Nothing is this Agreement will require a level of performance by the design Consultant higher than the Standard of Care. No other warranty of any kind, express or implied, at common law or created by statute, is extended, made, or intended with respect to the design services under this Agreement.

ARTICLE 13
CONSTRUCTION WORK

13.1 General: The Contractor shall provide all required construction Work for a Project, as directed by the Commissioner in the Task Order.

13.2 Required Approvals: The Contractor's provision of all required Work for the Projects must comply with all federal, state and local requirements, including obtaining all required permits and approvals from regulatory agencies having jurisdiction over the Work, including without limitation the agencies set forth below:

(a) DOT
(b) DEP
(c) United States Environmental Protection Agency ("**EPA**")
(d) FDNY's Bureau of Fire Protection (Certificate of Operation)
(e) DOB
(f) New York City Department of Consumer Affairs ("**DCA**")

(g) U.S. Department of Housing and Urban Development ("**HUD**")

13.3. Construction Work: The Contractor may enter into subcontracts for all construction Work, as directed by the Task Order. To the extent permitted by the Commissioner, the Contractor may perform some or all of the construction Work. In the event the Contractor performs some or all of the Construction Work as directed in the Task Order, the Contractor must comply with the requirements of this Article 13.A bid bond, in the form attached in Exhibit F, may be required in accordance with 2 CFR § 200.325. The Contractor shall provide performance and payment bonds for the construction Work performed by the Contractor, in accordance with Article 13.3.4(d).

13.3.1 For all construction Work to be performed within seventy-two (72) hours of the initial notification by the City of the Contractor, or within seventy-two (72) hours after Task Order issuance, whichever is first, the Contractor shall utilize the method of procurement directed by the Commissioner.

(a) At the conclusion of the seventy-two (72) hour period, the Contractor shall meet with the City to discuss the remaining emergency Work to be performed, and the feasibility of competitively bidding such remaining Work. If the City directs the Contractor to bid any portion of the work, then the Contractor shall bid such Work as directed.

13.3.2 For all subcontracts required to be competitively bid, as fully described in the Task Order, the Contractor shall document how the subcontract was awarded and shall comply with any standards, rules, or procedures concerning the responsibility of the subcontractor. If it is determined at any time that the subcontractor is non-responsive or not performing, then the Contractor will immediately terminate the subcontract and subcontract out the work again.

(a) Form of subcontract. Such subcontract shall comply with the requirements set forth below.

(b) Requirements applicable to bidders, as specified by DDC, including without limitation, applicable federal, State and City requirements, including Uniform Federal Contract Provision for Federally Funded Procurement Contracts, Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Rider; FEMA Rider; and Federal Exhibits I and II. The Contractor shall comply with directions from DDC.

(c) If a subcontract is required to be competitively bid, then subcontracting firms submitting bids shall be required to complete and submit all forms or documentation the Commissioner may require, included, but not limited to:

- Bid bond in the form attached in Exhibit F, in an amount equivalent to five percent of the bid price, in accordance with 2 CFR 200.325(a);

(d) For any competitively bid subcontracts, the Contractor shall submit a tabulation of the bids received and recommendation for award to the Commissioner for his/her review and approval. If any bid received by the Contractor contains conditions and/or exclusions, the Contractor shall provide written notification of the same to the Commissioner. The Contractor shall proceed as directed by the Commissioner.

(e) For any competitively bid subcontracts, the Contractor shall award the subcontract to the lowest responsive and responsible bidder approved in writing by the Commissioner. The Commissioner reserves the right to reject the proposer subcontractor in the best interest of the City.

(f) In the event that a subcontract is competitively bid, and fewer than three (3) bids are received, no subcontract shall be awarded, unless the Contractor obtains the prior written approval of the Commissioner.

(g) Limitation: The Contractor shall not employ or otherwise engage, or cause or permit any Subcontractor or sub-subcontractor at whatever tier to employ or otherwise engage (1) the Contractor, (2) any subsidiary, affiliate or parent of the Contractor, or (3) any person whose immediate family member is employed by the Contractor at a salary in excess of ten thousand dollars ($10,000.00) per annum, to perform work hereunder without the prior written approval of the Commissioner. For purposes of this Section, the term "immediate family member" shall mean a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild.

13.3.3 Exception: In order to ensure continuity of services, the Commissioner reserves the right to direct the Contractor to enter into subcontracts with specific Subcontractors at stipulated prices. In the event the Commissioner so directs the Contractor, the competitive bid procedure set forth above shall not apply.

13.3.4 Subcontract Requirements: Subcontracts between the Contractor and Subcontractors for Work hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Commissioner. The form of subcontracts shall be subject to the prior approval of the Commissioner.

(a) Such subcontracts shall require that all labor performed and all material furnished thereunder shall strictly comply with all requirements of this Agreement.

(b) Such subcontracts shall contain the DDC Safety Requirements and DDC General Conditions. Such subcontracts shall contain provisions approved in advance by the Commissioner regarding: (1) time for completion; (2) performance requirements and assessment of liquidated damages; (3) warranties and/or guarantees. If Contractor uses its own employees to perform the Construction work of any Task Order, then the Contractor will comply with all three provisions above.

(c) Such subcontracts shall contain the same terms and conditions as found in the Contract with respect to: (1) method of payment; (2) substantial completion; (3) method of payment for extra work; (4) extension of time; (5) termination without cause; (6) termination for cause; (7) omitted work; and, (8) tax exemption.

(d) Except as otherwise permitted by the Commissioner, such subcontracts shall require that all construction Subcontractors provide performance and payment bonds, each of which shall be in an amount equal to or greater than 100% of the subcontract price

and shall name the Contractor as obligee thereunder**.** Such bonds shall be provided by a surety company licensed and authorized to do business in the State of New York. Such bonds shall be identical in all respects to the form of bonds attached hereto, as Exhibit F. Premiums for required bonds must be included in the Subcontractor's bid price. The Subcontractor shall be required to submit two (2) originals of such bonds, one of which shall be submitted to the City by the Contractor immediately after receipt. With respect to performance and payment bonds submitted by Subcontractors hereunder, the Contractor agrees, immediately upon receipt of the bonds, to execute an irrevocable assignment in accordance with the form of assignment attached hereto. The Contractor shall submit such executed assignment to the City at the time it submits the original bonds.

(e) Such subcontracts shall require that the Subcontractor carry the types and amounts of insurance set forth in Article 27, or as otherwise directed by the Commissioner. All required policies shall be in accordance with the terms and conditions set forth in the Contract. Proof of Insurance shall be provided to the City in accordance with the Contract.

(f) Such subcontracts shall contain the following articles and shall require Subcontractor compliance with the same, if applicable due to the emergency nature of the Work:

(1) Labor Law Requirements;
(2) Payroll Reports;
(3) Noise Control Code Provisions;
(4) Prompt Payment;
(5) Locally Based Enterprise Program (if applicable);
(6) Tax Exemption;
(7) Ultra Low Sulfur Diesel Fuel;
(8) Ultra Low Sulfur Diesel Fuel (Consolidated Construction Act);
(9) Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement;
(10) Indemnification, including intentional tortious acts of the subcontractor or its employees;
(11) Resolution of disputes between the Subcontractor and the Contractor.

(g) Such subcontracts shall require that the Subcontractor agree not to make any claims against the City, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Contractor.

(h) Such subcontracts shall stipulate that the Subcontractor, without any further notification or other process, gives its unconditional consent for its insurance carrier to release directly to the City documentation verifying its actual rate for workers' compensation insurance.

(i) Such subcontracts shall require cooperation with an Integrity Monitor, audit monitor, or any other monitors, if assigned at any time.

13.3.5 Payment to Subcontractors: Payment by the Contractor to Subcontractors shall be in

accordance with the provisions set forth below:

(a) The Contractor shall pay all Subcontractors for and on account of Work performed by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Commissioner, the Contractor shall submit satisfactory evidence that it has made such payment.

(b) The Contractor shall include on each requisition for payment the following data: Subcontractor name, value of the subcontract, total amount previously paid to Subcontractor for work previously requisitioned, and the amount, to be paid to the Subcontractor for work included in the requisition. The Contractor shall use the form of requisition provided by DDC, and include the location of the Work.

13.3.6 Approval of Subcontractors: All Subcontractors and the dollar amounts of their subcontracts are subject to the prior written approval of the Commissioner. Notwithstanding, this may occur after the Subcontractor has started work due to the emergency condition. If an approved Subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontractor and the dollar amount of its sub-subcontract are subject to the prior written approval of the Commissioner. If applicable and possible, as directed by the Commissioner, then under normal subcontracting, no Subcontractor or sub-subcontractor shall be permitted to work until such written approval as required herein has been obtained. Any proposed change order to any subcontract(s) hereunder is subject to the prior written approval of the Commissioner. The Commissioner's approval of a Subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder.

13.4 Liquidated Damages: The Commissioner shall specify an amount of and basis for assessing liquidated damages to be included in each subcontract for construction work. As directed by the Commissioner, the Contractor shall include such specified liquidated damage amount in each subcontract for construction work for the Project.

13.4.1 Any and all moneys collected by the Contractor as liquidated damages from its Subcontractors shall be paid by the Contractor to the City.

13.4.2 In each subcontract for construction work, the Contractor shall include a provision expressly giving the City a right of action against the Subcontractor in the event such Subcontractor fails to pay any liquidated damages determined to be due and owing thereunder.

13.5 Substantial Completion: The Contractor shall substantially complete the Work within the time fixed in the Task Order, or within the time to which such Substantial Completion may be extended, or if there is no time period fixed due to the nature of the emergency, then when the City and the Contractor reach an agreement on when the Work should be completed. The following sections only apply when an actual time is fixed in the Task Order:

13.5.1 Determining the Date of Substantial Completion: The Work will be deemed to be substantially complete when the two conditions set forth below have been met.

a. Inspection: The Commissioner's Representative has inspected the Work and has made a written determination that it is substantially complete.

b. Approval of Final Approved Punch List and Date for Final Acceptance: Following inspection, the Commissioner's Representative shall furnish the Contractor with a final punch list, specifying all items of Work to be completed and proposing dates for the completion of each specified item of Work. The Contractor shall then submit in writing to the Commissioner's Representative within ten (10) Days of the Commissioner's Representative furnishing the final punch list either acceptance of the dates or proposed alternative dates for the completion of each specified item of Work. If the Contractor proposes alternative dates, then, within a reasonable time after receipt, the Commissioner's Representative, in a written notification to the Contractor, shall approve the Contractor's completion dates or, if they are unable to agree, the Commissioner's Representative shall establish dates for the completion of each item of Work. If the Contractor neither accepts the dates nor proposes alternative dates within ten (10) Days, the schedule proposed by the Commissioner's Representative shall be deemed accepted. The latest completion date specified shall be the date for Final Acceptance of the Work.

13.5.2 Date of Substantial Completion. The date of approval of the Final Approved Punch List, shall be the date of Substantial Completion. The date of approval of the Final Approved Punch List shall be either (a) if the Contractor approves the final punch list and proposed dates for completion furnished by the Commissioner's Representative, the date of the Contractor's approval; or (b) if the Contractor neither accepts the dates nor proposes alternative dates, ten (10) Days after the Commissioner's Representative furnishes the Contractor with a final punch list and proposed dates for completion; or (c) if the Contractor proposes alternative dates, the date that the Commissioner's Representative sends written notification to the Contractor either approving the Contractor's proposed alternative dates or establishing dates for the completion for each item of Work.

13.5.3 Determining the Date of Final Acceptance: The Work will be accepted as final and complete as of the date of the Commissioner's Representative's inspection if, upon such inspection, the Commissioner's Representative finds that all items on the Final Approved Punch List are complete and no further Work under the Task Order remains to be done and that the contractor has obtained all regulatory approvals for the Work performed under the Task Order pursuant to this Agreement. The Commissioner will then issue a written determination of Final Acceptance.

13.5.4 Request for Inspection: Inspection of the Work by the Commissioner's Representative for the purpose of Substantial Completion or Final Acceptance shall be made within ten (10) Days after receipt of the Contractor's written request therefor.

13.5.5 Request for Re-inspection: If upon inspection for the purpose of Substantial Completion or Final Acceptance, the Commissioner's Representative 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 Commissioner's Representative determines that the Work is substantially complete or finally accepted, the date of such re-inspection shall be the date of Substantial Completion or Final Acceptance. Re-inspection by the Commissioner's Representative shall be made within ten (10) Days after receipt of the Contractor's written request therefor.

13.5.6 Initiation of Inspection by the Commissioner's Representative: If the Contractor does not request inspection or re-inspection of the Work for the purpose of Substantial Completion or Final

Acceptance, the Commissioner's Representative may initiate such inspection or re-inspection. Alternatively, Substantial Completion shall occur on any date certified by the Commissioner, who shall have discretion to waive any of the foregoing conditions.

13.6 Extensions of Time for Subcontracted Work: If a period of time is set in the Task Order, then the following provisions are applicable. If the performance of Work performed by Subcontractors hereunder is delayed for a reason set forth below, the Contractor may be allowed a reasonable extension of time. An extension of time for subcontracted work may be granted only by the Commissioner, upon written application by the Contractor.

13.6.1 Grounds for Extension: If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of subcontracted work, if such delay is caused solely: (1) by the acts or omissions of the City, its officers, agents or employees; or (2) by the act or omissions of other contractors, not including the Contractor's Subcontractors; or (3) by Unavoidable Delay, or other supervening conditions entirely beyond the control of either party hereto. The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Commissioner 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 the Contract.

13.6.2 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 subcontracted work as determined by the Commissioner, 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 his Subcontractors or materialmen, and would of itself (irrespective of the concurrent causes) have delayed the subcontracted work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. The determination made by the Commissioner shall be binding and conclusive on the Contractor. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Commissioner. Permitting the Contractor to continue with the subcontracted work after the time fixed 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 in no way operate as a waiver on the part of the City of any of its rights under this Contract.

13.6.3 Application for Extension of Time: Before the Contractor's request for a time extension for subcontracted work may be approved, the Contractor must within five (5) calendar days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Commissioner identifying:

(a) Contractor; the Subcontractor; the Contract registration number; and Project description;

(b) Liquidated damage assessment rate, as specified in the subcontract;

(c) Original subcontract bid amount;

(d) Original subcontract start date and completion date;

(e) Any previous time extensions granted (number and duration); and

(f) Extension of time requested.

In addition, the application for extension of time shall set forth in detail:

(a) Nature of each alleged cause of delay in completing the work;

(b) Date upon which each such cause of delay began and ended and the number of days attributable to each such cause;

(c) 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

(d) Statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of subcontract 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.

13.6.4 Determination of Time Extensions: Time extensions for subcontracted work shall be determined in writing by the Commissioner.

13.6.5 Delay Analysis: For extensions of time for final completion payments for subcontracted work, the agency engineering staff shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Contract). The report shall be made a part of the agency contract file.

ARTICLE 14
CONSTRUCTION MANAGEMENT SERVICES

14.1 General Description of Construction Management Services: The Contractor shall provide, to the satisfaction of the Commissioner, all Work necessary and required for the inspection, supervision, management, coordination and administration of the Program, so that the required Work is properly executed, completed in a timely fashion and conforms to the requirements of the Construction Documents, if there are any, and to good construction practice. The Contractor shall provide construction management services as directed by the Commissioner. Such construction management services shall include without limitation the services set forth in this Article. The Contractor shall cooperate in all respects with representatives of the Commissioner concerning all aspects of the Program. The Contractor shall be entitled to reasonably rely on all City-supplied information, if any, and shall not be held liable for any defects arising out of errors in such City-supplied information.

14.2 The Contractor's Personnel:

14.2.1 Key Personnel: It is the intent of the City to secure the personal services of those key design and construction management personnel identified in Exhibit B, and specifically in the Task Order. Accordingly, the Contractor agrees to assign such key personnel for the entire duration of Task Order. Failure by the Contractor to provide such key personnel will be considered a material breach of the Contract 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 Project within nine (9) months of the date the Contractor submitted its technical proposal. Replacement of such key personnel must comply with the conditions set forth in Article 14.3 below.

14.2.2 Staffing Requirements: Staffing requirements for personnel for the performance of services hereunder have been established by the Commissioner and shall be set forth in the Disaster Readiness and Mobilization Plan. Such staffing requirements specify the following: (1) titles of design and construction management personnel that may be required for the Program, (2) minimum requirements per title. The Contractor agrees, throughout the term of the Contract, to provide design and construction management personnel as directed by the Commissioner. The Contractor specifically agrees that its employees, agents and consultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

14.2.3 Minimum Requirements Per Title: Design and construction management personnel providing services hereunder must satisfy the minimum requirements for the specific title in which he/she is performing services. The Contractor shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the minimum requirements per title**.**

14.3 Staffing Plan: 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 Commissioner prior to commencement of the Contractor's services.

14.3.1 Contents: The contents of the Staffing Plan are set forth below. Such Staffing Plan shall include only those titles and personnel necessary for the provision of the required services. Such Staffing Plan must be signed by the Project Executive.

(a) List of required titles and specific individual for each title
(b) All Inclusive Hourly Rate for each specified individual. The individual's All Inclusive Hourly Rate shall be the rate set forth in the Disaster Readiness and Mobilization Plan for the title for which the Commissioner determines the individual meets the qualification requirements.
(c) Total estimated hours and amount per title
(d) Total estimated amount for all required personnel

14.3.2 Proposed Staffing Plan: If required, within seventy-two (72) hours after commencement of the Work or issuance of the Task Order, whichever is first, the Contractor shall submit a proposed Staffing Plan for the Program. Such Staffing Plan shall include the items listed above. With respect to each proposed employee, the Contractor shall provide: (1) the employee's resume, as well as any other information detailing his/her technical qualifications and expertise, (2) the title for which the employee meets the qualification requirements, as set forth in the Disaster Readiness and Mobilization Plan.

14.3.3 Review and Approval of Staffing Plan: The Commissioner shall review the Contractor's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of his/her review, the Commissioner shall determine: (1) whether each proposed individual meets the qualification requirements for the applicable title, and (2) whether the All Inclusive Hourly Rate for each proposed individual is in accordance with the rate for the title for which the individual meets the qualification requirements. The Contractor shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

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

(a) Replacement Personnel: No substitutions for assigned personnel shall be permitted unless the proposed replacement has received the prior written approval of the Commissioner. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced. As set forth above, replacement of key design and construction management personnel will not be permitted unless the designated individual is no longer in the employ of the Contractor.

(b) Changes by the Commissioner: The Commissioner reserves the right to direct changes to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Program and increasing or decreasing the personnel assigned to the Program, based upon the scope of the required Work. The Contractor shall increase or decrease the personnel assigned to the Program, as directed by the Commissioner.

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

(d) Revisions Due to Delay: In the event completion of a Project is delayed for any reason, including without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the Contractor, the Commissioner shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. During such period the Staffing Expenses will not be paid. The Contractor will be paid a reduced sum pursuant to the change order provisions of this Agreement.

14.4 Related Services: Throughout the Program, the Contractor shall be responsible for providing the related services set forth below. All costs for such related services are deemed included in the Staffing Expenses.

14.4.1 If applicable, throughout the term of this Contract, the Contractor may be required to provide and maintain a Project Office, dedicated to the activities of personnel in connection with Projects assigned under this Contract.

14.4.2 If applicable, the Contractor shall provide overnight delivery of the following Project documents: (1) bid and Contract Documents; (2) all required submittals, including without limitation

shop drawings, material samples and catalogue cuts; (3) change orders; (4) documents with respect to payment, and (5) any other critical communications and/or documents. If such documents can be sent electronically, then the Parties may agree to that form of delivery.

14.4.3 The Contractor shall provide transportation, including parking and tolls, for the Project Executive(s) and all personnel assigned to the Program, except as otherwise provided below. The transportation provided shall be vehicular, unless a Project site can be easily accessed by public transportation. Contractors and/or Consultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.

(a) In the event the Contractor is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Contractor shall be reimbursed for expenses incurred in connection with such long distance travel.

(b) Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Contractor's home office.

(c) Reimbursement for long distance travel expenses shall be as set forth in the Contract.

14.4.4 The Contractor shall provide communications equipment and service, including without limitation cellular telephones for the Project Executive(s) and all personnel assigned to the Program. The telephone numbers of all personnel assigned to the Program shall be submitted to the Commissioner.

14.5 Services During Construction

14.5.1 The Contractor shall undertake the following responsibilities with respect to the Progress Schedule:

(a) If applicable, review proposed Progress Schedule(s), and any updates thereto, submitted by the Subcontractor(s) and direct the Subcontractor(s) to revise the same as necessary prior to Contractor submission of the Progress Schedule, or any updates thereto, to the Commissioner for approval in accordance with Article 9 hereof.

(b) Take appropriate action to ensure compliance with the Progress Schedule by the Subcontractor(s).

(c) Review the adequacy of the personnel and equipment of the Subcontractor(s) and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule.

(d) Notify the Commissioner of any anticipated delays in fabrication or construction.

(e) Take appropriate action to minimize delays to the Project caused by labor disputes during construction.

(f) If performance of the Work by the Subcontractor(s) falls behind the Progress

Schedule, advise the Commissioner of the same and make recommendations as to what methods should be adopted to make up for lost time.

14.5.2 Review and evaluate the means and methods of construction and/or remediation proposed by the Subcontractor(s) and direct changes as necessary in the event the Contractor reasonably believes that such proposed means and methods of construction and/or remediation will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the terms of the Construction Documents.

14.5.3 Undertake the following responsibilities with respect to the safety of the Project site:

(a) Perform all CM responsibilities set forth in the DDC Safety Requirements.

(b) Review all Safety Programs and Site Safety Plan(s) developed by the Subcontractor(s) and direct revisions to the same as necessary prior to submission to DDC.

(c) Take appropriate action to enforce Subcontractor compliance with (1) Safety Program, (2) Site Safety Plan, (3) DDC Safety Requirements, and (4) all applicable regulations that pertain to construction safety.

(d) Promptly notify the Commissioner and the Subcontractor(s) if the Contractor observes any hazardous conditions at the Site or non-compliance by the Subcontractor(s) with its Safety Program, Site Safety Plan, DDC Safety Requirements, any applicable safety regulations or subcontract requirements.

(e) Take or cause to be taken precautions to minimize the risk of injury to persons and damage to property resulting from or arising out of the Work.

(f) In the event of an emergency, provide such labor, materials, equipment and supervision necessary to cure such emergency condition. The Contractor shall immediately notify the Commissioner of any such emergency condition.

14.5.4 Undertake the following responsibilities with respect to record keeping:

(a) Keep accurate and detailed written records of the progress of each task within the Work Order and the Project during all stages of planning and construction.

(b) Maintain a daily job diary or log book describing all activities which occurred on the Project on a daily basis, including without limitation, all Work accomplished, the number of workers, identified by trade, employed at the Site by the Subcontractor(s), the number of hours worked, material shortages, labor difficulties, weather conditions, visits by officials, decisions reached, specific problems encountered, general and specific observations, and all other pertinent data relative to the performance of the Work.

(c) Maintain accurate, orderly and detailed files and written records and documents regarding the Project, including without limitation, correspondence, minutes and/or

reports of job conferences, progress reports, shop drawings and other submissions, subcontract documents, including all addenda, change orders, supplemental drawings records of all meetings and attempted meetings related to the Project, and all other Project-related documents

(d) The Contractor shall provide any records, documents or information concerning the Project to the Commissioner as directed.

(e) With respect to work to be performed on a time-and-materials, unit cost, or similar basis, requiring the keeping of records and computation therefrom, maintain cost accounting records in accordance with the City's procedures.

(f) All Project records, including without limitation those specified above, shall be available to the Commissioner at all times immediately upon request, and the Commissioner shall have the right to remove such Project records and make copies thereof.

14.5.5 If applicable, monitor compliance by the Subcontractor(s) with the following requirements applicable to the Work: (1) New York State Labor Law and Davis-Bacon, if applicable to the Work,; and the (2) Americans with Disabilities Act (ADA);

14.5.6 Undertake the following responsibilities with respect to Subcontractor payments:

(a) Review all requisitions for payments submitted by the Subcontractor(s), including without limitation partial payments, payments for extra work, Substantial Completion and final payments.

(b) Verify all estimates for payments of Work performed, computations, as well as field measurements and sketches necessary for payment purposes.

(c) With respect to each requisition for payments submitted by the Subcontractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.

(d) Contractor's requisitions for payment for Work performed by Subcontractors, submitted in accordance with the Contract, shall be based upon and in accordance with Subcontractor requisitions for payment reviewed and approved by the Contractor.

14.5.7 Review and approve or disapprove applications for extensions of time submitted by the Subcontractor(s). The Contractor's request for a time extension for construction Work performed by Subcontractors, submitted for Commissioner approval in accordance with the Contract, shall be based upon and in accordance with Subcontractor applications for extensions of time reviewed and approved by the Contractor.

14.5.8 Review, evaluate and respond to requests from Subcontractors for explanatory information and/or interpretation of the meaning and intent of the Construction Documents. The Contractor shall confer with the Consultant, ascertain the Consultant's interpretation and prepare a

response to the Subcontractor setting forth the Consultant's interpretation. In the event the Subcontractor disagrees with such interpretation, the Contractor shall prepare a detailed report to the Commissioner setting forth the Consultant's interpretation, the Subcontractor's interpretation and that by the Contractor.

14.5.9 If applicable, undertake the following responsibilities with respect to Subcontractor requests for change orders:

(a) Review, evaluate and make a decision with respect to the validity of all written Subcontractor requests for change orders. The Contractor's decision as to the validity of the proposed Subcontractor change order shall be in writing and shall provide a reasonably detailed explanation for the decision based upon the information presented by the Subcontractor and the requirements of the Construction Documents.

(b) If the Contractor decides that the Subcontractor's request for a change order is not valid, it shall provide such written decision to the Subcontractor, with a copy of the same to the Commissioner.

(c) If the Contractor decides that the Subcontractor's request for a change order is valid, the Contractor shall prepare the proposed Subcontractor change order and submit the same to the Commissioner for approval. Such proposed Subcontractor change order shall include or be accompanied by the following: (1) the Contractor's written decision as to the validity of the change order, (2) the cost proposal submitted by the Subcontractor, (3) the Contractor's evaluation of such cost proposal, (4) the Contractor's own cost estimate of the quantities of labor, equipment and materials required for the performance of the proposed change order. The Contractor must be prepared to substantiate the information with respect to the change order to the Commissioner, the Engineering Audit Officer, the Comptroller and any other agency having jurisdiction in this area. The Commissioner will make all final determinations regarding change orders, modifications and additions to the Construction Documents.

(d) If the Commissioner approves the Contractor's request for a Subcontractor change order, the Contractor shall negotiate a price, i.e., a lump sum price or unit prices, for the performance of the proposed change order work and submit the same to the Commissioner for his approval.

14.5.10 If applicable, conduct job meetings with the Subcontractor(s), Consultants, representatives of the Commissioner, interested city agencies and any other entities or individuals involved with the Program to discuss procedures, performance, progress, problems, scheduling and related issues. The Contractor shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees.

14.5.11 Undertake the following responsibilities with respect to Project and Program reports:

(a) If applicable, submit written progress reports to the Commissioner on a monthly basis, unless otherwise directed. Such reports shall be based upon the most current information and shall include, without limitation:

(1) Progress Schedule, including information concerning the Work of the construction Subcontractor(s) and the percentage of completion of the Work;
(2) Change Order Tracking Sheet, indicating the number and amount of change orders;
(3) Shop Drawing Log Schedule;
(4) Fabrication and Delivery Schedule;
(5) Budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete, and
(6) All information needed for reporting required by New York City Local Law 140 of 2013, (NYC Administrative Code 6-138.),
(7) Progress photographs.

(b) Provide reports regarding the Work as may be directed by the Commissioner, incorporating such information, interpretation, detail or back-up material as may be required by the Commissioner.

14.5.12 Undertake the responsibilities set forth below with respect to disputes submitted by its Subcontractors. Disputes shall mean disputes of the kind delineated in this Agreement.

(a) Review, evaluate and prepare a recommended determination with respect to disputes filed by its Subcontractors. The Contractor's recommendation shall be in writing, and shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the Subcontractor, as well as the requirements of the subcontract and the Construction Documents.

(b) The Contractor shall submit the dispute filed by its Subcontractor to the City for resolution in accordance with this Agreement. The Contractor's submission shall be accompanied by the recommended determination described above.

14.5.13 Determine the need for and undertake default proceedings against the Subcontractor(s). In the event of default by a Subcontractor, the Contractor shall promptly submit for Commissioner approval an alternate Subcontractor(s) to perform the Work.

14.5.14 Undertake the following responsibilities with respect to Substantial Completion of the Work:

(a) Inspect each Work location in conjunction with the Consultant and the Commissioner's Representative at the time of Substantial Completion.

(b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.

(c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.

(d) Finalize all necessary Punch Lists, including completion dates for all items, and expedite execution of the same by its Subcontractors.

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14.5.15 Undertake the following responsibilities with respect to Final Acceptance of the Work:

(a) Inspect each Work location in conjunction with the Consultant and the Commissioner's Representative at the time of Final Acceptance.

(b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.

(c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.

(d) Ensure that all regulatory approvals have been obtained, unless directed otherwise in writing by the Commissioner.

14.5.16 Collect guarantees from the manufacturer, maintenance and operations manuals, keying schedules and other data required of the Subcontractor(s), and maintain photographic records, material and equipment delivery records, visual aids, charts and graphs.

14.5.17 Undertake the following responsibilities with respect to maintenance and guarantee obligations:

(a) Prior to the expiration of the guarantee period set forth in the Contract, if there is one, then inspect the Work and furnish a report to the Commissioner describing in detail any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

(b) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

14.5.18 Take photographs (digital) to document the progress of the construction Work. Such photographs shall be taken on a bi-weekly basis until Substantial Completion of the Work. Such photographs shall be included in each monthly progress report.

14.5.19 Provide or cause to be provided all temporary facilities and utilities as necessary for the performance of the Work.

14.5.20 In the event any claim is made or any action brought in any way relating to the design or construction of a Project, the Contractor shall diligently render to the City all assistance which may be required. Such services shall be rendered by the Contractor without additional fee or other compensation, except for the costs and expense of personnel who were assigned to the Project as job-site or management staff, or comparable personnel if those who were assigned to the Project are no longer employed by the Contractor.

14.5.21 In the event any claim is made or any action brought in any way relating to the Work provided hereunder, including design, construction and/or remediation, the Contractor shall diligently render to the City all assistance which the City may require. Such Work shall be rendered by the Contractor without additional fee or other compensation, except for the costs and expense of personnel who were assigned to the Project as job-site or management staff, or comparable personnel if those who were assigned to the Project are no longer employed by the Contractor.

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

14.6 Additional Services: The Contractor may be directed to provide additional services. Additional services shall be such services determined by the Commissioner to be necessary for the expeditious completion of a Project, and may include without limitation, the performance of general conditions Work and/or the purchase of miscellaneous items.

ARTICLE 15
CHARACTER OF THE WORK

15.1 It is understood that the Work is being performed under an Emergency Declaration.

15.2 Unless otherwise expressly provided in this Agreement or a Task Order, the Work must be performed in accordance with the best, modern practice, with materials and workmanship of the highest quality, to the satisfaction of the Commissioner. All materials required for the Work shall be free from all defects, of the best available grade and quality, entirely satisfactory for the purpose intended, furnished in ample quantities to prevent delays, and in accordance with all requirements of this Agreement.

ARTICLE 16
SUBCONTRACTOR AND SUBCONSULTANT REPORTING REQUIREMENTS

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

16.2 In order to obtain Subcontractor/subconsultant approval under this Article and PPB Rule § 4-13, Contractor is required to list the Subcontractor/subconsultant in the system. For each Subcontractor/subconsultant listed, Contractor is required to provide the following information: maximum contract value, description of Subcontractor/subconsultant work, start and end date of the subcontract and identification of the Subcontractor's/subconsultant's industry. Thereafter, Contractor will be required to report in the system the payments made to each Subcontractor/subconsultant within thirty (30) calendar days of making the payment. If any of the required information changes throughout the Term of the Contract, Contractor will be required to revise the information in the system.

16.3 Failure of the Contractor to list a Subcontractor/subconsultant and/or to report Subcontractor/subconsultant payments in a timely fashion may result in the Department declaring the

Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of $100 per day for each day that the Contractor fails to identify a Subcontractor/subconsultant along with the required information about the Subcontractor/subconsultant and/or fails to report payments to a Subcontractor/subconsultant, beyond the time frames set forth herein or in the notice from the City.

16.4 Additional Reporting. The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

ARTICLE 17
INFORMATION AND WORK PROVIDED BY THE CITY

17.1 Due to the emergency nature of all work under any Task Order issued by the City, the Parties acknowledge that there may not be detailed information or data available about the Work.

17.2 Such data as is possessed by the City and if useful or necessary to the Contractor in order to carry out a Task Order, and not restricted or confidential, will be turned over to the Contractor at a time and place that is mutually convenient under the circumstances.

17.2.1 The Parties further acknowledge that the emergency circumstances may materially affect the City's ability to access and/or provide this data and, therefore, the City may be unable to provide this information.

17.2.2 Due to the emergency at hand, if the City has any data, the Contractor may want to review the data but since the data is being provided post-emergency the information may not be valid or applicable.

17.3 Except as specifically provided in this Article, the City is not required to retain additional contractors, do research or obtain additional data for use by the Contractor at the City's expense.

ARTICLE 18
MEANS AND METHODS OF CONSTRUCTION

18.1 Unless otherwise expressly provided in this Agreement, the means and methods of construction and/or remediation shall be such as the Contractor may choose; subject, however, to the Commissioner's right to reject means and methods proposed by the Contractor which: (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 Agreement.

18.2 The Commissioner's approval of the Contractor's means and methods of construction and/or remediation, or his/her failure to exercise his right to reject such means or methods, shall not relieve the Contractor of his obligation to accomplish the result intended by the Agreement; nor shall the exercise of such right to reject create a cause of action for damages.

ARTICLE 19
INSPECTION

19.1 During the progress of the Work and up to the date of Final Acceptance of all required Work, 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 the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

19.2 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, 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 this Contract.

19.3 Inspection and approval by the Commissioner's Representative 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 his obligation to perform the Work in strict accordance with the Agreement. Finished or unfinished Work found not to be in strict accordance with the Agreement shall be replaced as directed by the Commissioner's Representative, even though such Work may have been previously approved and paid for.

19.4 Rejected Work and materials must be promptly taken down and removed from the Site, which must at all times be kept in a reasonably clean and neat condition.

ARTICLE 20
PROTECTION OF WORK AND OF PERSONS AND PROPERTY; NOTICES AND INDEMNIFICATION

20.1 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace and/or repair such Work at the Contractor’s sole cost and expense, as directed by the Commissioner’s Representative. The obligation to deliver finished Work in strict accordance with the Contract prior to Final Acceptance shall be absolute and shall not be affected by the Commissioner’s Representative's approval of, or failure to prohibit, the Means and Methods of Construction used by the Contractor.

20.2 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's, and/or its Subcontractors’ operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, place or replace, and adequately maintain at or about the Site suitable and sufficient protection such as lights, barricades, and enclosures.

20.3 The Contractor shall comply with the notification requirements set forth below in the event of any loss, damage or injury to Work, persons or property, or any accidents arising out of the operations of the Contractor and/or its Subcontractors under this Contract.

20.3.1 The Contractor shall make a full and complete report in writing to the Commissioner’s Representative within three (3) calendar days after the occurrence.

20.3.2 The Contractor shall also send written notice of any such event to all insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) calendar days after such event and again no later than twenty (20) calendar days after the initiation of any claim and/or action resulting therefrom. Such notice shall contain the following information:

> The number of the insurance policy, the name of the Named Insured, the date and location of the incident, and the identity of the persons injured or property damaged. For any policy on which the City and/or the Engineer, Architect, or Project Manager are Additional Insureds, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured, such other Additional Insureds, as well as the Named Insured."

20.3.2(a) Whenever such notice is sent under a policy on which the City is an Additional Insured, the Contractor shall provide copies of the notice to the Comptroller, the Commissioner and the City Corporation Counsel. The copy to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York, 10007. The copy to the Commissioner shall be sent to Commissioner, NYC Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, NY 11101.The copy to the City Corporation Counsel shall be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

20.3.2(b) If the Contractor fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Contractor shall indemnify the City all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

20.4 To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold theCity, its employees, and officials (the "Indemnitees") harmless against any and all claims (including but not limited to claims asserted by any employee of the Contractor and/or its Subcontractors) 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 the operations of the Contractor and/or its Subcontractors in the performance of this Contract or from the Contractor's and/or its Subcontractors' failure to comply with any of the provisions of this Contract or of the Law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Article 20.4 by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that the indemnification obligation hereunder contemplates (1) 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 (2) 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.

20.4.1 Indemnification under this Article or any other provision of the Contract shall operate whether or not Contractor or its Subcontractors or Consultants have placed and maintained the insurance specified under Article 27.

20.5 Except to the extent indemnification is required pursuant to this Contract, 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 Parties.

20.6 The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor or the City.

ARTICLE 21
REQUEST FOR INFORMATION OR APPROVAL

21.1 From time to time as the Work progresses and in the sequence indicated by the approved Progress Schedule, the Contractor may submit to the Commissioner a specific request in writing for each item of information or approval required by him. These requests must state the latest date upon which the information or approval is actually required by the Contractor, and must be submitted sufficiently in advance thereof to allow the Commissioner a reasonable time to act upon such submissions or any necessary re-submissions thereof.

21.2 The Contractor shall not have any right to an extension of time on account of delays due to his failure to submit his requests for the required information for the required approval in accordance with the above requirements.

ARTICLE 22
NOTICE AND DOCUMENTATION OF DELAY DAMAGES AND OTHER DAMAGES; PRODUCTION OF FINANCIAL RECORDS

22.1 After the commencement of any condition which is causing or may cause a delay in completion of the Work, including conditions for which the Contractor may be entitled to an extension of time, the following notifications and submittals are required:

22.1.1 Within seven (7) calendar days after the commencement of such condition, the Contractor must notify the Commissioner's Representative in writing of the existence, nature and effect of such condition upon the approved progress schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.

22.1.2 If the Contractor shall claim to be sustaining damages for delay, by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) calendar cays from the time such damages are first incurred, and every thirty (30) calendar days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) calendar days shall be deemed a denial of the request. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action arising under or by reason of this Contract shall not be different from or in excess of the statements made and

documentation provided pursuant to this Article.

22.2 Failure of the Contractor to strictly comply with the requirements of this Article may, in the discretion of the Commissioner, be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of the Contractor to strictly comply with the requirements of this Article shall be deemed a conclusive waiver by the Contractor of any and all claims for damages for delay arising from such condition and no right to recover on such claims shall exist.

22.3 When appropriate and directed by the Commissioner's Representative, the progress schedule shall be revised by the Contractor until finally approved by the Commissioner's Representative. The revised progress schedule must be strictly adhered to by the Contractor.

22.4 In addition to the foregoing statements, the Contractor and/or its Subcontractor and/or Consultant shall, upon notice from the Commissioner, produce for examination at the Contractor's and/or Subcontractor's and/or Consultant's office, by the Commissioner's Representative, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract. Further, the Contractor and/or its Subcontractor and/or Consultant shall submit itself and persons in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

22.5 Unless the information and examination required under this Article is provided by the Contractor and/or its Subcontractor and/or Consultant upon thirty (30) calendar days' notice from the Commissioner or Comptroller, or upon the Commissioner's or Comptroller's written authorization to extend the time to comply, the City shall be released from all claims arising under, relating to or by reason of this Contract, except for sums certified by the Commissioner or Comptroller to be due under the provisions of this Contract. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the City to recover any sum in excess of the sums certified by the Commissioner or Comptroller to be due under or by reason of this Contract, the Contractor must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article.

22.6 In addition, after the commencement of any action or dispute resolution procedure by the Contractor arising under or by reason of this Contract, the City shall have the right to require the Contractor to produce for examination under oath, up until the trial of the action or hearing before the Contract Dispute Resolution Board, the books and documents described in the Contract and submit itself and all persons in its employ for examination under oath. If this Article is not complied with as required, then the Contractor hereby consents to the dismissal of the action or dispute resolution procedure.

ARTICLE 23
EXTENSION OF TIME

23.1 This is the general condition term for when there will be a request for an extension of time. This may not be applicable for an emergency Task Order.

23.2 Upon written application by the Contractor, the Agency Chief Contracting Officer may grant an extension of time for performance of the Contract. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total number of delay in days attributable to such cause. The ruling of the Agency Chief Contracting Officer shall be final and binding as to the allowance of an extension and the number of days allowed.

ARTICLE 24
OCCUPATION OR USE PRIOR TO COMPLETION

24.1 Unless otherwise provided for in the Work Order, the City may take over, use, occupy or operate any part of the Work at any time prior to Final Acceptance, upon written authorization of the Commissioner. Such authorization must include the date when the City may take over, use, occupy or operate part of the Work and a brief description of the relevant part of the Work. In the event the City takes over, uses, occupies, or operates any part of the Work:

24.1.1 Commissioner shall issue a written certification of completion with respect to such part of the Work;

24.1.2 Contractor shall be relieved of its absolute obligation to protect such part of the unfinished Work in accordance with the Contract; and

24.1.3 Contractor's guarantee on such part of the Work shall begin on the date in the written authorization by the Contractor required in this Article.

ARTICLE 25
CHANGED CONDITIONS

25.1 Should the Contractor encounter during the progress of the Work, subsurface conditions at the Site materially differing from any shown on any documents furnished by the Commissioner or such subsurface conditions as could not reasonably have been anticipated by the Contractor and were not anticipated by the City, which conditions will materially affect the cost of the Work to be done under the Contract, the attention of the Commissioner must be called immediately to such conditions before they are disturbed. The Commissioner shall thereupon promptly investigate the conditions. If he finds that they do so materially differ, or that they could not reasonably have been anticipated by the Contractor and were not anticipated by the City, the Contract may be modified with his written approval. Any increase in cost resulting therefrom shall be in accordance with the Contract and the PPB Rules.

ARTICLE 26
ASSIGNMENTS

26.1 The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or of its rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the moneys due or to become due under this contract, unless the prior 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 consent shall be void.

26.2 Such assignment, transfer, or conveyance shall not be valid until filed in the office of the Department of Design and Construction and of the Comptroller with the written consent of the Commissioner endorsed thereon or attached thereto.

26.3 Failure of the Contractor to obtain the required prior written consent of the Commissioner to such an assignment, transfer or conveyance, shall be cause for termination for cause, at the option of the Commissioner; and, if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the contract shall be forfeited to the City, except so much thereof as may be necessary to pay the Contractor's employees.

26.4 The provisions of this Article shall not be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of creditors made pursuant to the statutes of the State of New York.

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

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

ARTICLE 27
INSURANCE

27.1 From the date the Contractor is ordered to commence Work and throughout the term of this Contract, the Contractor must effect and maintain with companies licensed and authorized to do business in the State of New York, the following types and amounts of insurance. All insurance shall meet the requirements set forth in this Article. Wherever this Article requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

27.1.1 Commercial General Liability Insurance: The Contractor shall provide a Commercial General Liability Insurance policy (with the coverages indicated below) in the minimum amount of $3,000,000per occurrence (combined single limit), $5,000,000 aggregate. The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 0001. Such insurance shall be "occurrence" based rather than "claims-made" and include, without limitation, the following types of coverage: personal and advertising injury; premises; operations; products and completed operations; contractual liability (including the tort liability of another assumed in a contract); independent contractors; explosion, collapse and underground (XCU); construction means and methods; and incidental malpractice. Such insurance shall contain a "per project" aggregate limit, as stated above, that applies separately to operations under this Contract.

27.1.2 Such Commercial General Liability Insurance shall name the City as an Additional

Insured. Coverage for the City shall specifically include the City's officials and employees, be at least as broad as the latest edition of ISO Form CG 2010 and completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37.

27.1.3 The general liability insurance policy provided shall include the following endorsements:

27.1.3.i The City of New York, including its officials and employees, is an Additional Insured under this policy.

27.1.3.ii Notice under the Policy to the Additional Insured shall be addressed to the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York, New York 11101.

27.1.3.iii Notice of Accident shall be given to the insurance company by the Insured within one hundred twenty (120) calendar days after notice of such accident has been sent to the Commissioner of the Department of Design and Construction.

27.1.3.iv Notice of Claim shall be given to the insurance company within one hundred twenty (120) calendar days after such notice shall be filed with the Comptroller of the City of New York.

27.1.3.v Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City, including its officials and employees, as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to Named Insured, to the City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007.

27.1.3.vi Notice of Cancellation of Policy, as set forth in the Contract.

27.1.4 Professional Liability Insurance: Any Consultant engaged by the Contractor to perform professional services hereunder, and any subconsultant performing professional services, must provide Professional Liability insurance in the amount of at least One Million Dollars ($1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the consultant or anyone employed by the consultant.

27.1.4.i Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Consultant or subconsulant shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

27.1.5 Workers' Compensation Insurance, Employers' Liability Insurance, and Disability

Benefits Insurance: The Contractor shall provide, and shall cause its Subcontractors to provide, Workers Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract

27.1.6 Commercial Automobile Liability Insurance: The Contractor shall provide liability insurance in the amount of $1,000,000 per occurrence (combined single limit), covering all owned, non-owned and hired vehicles to be used in connection with this contract. Such policy shall name the City of New York as an additional insured thereunder. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. 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 proof of MCS 90.

27.1.7 Umbrella or Excess Liability Insurance: The Contractor shall maintain an occurrence form umbrella liability policy or excess liability policies insuring against liability arising from premises (including loss of use thereof), operations, independent contractors, products-completed operations, personal and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Contractor or arising from automobile liability and employers liability. Such coverage shall be written on an Insurance Service Office ("ISO") occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than $10,000,000 combined single limit per occurrence and in the aggregate, excess of primary general, automobile and employer's primary liability limits.

27.2 General Requirements for Insurance Coverage and Policies:

27.2.1 All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/VII or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Corporation Counsel.

27.2.2 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.

27.2.3 In his/her sole discretion, the Commissioner may, subject to the approval of the Comptroller and the City Corporation Counsel, accept Letters of Credit and/or custodial accounts in lieu of required insurance.

27.2.4 The City's limits of coverage for all types of insurance required pursuant this contract shall be the greater of (i) the minimum limits set forth in the 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.

27.2.5 Policies of insurance provided pursuant to this Article 27 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

27.3 Proof of Insurance:

25.3.1 For all types of insurance required by the Contract except for Builder's Risk insurance, if required, the Contractor shall file proof of insurance in accordance with this Article within ten (10) Days of award. For Builder's Risk, proof shall be filed by a date specified by the Commissioner or ten (10) Days prior to the commencement of the portion of the Work covered by such policy, whichever is earlier.

27.3.2 For Workers' Compensation Insurance provided pursuant to the Contract, the Contractor shall submit one of the following forms: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. For Disability Benefits Insurance provided pursuant to the Contract, the Contractor shall submit DB-120.1 - Certificate Of Insurance Coverage Under The NYS Disability Benefits Law, Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. ACORD forms are not acceptable.

27.3.4 For policies provided pursuant to the Contract other than Builder's Risk, the Contractor shall submit one or more Certificates of Insurance on forms 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 Contract that the City is an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 10, CG 20 37, and CG 20 26, as applicable; (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number); and (d) the number assigned to the Contract by the City. All such Certificates of Insurance shall be accompanied by the required additional insured endorsements and either a duly executed "Certification by Insurance Broker or Agent" in the form attached to this Agreement or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. 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.

27.3.5 Documentation confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Contract. Such proofs of insurance shall comply with the requirements of this Article.

27.3.6 The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Article upon the demand for such policy by the Commissioner or the City Corporation Counsel.

27.4 Operations of the Contractor:

27.4.1 The Contractor shall not commence the Work unless and until all required certificates have been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of a certificate does not excuse the Contractor from securing insurance consistent with all provisions of this Article or of any liability arising from its failure to do so.

27.4.2 The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Contract and shall be authorized to perform Work only during the effective period of all required coverage.

27.4.3 In the event that any of the required insurance policies lapse, are revoked, suspended 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. Contract time shall continue to run during such periods and no extensions of time will be granted. The Commissioner may also declare the Contractor in default for failure to maintain required insurance.

27.4.4 In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 27 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.

27.4.5 Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Contract (including notice to Commercial General Liability insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) 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 as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, 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.

27.4.6 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, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

27.5 Subcontractor Insurance: In the event the Contractor requires any Subcontractor to procure insurance with regard to any operations under this Contract and requires such Subcontractor to name the Contractor as an Additional Insured thereunder, the Contractor shall ensure that the Subcontractor name the City, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20.

27.6 Wherever reference is made in the Contract or this Article to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to 30-30 Thomson Avenue, Long Island City, NY 11101. In the event no address is set forth in Schedule A, such documents are to be sent to the Commissioner's address as provided elsewhere in this Contract.

27.7 Apart from damages or losses covered by insurance provided pursuant to Articles 27.1.5, 27.1.6 and 27.12.1(a), the Contractor waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article 27 (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.

27.8 In the event the Contractor utilizes a self-insurance program to satisfy any of the requirements of this Article, 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, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

27.10 Pursuant to New York State General Municipal Law Section 108, this Contract shall be void and of no effect unless Contractor maintains Workers' Compensation Insurance for the term of this Contract to the extent required and in compliance with the New York State Workers' Compensation Law.

27.11 Other Remedies: Insurance coverage provided pursuant to this Article or otherwise shall not relieve the Contractor of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Contract or Law.

27.12 Additional Insurance Provided by the Contractor: In addition to any insurance required by this Contract 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. Such additional insurance may be invoiced as a separate line item on invoices after premiums and/or adjustments are paid by the Contractor.

27.12.1 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 purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

(a) U.S. Harbor Workers' Long Shoremens' Compensation Act: Full statutory amounts

(b) Marine Protection and Indemnity: $25,000,000 combined single limit per occurrence, but if an annual aggregate is applicable to the policy not less than $25,000,000 in the aggregate per year

27.12.2 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 or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services and any work incidental thereto:

(a) Contractor Pollution Liability ("CPL") Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability ("PLL") Policy, Transportation Coverage and Non-Owned Disposal: $5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than $5,000,000 in the aggregate per year dedicated to this Project, on an "occurrence" basis, with a term of not less than ten (10) years

27.12.3 If the Project is adjacent to or includes an existing active railroad or subway line, the Contractor, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Contractor and its Subcontractors, and any work incidental thereto:

(a) Railroad Protective Liability: $1,000,000 combined single limit per occurrence, but if an annual aggregate is applicable to the policy not less than $2,000,000 in the aggregate.

27.13 Insurance Provided or Supported by the City: In addition to any base insurance required by this Contract of the Contractor and Subcontractors or specific Task Orders, the City will provide the following insurance or assist Contractors to arrange such insurance that shall be reimbursed under a specific Task Order, subject to prior approvals by the City. The nature of the Task Order scope of work will guide the types and amounts of additional insurance that the City will provide or support as a contractor reimbursed cost additional coverage options, such as the following:

(a) Additional Layers of Excess Liability Insurance – From limits of $100,000,000 to an upper limit of $250,000,000 above the required $10,000,000 umbrella, or excess liability policy, depending upon the scope of the specific Task Order.
(b) Pollution Liability Insurance – Limits up to $50,000,000 above $5,000,000 primary
(c) Professional Liability Insurance – Limits up to $10,000,000 above $1,000,000 primary

Once contracts have been awarded, the City and each Contractor will develop Disaster Readiness and Mobilization Plans for various Task Order types that include the anticipated risk management and insurance strategies required for different types of Task Orders.

ARTICLE 28
MONEY RETAINED AGAINST CLAIMS

28.1 If any claim shall be made by any person or entity against the City or against the Contractor and the City for any of the following:

28.1.1 An alleged loss, damage, injury, theft or vandalism of any of the kinds referred to in the Contract, 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

28.1.2 An infringement of copyrights, patents or use of patented articles, tools, etc., as referred to in the Contract; or

28.1.3 Damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract,

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.

28.2 If no action is commenced upon such claim within the time limited thereof by law, the Comptroller, upon written demand by the Contractor, shall return the amount so withheld without interest.

28.3 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 moneys retained by him under the provisions of this Article, and return the balance, if any, without interest, to the Contractor.

ARTICLE 29
MAINTENANCE AND GUARANTY

29.1 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 (1) year period subsequent to the date of Substantial Completion (or use and occupancy in accordance with the Contract).

29.2 As security for the faithful performance of its obligations hereunder, the Contractor, upon filing its requisition for payment on Substantial Completion, shall deposit with the Commissioner a sum equal to one (1%) percent of the price (or the amount fixed in Schedule A of the General Conditions) 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.

29.3 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 Substantial Completion payment which shall be deemed the deposit required above.

29.4 If the Contractor has faithfully performed all of its obligations hereunder the Commissioner shall so certify to the Comptroller within five (5) Days after the expiration of one (1) year from the date of Substantial Completion and acceptance of the Work or within thirty (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 thirty (30) Days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all of its obligations hereunder.

29.5 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 (10) Days subsequent to the expiration of the one (1) year period or other periods provided for herein.

29.6 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 and to deduct the cost thereof from the amount so deposited hereunder. The balance, if any, shall be returned to the Contractor without interest.

29.7 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.

29.8 The Commissioner's Representative 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.

29.9 The Contractor shall obtain all manufacturers' warranties and guaranties of all equipment and materials required by this Contract in the name of the City and shall deliver same to the Commissioner.

ARTICLE 30
CONTRACT CHANGES

30.1 Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Contractors deviating from the requirements of an original Task Order or contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original Contract. Work so ordered must be performed by the Contractor.

30.2 Contract changes will be made only for Work necessary to complete the Work included in the original scope of the Contract, and for non-material changes to the scope of the Contract. Changes are not permitted for any material alteration in the scope of the Projects. Contract changes may include any contract revision deemed necessary by the Contracting Officer. The Contractor may be entitled to a price adjustment for Extra Work performed pursuant to a written change order. If any part of the Contract Work is necessarily delayed by a change order, the Contractor may be entitled to an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (1) by agreement of a fixed price; (2) by unit prices specified in the contract; (3) by time and material record; and/or (4) in any other manner approved by the City Chief Procurement Officer.

30.3 Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification.

30.4 All payments for change orders are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller. If the audits reveal that the Contractor's costs for the change order work were inaccurately stated during negotiations, the Agency shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price of the change order. This remedy is not exclusive and in addition to all other rights and remedies of the City.

ARTICLE 31
METHODS OF PAYMENT FOR EXTRA WORK

31.1 Based on the Emergency nature of the Contract, in the event the Contractor is required to perform extra work for an already-issued Task Order, the Commissioner will issue a supplementary

Task Order for the extra work. Payment for the supplementary Task Orders will be in accordance with Article 45.

ARTICLE 32
RESOLUTION OF DISPUTES

32.1 All disputes between the City and the Contractor of the kind delineated in this Article that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this Article and the PPB Rules. This procedure for resolving disputes of the kind delineated herein shall be the exclusive means of resolving such disputes.

(a) This Article 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.

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

32.2 All determinations required by this Article shall be made in writing, clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Article shall be deemed a non-determination without prejudice that will allow application to the next level.

32.3 During such time as any dispute is being presented, heard, and considered pursuant to this Article, the Contract terms shall remain in force and effect and the Contractor shall continue to perform Work as directed by the ACCO or the Engineer. Failure of the Contractor to continue Work as directed shall constitute a waiver by the Contractor of its claim.

32.4 Presentation of Dispute to Commissioner.

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

demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner 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) Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor, the ACCO, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Commissioner may seek such technical or other expertise as 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 Commissioner's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Commissioner participated therein. The Commissioner may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Contract and that contractor shall be bound by the decision of the Commissioner. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Article as the Contractor initiating the dispute.

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

(d) Finality of Commissioner Decision. The Commissioner's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Article. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Commissioner.

32.5 Presentation of Dispute to the Comptroller. Before any dispute may be brought by 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 thirty (30) days of receipt of a decision by the Commissioner, the Contractor shall submit to the Comptroller and to the Commissioner a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the decision of the Commissioner, and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The

Contractor may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.

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

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

(d) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

32.6 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/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

(b) The City Chief Procurement Officer ("**CCPO**") or his/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.

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

(a) Form and Content of Petition by Contractor. The Contractor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief written 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 Commissioner; (ii) a copy of the written decision of the Commissioner; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the written 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 Commissioner and the Comptroller.

(b) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Commissioner and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.

(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 forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a written decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

(e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the Corporation Counsel, the Comptroller, the CCPO, and the PPB. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.

(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 this Article.

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

ARTICLE 33
RECORD KEEPING FOR EXTRA OR DISPUTED WORK

33.1 While the Contractor or any of its Subcontractors is performing Extra Work on a Time and Material Basis ordered by the Commissioner under Article 31, or is performing disputed Work, or complying with a determination or order under protest in accordance with Article 32 hereof, in each such case the Contractor shall furnish the Commissioner's Representative daily with three (3) copies of written statements signed by the Contractor's representative at the Site showing:

33.1.1 The name and number of each Worker employed on such Work or engaged in complying with such determination or order, the number of hours employed, and the character of the Work each is doing; and

33.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work or compliance with such determination or order, and from whom purchased or rented.

33.2 A copy of such statement will be countersigned by the Commissioner's Representative, noting thereon any items not agreed to or questioned, and will be returned to the Contractor within two (2) calendar days after submission.

33.3 The Contractor and its Subcontractors, when required by the Commissioner, or the Comptroller, shall also produce for inspection, at the office of the Contractor or Subcontractor, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, and canceled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such Work, or in complying with such determination or order, and the amounts expended therefor, and shall permit the Commissioner and

the Comptroller to make such extracts therefrom, or copies thereof, as they or either of them may desire.

33.4 In connection with the examination provided for herein, the Commissioner, upon demand therefor, will produce for inspection by the Contractor such records as the Agency may have with respect to such Extra or disputed Work performed under protest pursuant to order of the Commissioner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

33.5 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Work or compliance with such determination or order.

ARTICLE 34
NOT USED

ARTICLE 35
THE COMMISSIONER'S REPRESENTATIVE

35.1 The Commissioner's Representative shall be the representative of the Commissioner, and subject to review by the Commissioner, shall have the power, in the first instance, to inspect the performance of the Work and exercise such other authority as the Commissioner may delegate. He shall not however, have the power to issue an Extra Work order, except as specifically designated in writing by the Commissioner.

ARTICLE 36
THE COMMISSIONER

36.1 The Commissioner, in addition to those matters elsewhere herein expressly made subject to his determination, direction or approval, shall have the power: (a) to review and determine any and all questions in relation to this Agreement and its performance; and (b) to modify or change this Agreement so as to require: (i) the performance of Extra Work (subject, however, to the limitations specified in the Contract); or (ii) the omission of Work whenever he deems it in the interest of the City to do so; or both; and (c) to postpone, delay, suspend or terminate the whole or any part of the Work, whenever in his judgment such action is required in the interest of the City.

ARTICLE 37
NO ESTOPPEL

37.1 Neither the City nor any department, officer, 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 Commissioner's Representative, or any other officer, agent or employee of the City, either before or after the final completion and acceptance of the Work and payment therefor:

37.1.1 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

37.1.2 from demanding and recovering from the Contractor any overpayments made to him, or such damages as it may sustain by reason of his failure to perform each and every part of his Agreement in strict accordance with its items, or both.

ARTICLE 38
EMPLOYEES

38.1 The Contractor and its Subcontractors and Consultants shall not employ on the Work:

38.1.1 anyone who is not competent, faithful and skilled in the Work for which he shall be employed; and whenever the Commissioner shall inform the Contractor, in writing, that any employee is, in his opinion, incompetent, unfaithful or disobedient, he shall be discharged from the Work forthwith, and shall not again be employed upon it; or

38.1.2 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 his 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 of New York, 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 terminating the Contractor for cause and taking such action as set forth in the Contract, or such other action as the Commissioner may deem proper; or

38.1.3 in accordance with Section 220.3-e of the New York State Labor Law, any apprentice, unless he is registered individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his Work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above shall be paid the wage rate determined by the Comptroller of the City of New York for the classification of Work being actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of its program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Contract Work.

38.2 If the total cost of the Work under this Contract is at least two hundred fifty thousand dollars, all laborers, workers, and mechanics employed in the performance of the Contract on the work 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 contract, 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.

38.3 In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the Administrative Code, respectively,

38.3.1 The Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (a) the Commissioner of the Department of Investigation, (b) a member of the New York City Council, the Public Advocate, or the Comptroller, or (c) the CCPO, ACCO, Agency head, or Commissioner.

38.3.2 If any of the Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of Article 38.3.1, he or she shall be entitled to bring a cause of action against the Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (a) an injunction to restrain continued retaliation, (b) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (c) reinstatement of full fringe benefits and seniority rights, (d) payment of two times back pay, plus interest, and (e) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

38.3.3 The Contractor shall post a notice provided by the City in attachment J to this Contract, in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

> 38.3.3(a) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
>
> 38.3.3(b) the rights and remedies afforded to its employees under Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

38.3.4 For the purposes of this Article 38.3, "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.

38.3.5 This Article 38.3 is applicable to all of the Contractor's Subcontractors having subcontracts with a value in excess of $100,000; accordingly, the Contractor shall include this rider in all subcontracts with a value a value in excess of $100,000.

38.4 Article 38.3 is not applicable to this Contract if it is valued at $100,000 or less. Articles 38.3.1, 38.3.2, 38.3.4, and 38.3.5 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency.

ARTICLE 39
NO DISCRIMINATION

39.1 As required by New York State Labor Law Section 220-e, it is agreed between the Parties hereto as follows:

39.1.1 That 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 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;

39.1.2 That neither the Contractor, Subcontractor, nor any person on his 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 or national origin;

39.1.3 That there may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of five dollars 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

39.1.4 That this Agreement may be canceled or terminated by the City and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Agreement.

39.1.5 The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

39.2 As required by New York City Administrative Code Section 6-108:

39.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of building 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.

39.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision 36.2.1 above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

39.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this Agreement.

39.2.4 Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

ARTICLE 40
EQUAL EMPLOYMENT OPPORTUNITY

40.1 This Contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("**E.O. 50**") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the Contractor agrees that:

40.1.1 The Contractor will not engage in any unlawful discrimination 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;

40.1.2 When it subcontracts, the Contractor will not engage in any unlawful discrimination 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;

40.1.3 The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship, or that it is an equal employment opportunity employer;

40.1.4 The Contractor will send to each labor organization or representative or 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; and

40.1.5 The Contractor will furnish all information and reports including an Employment Report before the award of the contract which are required by E. O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("DLS"), and will permit access to its books, records and accounts by DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

40.2 The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the 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 imposition by the Commissioner of any or all of the following sanctions:

40.2.1 disapproval of the Contractor;
40.2.2 suspension or termination of the contract;
40.2.3 declaring the Contractor in default; or
40.2.4 in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the DLS may recommend to the Department head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

40.3 The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract

in the amount of $10,000 or more 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. The Contractor will take such action with respect to any subcontract as may be directed by the Director of DLS as a means of enforcing such provisions, including sanctions for noncompliance.

40.4 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.

ARTICLE 41
LABOR LAW REQUIREMENTS

41.1 The Contractor and its subcontractors shall strictly comply with all applicable provisions of the City, State and Federal Labor Law, as amended, including Davis-Bacon Act, unless otherwise directed in the Task Order. Such compliance is a material term of this Contract. The Contractor shall include the provisions of this Article set forth below in all subcontracts for construction Work.

41.2 The Contractor specifically agrees, as required by Labor Law Sections 220 and 220-d (if applicable to the Task Order Work), as amended, that:

41.2.1.Hours of Work: No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Contract shall be permitted or required to work more than eight (8) hours in any one (1) Day, or more than five (5) Days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

41.2.2 In situations in which there are not sufficient laborers, workers, and mechanics who may be employed to carry on expeditiously the Work contemplated by this Contract as a result of such restrictions upon the number of hours and Days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) Day; or five (5) Days in any one (1) week; provided, however, that upon application of any Contractor, the Commissioner shall have first certified to the Commissioner of Labor of the State of New York (hereinafter "Commissioner of Labor") that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

41.2.3 Failure of the Commissioner to make such a certification to the Commissioner of Labor shall not entitle the Contractor to damages for delay or for any cause whatsoever.

41.2.4 Prevailing Rate of Wages: The wages to be paid for a legal day's Work to laborers, workers, or mechanics employed upon the Work contemplated by this Contract or upon any materials to be used thereon shall not be less than the "prevailing rate of wage" as defined in Labor Law Section 220, and as fixed by the Comptroller in the attached Schedule of Wage Rates and in updated schedules

thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed.

41.2.5 Requests for interpretation or correction in the Information for Bidders includes all requests for clarification of the classification of trades to be employed in the performance of the Work under this Contract. In the event that a trade not listed in the Contract is in fact employed during the performance of this Contract, the Contractor shall be required to obtain from the Agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Contract at the price at which the Contract was awarded.

41.2.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, 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.

41.3 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.

41.4 Prevailing Wage Enforcement: The Contractor agrees to pay for all costs incurred by the City in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the Agency or the Comptroller, where the City discovers a failure to comply with any of the requirements of this Article by the Contractor or its Subcontractor(s). The Contractor also agrees that, should it fail or refuse to pay for any such investigation, the Agency is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

41.4.1 The Labor Law Section 220 and Section 220-d, as amended, provide that this Contract shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than:

41.4.1(a) The stipulated prevailing wage scale as provided in Labor Law section 220, as amended, or

41.4.1(b) The stipulated minimum hourly wage scale as provided in Labor Law section 220-d, as amended.

41.4.2 For any breach or violation of either working conditions or minimum wages provisions, the party responsible therefor 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 actions brought by the City Corporation Counsel in the name of the City, in addition to damages for any other breach of this Contract, for 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 Comptroller, 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.

41.4.3 A determination by the Comptroller that a Contractor and/or its Subcontractor willfully violated Labor Law Section 220 will be forwarded to the City's five District Attorneys for review.

41.4.4 The Contractor's or Subcontractor's noncompliance with this Article and Labor Law Section 220 may result in an unsatisfactory performance evaluation and the Comptroller may also find and determine that the Contractor or Subcontractor willfully violated the New York Labor Law.

41.4.4(a) An unsatisfactory performance evaluation for noncompliance with this Article may result in a determination that the Contractor is a non-responsible bidder on subsequent procurements with the City and thus a rejection of a future award of a contract with the City, as well as any other sanctions provided for by Law.

41.4.4(b) Labor Law Section 220-b, as amended, provides that when two (2) final determinations have been rendered against a Contractor or Subcontractor within any consecutive six (6) year period determining that such Contractor or Subcontractor has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor Law and this Article 41.4, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public works projects are rendered simultaneously, such Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public works contract with the City for a period of five (5) years from the second final determination. If the final determination involves the falsification of payroll records or the kickback of wages or supplements, the Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public works contract with the City for a period of five (5) years from the first final determination.

41.4.4(c) Labor Law Section 220, as amended, provides that the Contractor or Subcontractor found to have violated this Article may be directed to make payment of wages or supplements including interest found to be due, and the Contractor or Subcontractor may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

41.5 The Contractor and its Subcontractors shall within ten (10) Days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of the Contractor and its Subcontractors engaged in the performance of this Contract are employed, notices furnished by the City, in relation to prevailing wages and supplements, minimum wages, and other stipulations contained in Sections 220 and 220-h of the Labor Law, and the Contractor and its Subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services required to be furnished or rendered under this Contract.

41.6 The Contractor shall strictly comply with all of the provisions of Articles 41.6.1 through 41.6.5, and provide for all workers, laborers or mechanics in its employ, the following:

41.6.1 Notices Posted At Site: Post, in a location designated by the City, schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the Workers' Compensation Law Section 51 notice, all other notices required by Law to be posted at the Site, the City notice that this Project is a public works project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the City directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the City. The Contractor shall maintain and keep current such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Contractor shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete; and

41.6.2 Daily Site Sign-in Sheets: Maintain daily Site sign-in sheets, and require that Subcontractors maintain daily Site sign-in sheets for its employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began work and the time the employee left work, until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services to be furnished or rendered under this Contract unless exception is granted by the Comptroller upon application by the Agency. In the alternative, subject to the approval of the CCPO, the Contractor and Subcontractor may maintain an electronic or biometric sign-in system, which provides the information required by this Article 41.6.2; and

41.6.3 Individual Employee Information Notices: Distribute a notice to each worker, laborer or mechanic employed under this Contract, in a form provided by the Agency, that this Project is a public works project on which each worker, laborer or mechanic is entitled to receive the prevailing rate of wages and supplements for the occupation at which he or she is working. If the total cost of the Work under this Contract is at least two hundred fifty thousand ($250,000) dollars, such notice shall also include a statement that each worker, laborer or mechanic must 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 (10) hours in duration. Such notice shall be distributed to each worker before he or she starts performing any Work of this Contract and with the first paycheck after July first of each year. "Worker, laborer or mechanic" includes employees of the Contractor and all Subcontractors and all employees of suppliers entering the Site. At the time of distribution, the Contractor shall have each worker, laborer or mechanic sign a statement, in a form provided by the Agency, certifying that the worker has received the notice required by this Article 41.6.3, which signed statement shall be maintained with the payroll records required by this Contract; and

41.6.3(a) The Contractor and each Subcontractor shall notify each worker, laborer or mechanic employed under this Contract in writing of the prevailing rate of wages for their particular job classification. Such notification shall be given to every worker, laborer, and mechanic on their first pay stub and with every pay stub thereafter; and

41.6.4 Site Laminated Identification Badges: The Contractor shall provide laminated identification badges which include a photograph of the worker's, laborer's or mechanic's face and indicate the worker's, laborer's or mechanic's name, trade, employer's name, and employment starting date (month/day/year). Further, 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. The Commissioner may grant a written waiver from the requirement that the laminated identification badge include a photograph if the Contractor demonstrates that the identity of an individual wearing a laminated identification badge can be easily verified by another method; and

41.6.5 Language Other Than English Used On Site: Provide the ACCO notice when three (3) or more employees (worker and/or laborer and/or mechanic) on the Site, at any time, speak a language other than English. The ACCO will then provide the Contractor the notices described in Article 41.6.1 in that language or languages as may be required. The Contractor is responsible for all distributions under this Article 41; and

41.6.6 Provision of Records: The Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Engineer, the Commissioner, the ACCO, the Agency EAO, or the Comptroller, such records as are required to be kept by this Article 41.6; and

41.6.7 The Contractor and Subcontractor(s) shall pay employees by check or direct deposit. If this Contract is for an amount greater than one million ($1,000,000) dollars, 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 Agency). For any subcontract for an amount greater than seven hundred fifty thousand ($750,000) dollars, 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); and

41.6.8 The failure of the Contractor or Subcontractor(s) to comply with the provisions of Articles 41.6.1 through 41.6.7 may result in the Commissioner declaring the Contractor in default and/or the withholding of payments otherwise due under the Contract.

41.7 The Contractor and its Subcontractors shall keep such employment and payroll records as are required by Section 220 of the Labor Law. The failure of the Contractor or Subcontractor(s) to comply with the provisions of this Article 41.7 may result in the Commissioner declaring the Contractor in default and/or the withholding of payments otherwise due under the Contract.

41.8 At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to the Commissioner a written payroll certification, in the form provided by this Contract, of compliance with the prevailing wage, minimum wage, and other provisions and stipulations required by Labor Law Section 220 and of compliance with the training requirements of Labor Law Section 220-h set forth in Article 38. This certification of compliance shall be a condition precedent to payment and no payment shall be made to the Contractor unless and until each such certification shall have been submitted to and received by the Commissioner.

41.9 This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of Section 220 of the Labor Law from the award of the Contract.

41.10 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 42
PAYROLL REPORTS

42.1 The Contractor and its Subcontractor(s) shall maintain on the Site during the performance of the Work the original payrolls or transcripts thereof which the Contractor and its Subcontractor(s) are required to maintain and shall submit such original payrolls or transcripts, subscribed and affirmed by it as true, within thirty (30) Days after issuance of its first payroll, and every thirty (30) Days thereafter, pursuant to Labor Law Section 220(3-a)(a)(iii). The Contractor and Subcontractor(s) shall submit such original payrolls or transcripts along with each and every payment requisition. If payment requisitions are not submitted at least once a month, the Contractor and its Subcontractor(s) shall submit original payrolls and transcripts both along with its payment requisitions and independently of its payment requisitions.

42.2 The Contractor shall maintain payrolls or transcripts thereof for six (6) years from the date of completion of the Work on this Contract. If such payrolls and transcripts are maintained outside of New York City after the completion of the Work and their production is required pursuant to this Article 42, the Contractor shall produce such records in New York City upon request by the City.

42.3 The Contractor and Subcontractor(s) shall comply with any written order, direction, or request made by the Commissioner's Representative, the Commissioner, the ACCO, the Agency EAO, the Agency Labor Law Investigator(s), or the Comptroller, to provide to the requesting party any of the following information and/or records within five (5) Days of such written order, direction, or request:

42.3.1 Such original payrolls or transcripts thereof subscribed and affirmed by it as true and the statements signed by each worker pursuant to this Contract; and/or

42.3.2 Attendance sheets for each Day on which any employee of the Contractor and/or any of the Subcontractor(s) performed Work on the Site, which attendance sheet shall be in a form acceptable to the Agency and shall provide information acceptable to the Agency to identify each such employee; and/or

42.3.3 Any other information to satisfy the Commissioner's Representative, the Commissioner, the ACCO, the Agency EAO, the Agency Labor Law Investigator(s) or the Comptroller, that this Contract and the Labor Law, as to the hours of employment and prevailing rates of wages and/or supplemental benefits, are being observed.

42.4 The failure of the Contractor or Subcontractor(s) to comply with the provisions of Articles 42.1 and/or 42.2 may result in the Commissioner declaring the Contractor in default and/or the withholding of payments otherwise due under the Contract.

ARTICLE 43

DUST HAZARDS

43.1 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 State 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 void.

ARTICLE 44
NOISE CONTROL CODE PROVISIONS

44.1 In accordance with the provisions of Section 24-216(b) of the Administrative Code of the City ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the City Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the Department of Environmental Protection.

44.2 The Contractor agrees to comply with Section 24-219 of the Administrative Code and implementing rules codified at 15 Rules of the City of New York ("RCNY") Sections 28-100 et seq. In accordance with such provisions, the Contractor, if the Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan at each work Site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the New York City Department of Environmental Protection. In addition, the Contractor's certified Construction Noise Mitigation Plan is subject inspection by the Department of Environmental Protection in accordance with 15 RCNY §28-101. No Contract work may take place at a work Site unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

ARTICLE 45
PAYMENT TERMS AND CONDITIONS

45.1 Due to the Emergency nature of the Work issued under this Contract, the City will use best efforts, if feasible, to work with the Contractors on expediting payments.

45.1.1 In general, payments to the Contractor will be made monthly or on such other basis as the City designates in the Task Order (such as bi-weekly or even weekly, for some period of time).

45.1.2 Payment requisitions will be submitted in the format that the City provides the Contractor.

45.1.3 To the extent feasible, under the circumstances, a short narrative progress report may accompany each invoice, which report will discuss any issues, problems, or potential

causes for delay with the status of the Task Order, amount of work completed, and any other relevant information.

45.2 Contractor acknowledges that the purpose of this Agreement is for Emergency services and, therefore, agrees that payment may not be on a regular basis or in an as timely manner as usual due to the Emergency.

45.2.1 Contractor agrees not to institute a claim or lawsuit or refuse to continue working hereunder solely based on the City's inability to timely pay an invoice due to the emergency; and

45.2.2 However, if the City is unable to pay timely, this does not relieve the City of its legal obligation to pay a proper invoice.

45.3 The City may retain the services of an outside auditor and/or contract monitor to assist in reviewing all payment requisitions and to set up procedures for how certain items may be paid for. The Contractor shall work with these vendors.

45.3.1 In developing the requisition forms, the City will comply with the demands of the appropriate funding source (i.e., FEMA, etc.), or otherwise.

45.3.2 If the City retains the services of a third party vendor (auditor and/or monitor) to work with the City and the Contractors on the requisition forms as well as the actual documentation submitted along with the requisitions, the Contractors shall cooperate and work with the City and any third party vendors retained by the City.

45.4 General

45.4.1 Task Orders: Task Orders issued hereunder shall specify an overall Not to Exceed amount for the services to be performed under the Task Order. Such overall Not to Exceed amount r may be further broken down into allowance amounts for the following: 1) allowance for design services, if required; 2) allowance for construction management services, if required; 2) allowance for construction work, and 3) allowance for miscellaneous expenses and/or additional services, if required. In accordance with Article 13, to the extent permitted by the Commissioner, the Contractor may perform some or all of the Construction Work. In the event the Contractor performs some or all of the Construction Work as directed in the Task Order, the allowance for construction management services and for construction work shall be combined into one allowance.

45.4.2 Total Payments: Total payments for all Work performed and all expenses incurred pursuant to this Contract shall not exceed the amount agreed to by the Parties for a specific Task Order, unless such Task Order is amended or supplemented.

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

45.4.4 Not to Exceed Amount: In the event the Not to Exceed Amount for a Task Order is insufficient, the Commissioner may increase the amount, pending review by the Commissioner that the

funds expended have been necessary for performance of the Work and that the Contractor has taken all reasonable steps to contain costs..

45.4.5 Method of Payment: The method of payment for the performance of all required emergency construction management and construction-related services shall be specified in the Task Order, subject to the limitations listed below. However, for most services, the specified method of payment shall be through fixed fee(s) for fixed scope of work to be paid upon reaching specific milestones and/or deliverables set forth in the Task Order. Alternatively, All-Inclusive Hourly Rates as set forth in the Disaster Readiness and Mobilization Plan, or a portion thereof, shall be used as a basis for negotiating fee(s) with the Contractor. Payments based on time and materials or time card basis, with a Not to Exceed amount, will only be used if, under the totality of the circumstances, the Commissioner determines that no other form of payment is suitable.

45.5. Allowance for Disaster Readiness and Mobilization Plan: The method of payment for the Disaster Readiness and Mobilization Plan shall be through a fixed fee, paid upon completion of specific milestones set forth in the Task Order. The Contractor's price proposal in accordance with Article 10 shall be used as a basis for negotiating the fixed fee(s) with the Contractor.

45.5.1.This fixed fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultants in the preparation of the Disaster Readiness and Mobilization Plan, including all expenses related to management and overhead, all expenses in connection with providing the non-reimbursable items and/or services, and any anticipated profits.

45.6 Allowance for Construction Management Services: If applicable, the Task Order shall specify an Allowance for Construction Management Services. Such allowance is established for payment to the Contractor for the performance of construction management services by those personnel who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner. Payment for Construction Management Services will be through a fixed fee(s) for fixed scope of work to be paid upon reaching specific milestones and/or deliverables.

45.6.1 Payment Limitations: Payment for personnel is subject to the limitations set forth below.

(a) Staffing Plan: The Contractor shall not be entitled to payment for any personnel not assigned to the Project and not included in the approved Staffing Plan.

(b) Principal: The Contractor shall not be entitled to payment for a principal's time performing oversight or management duties, except for the Project Executive, as set forth below. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Exhibit D, and (2) such principal is included in the approved Staffing Plan for such title.

(c) Project Executive: The Contractor shall not be entitled to payment for the services of the Project Executive in excess of five (5) hours per week, unless otherwise authorized in writing by the Commissioner.

45.6.2 Required Personnel: The personnel specified in the approved Staffing Plan shall be considered Assigned Employees for the purpose of payment in accordance with this Article.

45.6.3 All Inclusive Hourly Rates: An All Inclusive Hourly Rate for each Assigned Employee is set forth in the Staffing Plan. Such All Inclusive Hourly Rate shall be the rate set forth in Exhibit C, as well as the Disaster Readiness and Mobilization Plan set forth in the Task Order, for the title for which the Commissioner determines the Assigned Employee meets the qualification requirements. Such All Inclusive Hourly Rate shall apply to all hours during which an Assigned Employee performs services for the Project, including non-regular business hours. No increase in such rate shall be provided for services performed during non-regular business hours. Such All Inclusive Hourly Rates shall be deemed to include:

(a) All expenses incurred by the Contractor and/or its Subconsultants or Subcontractors in the performance of all required services for the Project
(b) All expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties
(c) All expenses related to overhead and any anticipated profit
(d) All expenses in connection with transportation and travel, including without limitation, expenses for ordinary transportation and expenses for time personnel spend commuting or traveling
(e) All expenses in connection with providing the following: (1) printing of deliverables, if required by the Commissioner in the Task Order, and (2) Non-Reimbursable Items and/or Services, if required by the Commissioner in the Task Order

45.6.4 Amount of Payment: For any week during which an Assigned Employee performs services, payment to the Contractor for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in subparagraph (a) by the number set forth in subparagraph (b).

(a) Assigned Employee's All Inclusive Hourly Rate. The All Inclusive Hourly Rate for an Assigned Employee shall be the rate set forth in Exhibit C, as well as the Disaster Readiness and Mobilization Plan set forth in the Task Order, for the title for which the Commissioner determines the employee meets the qualification requirements.
(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for the Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting and/or traveling; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project, and (4) any hours other than regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
(c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed hereunder. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

45.6.5 Non-Regular Business Hours: The Commissioner may authorize the Contractor in advance in writing to have an Assigned Employee(s) perform services during non-regular business hours. Non-regular business hours shall be defined as any hours in excess of eight (8) hours per day, Monday through Friday (i.e., evenings, weekends and holidays). Payment for services performed during non-regular business hours shall be in accordance with the All Inclusive Hourly Rates set forth in

Exhibit C, as well as the Disaster Readiness and Mobilization Plan set forth in the Task Order. The Contractor shall not be entitled to any increase in such rates for services performed during non-regular business hours.

45.6.6 Increases: The All Inclusive Hourly Rates set forth in Exhibit C, as well as the Disaster Readiness and Mobilization Plan set forth in the Task Order, shall apply to the two-year base term of the Contract. Thereafter, in the event of Contract renewal or extension, such All Inclusive Hourly Rates shall be subject to increases on a yearly basis, subject to the limitations set forth below. The first such increase shall be made at the end the Contract base term, two (2) year after the commencement date (i.e., the date on which the Contract is registered by the Comptroller). Thereafter, during any renewal or extension of the Contract term, increases in the All Inclusive Hourly Rates shall be made on a yearly basis, on the anniversary of the commencement date.

(a) Any increase in the All Inclusive Hourly Rates shall be based on the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index").

(b) Any increase in the All Inclusive Hourly Rates shall be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**. If, for the prior year, the Index showed an increase, the All Inclusive Hourly Rates shall be increased. If, for the prior year, the Index declined or showed no increase, the All Inclusive Hourly Rates shall remain unchanged.

(c) Any increase in the All Inclusive Hourly Rates shall be applied on a prospective basis only and shall have no impact on rates paid to date.

45.6.7 Decreases: The names of individuals identified as Key Personnel by the Contractor in its Proposal for the Contract, as well as their qualifications, are set forth in Exhibit B. Exhibit C shall lists the All Inclusive Hourly Rates applicable to titles of Key Personnel. In the event the Contractor fails to provide any individual listed in Exhibit B, the Commissioner may decrease the All Inclusive Hourly Rate for such individual's title to an amount based on the qualifications and salary rate of the individual approved as a replacement.

45.6.8 Non-Reimbursable Services: Throughout the Contract and regardless of whether specified in any Task Order issued hereunder, the Contractor shall be responsible for providing the non-reimbursable services set forth below. All costs for such services are deemed included in the All Inclusive Hourly Rates set forth in Exhibit C, as well as the Disaster Readiness and Mobilization Plan set forth in the Task Order.

45.6.8.1 The Contractor shall, when requested by the Commissioner, provide overnight delivery of Project documents.
45.6.8.2 The Contractor shall provide printing services for all required deliverables, as set forth in this Article.
45.6.8.3 The Contractor shall provide health and safety plans or other documents required under City, State or Federal law for environmental investigations.
45.6.8.4 The Contractor shall be responsible for payment of fees for any and all permits and/or licenses required by Federal, State, or local regulatory agencies
45.6.8.5 The Contractor shall provide the items set forth below for all personnel performing services.

(a) Transportation, including transportation to the Project site, as well as parking and tolls. Contractors and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
(b) All computer hardware and software necessary to perform the required services
(c) All necessary office supplies and/or tools
(d) Communications equipment, including without limitation cellular telephones for all personnel performing services. Such telephone numbers shall be submitted to the Commissioner.
(e) Hand tools, sample media, containers and other supplies for collecting samples of hazardous materials.
(f) Digital camera capable of recording images in indoor/outdoor applications.
(g) Safety equipment as required by City, State or Federal requirements.
(h) Hard hats, safety vests, and all other necessary and required Personal Protective Equipment (P.P.E.).

45.7 Allowance for Construction Work

45.7.1 All Work shall include all required Work for the types of Projects described in the Task Order.

45.7.2 The total amount to be paid for Construction Work shall not exceed the cumulative total of the amounts for which subcontracts for Work for the Project are awarded and the amounts of any change orders to such subcontracts, or for the Work directly handled by the Contractor. No amounts shall be paid for Construction Work, unless the Commissioner has given prior written approval to the amount of award of the subcontract and the amount of any change orders thereto. No amounts shall be paid for Construction Work, unless the Commissioner has given prior approval of the Work to be performed directly by the Contractor.

45.7.2 Payment for Construction Work:

(a) Bid Breakdown of Subcontract Price: If applicable, upon commencement of Work, the Contractor shall submit a bid breakdown of costs, and any other information as may be required by the Commissioner. This breakdown shall be used for checking the Contractor's requests for partial payment for Work performed by Subcontractors or directly by the Contractor, and shall not be binding on the Commissioner for any purpose whatsoever.

(b) To the extent practicable under the circumstances, the Task Order will establish payments for construction Work based on a firm fixed fee for fixed scope of services. Payments based on time and materials, with a Not to Exceed amount, will only be used if, under the totality of the circumstances, the Commissioner determines that no other form of payment is suitable.

45.7.3 Partial Payments: Partial payments to the Contractor for Work performed by Subcontractors or by the Contractor directly shall be on the basis of and in proportion to the percentage of completion of all Work required under the subcontract, as determined by the Commissioner and as set forth in this Article.

(a) With respect to Work, partial payments may be made for materials, fixtures and equipment in advance of their actual incorporation in the work, subject to approval by the Commissioner and compliance with the requirements set forth in the Contract.
(b) In connection with every partial payment requisition for Work, the Contractor shall also submit a verified statement in the prescribed for setting forth the information required under Section 220(a) of the Labor Law

45.7.4 Substantial Completion Requisition: Upon written determination by the Commissioner that the Work of a subcontract is substantially complete, the Contractor shall submit a requisition for a Substantial Completion payment for that subcontract. The Contractor must submit the following with such requisition:

(a) Final verified statement of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to the Contract). With respect to each such claim, the Contractor shall set forth the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof, was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Commissioner and the Comptroller shall have the same right to inspect, and to make extracts or copies of, books, vouchers, records, etc., of the Contractor or the Subcontractor, as referred to in the Contract. Nothing contained in this Article is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to the Contract hereof. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor, upon acceptance of the Substantial Completion payment pursuant to this Article, will have waived any such claims arising out of the Work for which payment is requested.
(b) Final written complete punch list and a date for completion of all required Work. The punch list and completion date are subject to the written acceptance of the Commissioner.
(c) If required, a request for a substantial or final extension of time.

45.7.5 Substantial Completion Payment: The Commissioner shall issue a voucher calling for payment to the Contractor of any part or all of the balance due for Work for which payment is requested, including moneys retained hereunder, less any and all deductions authorized to be made by the Commissioner, under this Contract or by law, and less twice the amount the Commissioner considers necessary to ensure the completion of the balance of the Work of the subcontract. No further partial payments shall be made to the Contractor after the Commissioner determines that the subcontracted Work is substantially complete, except the Substantial Completion payment and any requisitions for partial payment that were properly filed with the Commissioner prior to the date of Substantial Completion; provided, however, the Commissioner may grant a waiver for further partial payments after the date of Substantial Completion to permit payments for change order work. Such waiver shall be in writing.

45.7.6 Final Payment: After Final Acceptance by the Commissioner of the subcontracted

Work, the Contractor shall submit all required certificates and documents, together with a requisition for the balance claimed to be due, less the amount authorized to be retained for maintenance under the Contract hereof. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Commissioner.

45.7.7 Requisition for Final Payment: The Contractor must also submit with the final requisition for Work performed any amendments to the final verified statement of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of the Work performed for which payment is requested (including those as to which details may have been furnished pursuant to the Contract) that have occurred subsequent to Substantial Completion, 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 permissible claim, the Commissioner and the Comptroller shall have the same right to inspect, and to make extracts or copies of, the books, vouchers, records, etc., of the Contractor or Subcontractor, as referred to in the Contract. Nothing contained in this Article, is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to the Contract hereof. 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 the Contract hereof, will have waived any such claims arising out of the Work performed for which payment is requested.

45. 7.9 Voucher for Final Payment: Upon determining the balance due for subcontracted Work for which payment is requested, other than on account of claims, the Commissioner's Representative will prepare and certify, and the Commissioner will approve, a voucher for final payment in that amount less any and all deductions authorized to be made by the Commissioner under Contract or by law. Such voucher shall thereupon be filed with the Comptroller and a copy thereof delivered to the Contractor. The Commissioner shall certify the voucher for final payment for subcontracted Work for which payment is requested following completion and acceptance of the work, provided all requests for extensions of time have been acted upon, if required. Payment pursuant to such final voucher, less any deductions authorized to be made by the Commissioner under Contract or by law, shall constitute final payment in accordance with the Contract hereof.

45.7.10 No Mark-Up: The Contractor shall not be entitled to any mark-up whatsoever on payments for subcontracted Work performed by Subcontractors.

45.8 Allowance for Miscellaneous Expenses

45.8.1 General: If required, an allowance for reimbursement for miscellaneous expenses may be included in the Task Order. The Contractor shall be reimbursed for expenses actually incurred in the procurement of miscellaneous items in accordance with the terms and conditions set forth below.

(a) No miscellaneous expenses shall be incurred by the Contractor, or reimbursed unless expressly authorized in a written directive from the Commissioner. For miscellaneous expenses in excess of $150, such written authorization must be provided in advance of the expenditure.

(b) In the event the Contractor is directed to purchase any item(s) pursuant to this allowance, such item(s) shall, unless otherwise directed by the Commissioner, be the sole property of the City or the Homeowner upon delivery to the designated location. Upon completion of the required work, as directed by the Commissioner, the Contractor shall

turn such item(s) over to the City.

(c) With respect to miscellaneous expenses, the Contractor shall utilize the method of procurement and form of payment directed by the Commissioner.

(d) Reimbursement for miscellaneous expenses shall be the actual and reasonable cost of the same, with no mark up for the Contractor's overhead and profit. Requests for reimbursement for miscellaneous expenses shall be accompanied by receipted bills or any other data required by the Commissioner.

(e) Reimbursement for long distance travel expenses, as set forth in Article 14, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses." The Contractor shall not be entitled to any mark-up with respect to long distance travel expenses. Requests for reimbursement for long distance travel expenses shall be accompanied by receipted bills or any other data required by the Commissioner.

(f) Miscellaneous items shall be those items determined by the Commissioner to be necessary for the Work described in the Task Order, and shall include without limitation (1) equipment specified by DDC, and (2) Long distance travel, as set forth in Article 14.

45.9 Requisitions for Payment

45.9.1 Requisitions for payment may be submitted in accordance with this Article as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the Contractor and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into the following categories, to the extent each respective category applies to the payment period: identifying the housing units, by lot and block, on which Work was performed and for which payment is requested and identifying the applicable allowance(s) listed in the Task Order, if any. The Contractor shall submit one (1) original and two (2) copies of each requisition for payment. Requisitions for payment shall be accompanied by the documentation set forth below.

(a) Project Progress Report: The Contractor shall submit a current report indicating (1) the percentage of completion of all required services for the Project, and (2) the Work the Contractor was directed to provide during the payment period.

(b) Construction Management Services: For any period for which the Contractor is requesting payment for construction management services, the Consultant shall submit the documentation set forth below.

(1) Assigned Employee's name and title

(2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement

(3) All Inclusive Hourly Rate applicable to the Assigned Employee. The All Inclusive Hourly Rate for an Assigned Employee shall be the rate set forth in Disaster Preparedness Readiness and Mobilization Plan for the title for which the Commissioner determines the employee meets the qualification requirements.

(4) Number of hours per day during which the Assigned Employee actually performed services for the Project.

(5) Detailed time sheets completed by the Assigned Employee for the week(s) in

question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for the Project, (2) actual hours during which the employee performed services for other projects, (3) non-billable hours, as defined above, and (4) any non-regular business hours.

(6) Commissioner authorization for services during non-regular business hours, if applicable

(b) Construction Work: For payment for construction Work, the Contractor shall submit the documentation set forth below:

(1) Current report indicating: (1) the name and type of Work performed by each first tier Subcontractor, and (2) the percentage of completion of all required Work under that subcontract. A first tier Subcontractor shall mean a Subcontractor directly engaged by the Contractor.

(2) Certified copies of payroll reports for all Subcontractors of whatever tier which have performed Work for the Project.

(d) Miscellaneous Expenses or Additional Services: For payment for miscellaneous expenses or additional Work, the Contractor shall submit the documentation set forth below:

(1) Description of the miscellaneous expenses or additional Work the Contractor was directed to provide.

(2) If payment is on a lump sum basis, a report on the progress of the Work, indicating the percentage of completion of all required Work.

(3) If payment is on a unit price basis, a report indicating the number of completed units.

(4) If payment is based on actual cost, receipted bills or any other data required by the Commissioner.

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

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

45.10 Electronic Funds Transfer: In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. 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 at http://www.nyc.gov/dof) in order to provide the Commissioner 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.

45.10.1 The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder 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 interest of the City.

ARTICLE 46
PROMPT PAYMENT

46.1 To the extent applicable, the Prompt Payment provisions of the PPB Rules in effect at the time of the solicitation for this Contract shall be applicable to payments hereunder. The provisions require the payment to contractors of interest on payments made after the required payment date, except as otherwise provided in the PPB Rules. The Contractor must submit a proper invoice to receive payment, except where the Contract provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determination of interest due will be made in accordance with the provisions of the PPB Rules. If the Contractor is paid interest, the proportionate share of that interest shall be forwarded by the Contractor to its Subcontractor(s).

46.2 The Contractor shall pay each Subcontractor (including a materials supplier) not later than seven (7) calendar days after receipt of payment out of amounts paid to the Contractor by the City for work performed by the Subcontractor or supplier under this Contract.

46.3 The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth above.

46.4 If Contractor fails to make any payment to any Subcontractor or Materialman within seven (7) days after receipt of payment by the City pursuant to section 7.2 herein, then the Contractor shall pay interest on amounts due to such Subcontractor or Materialman at a 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 NY General Business Law. Accrual of interest shall commence on the day immediately following the expiration of the seventh day following receipt of payment to the Contractor by the City and shall end on the date on which payment is made.

ARTICLE 47
ACCEPTANCE OF FINAL PAYMENT

47.1 The acceptance by the Contractor, or by anyone claiming by or through him, of final payment,

whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the City from any and all claims of and liability to the Contractor, or anyone claiming by or through him, for anything theretofore done or furnished for or relating to or arising out of this Contract and the Work done hereunder, and for any prior act, neglect or default on the part of the City or any of its officers, 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 a claim, not otherwise waived, which is contained in the verified statement filed with the Contractor's final requisitions for any work performed hereunder.

47.2 The Contractor is warned that the execution by him of a release, in connection with the acceptance of any final payment hereunder, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the Commissioner from the final requisition or by the Comptroller from the final payment as certified by the Commissioner's Representative and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.

47.3 Should the Contractor refuse to accept any final payment hereunder as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.

47.4 The Contractor, however, shall not be barred from commencing an action for breach of contract under this provision, provided that a detailed and verified statement of claim is served upon the Department and Comptroller not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

47.5 The provisions of this Article shall apply to final payment(s) for work performed pursuant to subcontracts hereunder.

ARTICLE 48
RIGHTS OF COMMISSIONER TO POSTPONE AND TERMINATE AGREEMENT

48.1 The Commissioner shall have the right, upon ten (10) calendar days prior written notice to the Contractor, to postpone, delay, suspend or terminate all or any portion of the Work to be performed by the Contractor under the Agreement, or any additions thereto or modifications thereof, at any time and for any reason deemed to be in the City's interest. In such event, the Contractor shall be paid such part of the payment items set forth in the Contract as shall have become due and payable hereunder for the work done by him prior thereto, or for non-cancelable orders for material and/or 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, subject to audit by the Department and post-audit by the Comptroller.

48.2 Such postponement, delay, suspension or termination under this Contract shall not give rise to any cause of action for damages or extra remuneration against the City other than that provided for herein.

ARTICLE 49
TERMINATION OF THIS AGREEMENT FOR CAUSE

49.1 If in the sole determination of the Commissioner:

49.1.1 Contractor fails to perform any of the terms, covenants or provisions of this Agreement on its part to be performed,

49.1.2 Contractor fails to progress with the Work called for under this Agreement in a satisfactory manner,

49.1.3 The conduct of the Contractor is such that the interests of the City are likely to be impaired or prejudiced, or

49.1.4 Contractor shall violate any of the terms, covenants or provisions of this Agreement, then the Commissioner may, upon written notice to the Contractor, terminate this Agreement for cause. Upon issuance of such Notice the Contractor shall be entitled to a thirty (30) day period to cure such cause referenced above to the satisfaction of the Commissioner. The Commissioner may suspend all or part of the Work for this thirty (30) day period, and the Contractor will not be entitled to payment during such period. If such cause is not cured, in the sole opinion of the Commissioner, termination shall take effect upon the expiration of such thirty (30) day period.

49.2 Upon such termination, the Contractor shall be entitled to payment of such amount, to be determined by the Commissioner, and subject to post-audit by the Comptroller, as shall fairly compensate him for the work satisfactorily performed prior to the termination date; provided, however, that the Commissioner shall deduct from such amount and from any amount due and payable to the Contractor prior to the termination date, but withheld or not paid, the total amount of additional expenses incurred by the City in order satisfactorily to complete the Work required to be performed by the Contractor under this Agreement, including the expense of engaging another Contractor for this purpose. If such additional expense shall exceed the amounts otherwise due and payable to the Contractor hereunder, the Contractor shall pay the City the full amount of such excess incurred by the City.

49.3 The Commissioner's determination upon which the termination of this Agreement for cause is based, as set forth in the Contract, shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract.

49.4 If the Contractor protests the determination of the Commissioner, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

ARTICLE 50
ACTIONS UPON TERMINATION

50.1 In the event of termination with or without cause, the Contractor shall, upon receipt of such notice, take the following actions:

50.1.1 Stop Work on the date specified in the notice;
50.1.2 Take such action as may be necessary for the protection and preservation of the City's

materials and property;

50.1.3 Cancel all cancelable orders for material and equipment;

50.1.4 Assign to the City and deliver to the Site or any other location designated by the Commissioner, any non-cancelable orders for material and/or 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 in the Work;

50.1.5 Take no action which will increase the amounts payable by the City under this Agreement.

ARTICLE 51
CLAIMS AND ACTIONS THEREON

51.1 No claim against the City for damages for breach of contract or compensation for Extra Work shall be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims all as herein before provided.

51.2 Nor shall any such action or proceeding be instituted or maintained on any such claims unless such action or proceeding be commenced within one year after the date of the filing in the office of the Comptroller of the final payment voucher pursuant to the Contract; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Agreement or by law, must be commenced within one year after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and further except that an action or proceeding on a claim based upon the Commissioner's exercise of the right to terminate this Agreement for cause must be commenced within six months after the date the Commissioner exercises such right to terminate for cause.

ARTICLE 52
TAX EXEMPTION

52.1 The City is exempt from payment of Federal, State, and local taxes, including sales and compensating use taxes of the State of New York and its cities and counties on all tangible personal property sold to the City pursuant to the provisions of this Contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Contractor, Subcontractor or Materialman or to tangible personal property which, even though it is consumed, is not incorporated into the completed Work (consumable supplies) and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work. The Contractor and its Subcontractors and Materialmen shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property and upon all such consumable supplies and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work.

52.2 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 this Contract. The sum paid under this Contract for such tangible personal property shall be in full payment and consideration for the sale of such tangible personal property.

52.2.1 The Contractor agrees to construct the Project and to perform all Work, labor and services rendered, necessary, proper or incidental thereto for the sum shown in the bid for the performance of such Work, labor, and services, and the sum so paid pursuant to this Contract for such Work, labor, and services, shall be in full consideration for the performance by the Contractor of all its duties and obligations under this Contract in connection with said Work, labor, and services.

52.3 20 NYCRR Section 541.3(d) provides that a Contractor's purchases of tangible personal property that is either incorporated into real property owned by a governmental entity or purchased for and sold to a governmental entity are exempt from sales and use tax. The City shall not pay sales tax for any such tangible personal property that it purchases from the Contractor pursuant to the Contract. With respect to such tangible personal property, the Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by the City, properly executed, acknowledged and delivered assuring to the City title to such tangible personal property, free of liens and/or encumbrances, and the Contractor shall mark or otherwise identify all such tangible personal property as the property of the City.

52.4 Title to all tangible personal property to be sold by the Contractor to the City pursuant to the provisions of the Contract shall immediately vest in and become the sole property of the City upon delivery of such tangible personal property to the Site. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such tangible personal property in accordance with the provisions of this Contract, protect it, maintain it in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional tangible personal property in place of any that may be lost, stolen or rendered unusable, without cost to the City, until such time as the Work covered by the Contract is fully accepted by the City. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. In the event that, after title has passed to the City, any of the tangible personal property is rejected as being defective or otherwise unsatisfactory, title to all such tangible personal property shall be deemed to have been transferred back to the Contractor.

52.5 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) and therefore not subject to the aforesaid sales and compensating use taxes, provided that the subcontracts and purchase agreements provide for the resale of such tangible personal property and that such subcontracts and purchase agreements are in a form similar to this Contract with respect to the separation of the sale of consumable supplies and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work from the Work and labor, services, and any other matters to be provided, and provided further that the subcontracts and purchase agreements provide separate prices for tangible personal property and all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for tangible personal property from the payments for other Work and labor and other things to be provided.

52.6 The Contractor and its Subcontractors and Materialmen shall furnish a Contractor Exempt Purchase Certificate to all persons, firms or corporations from which they purchase tangible personal property for the performance of the Work covered by this Contract.

52.7 In the event any of the provisions of this Article shall be deemed to be in conflict with any other provisions of this Contract or create any ambiguity, then the provisions of this Article shall control.

ARTICLE 53
NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

53.1 No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted to be done in connection with this Agreement.

53.2 The Contractor shall require each Subcontractor or consultant to agree in its subcontract not to make any claim against the City, its officers, agents or employees, by reason of such subcontract, or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to (a) demands filed by Subcontractors pursuant to the Contract, or (b) disputes submitted by Subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in the Contract.

ARTICLE 54
PARTICIPATION IN AN INTERNATIONAL BOYCOTT

54.1 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 Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

54.2 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, 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 option, render forfeit and void this Contract.

54.3 The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

ARTICLE 55
INVESTIGATIONS

55.1 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York ("**State**") or a City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

55.1.1 If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the 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 of New York, or;

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

55.1.3 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 no 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.

55.1.4 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 the Contract without the City incurring any penalty or damages for delay or otherwise.

55.2 The penalties which may attach a final determination by the commissioner or agency head may include but shall not exceed:

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

55.2.2 The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

55.3 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in the Contract. He or she may also consider, if relevant and appropriate, the criteria established in the Contract in addition to any other information which may be relevant and appropriate;

55.3.1 The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

55.3.2 The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

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

55.3.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under the Contract, 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 the Contract 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.

55.4 Definitions Used in this Article

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

55.4.2 The term "**person**" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

55.4.3 The term "**entity**" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

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

55.5 In addition to and not withstanding any other provision of this agreement the Commissioner or Agency Head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event consultant fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the consultant, or affecting the performance of this contract.

ARTICLE 56
ALL PRIOR WRITTEN OR ORAL AGREEMENTS EXCLUDED

56.1 The written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 57
HEADINGS NOT BINDING

57.1 Article, Section and Chapter headings and the Table of Contents are inserted for convenience only and are not to be considered in the construction or interpretation of any provision hereof.

ARTICLE 58
ERRORS

58.1 If this Agreement contains any errors, inconsistencies, ambiguities or discrepancies, including typographical errors, the Contractor shall request a clarification of same by writing to the Commissioner whose decision shall be binding on the parties.

ARTICLE 59
UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

59.1 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 thereof, the same 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.

ARTICLE 60
ALL LEGAL PROVISIONS DEEMED INCLUDED

60.1 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 and is 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.

ARTICLE 61
WAIVER

61.1 Waiver by the City of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same be agreed to in writing by the Commissioner.

ARTICLE 62
ALL DEFENSES RESERVED

62.1 Each and every defense, right and remedy that the City has under this Agreement is not exclusive and it is in addition to and concurrent with all other defenses, right and remedies which the City has under this Agreement and which the City otherwise has, will have, or may have under law, equity, or otherwise.

ARTICLE 63
CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

63.1 This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.

63.2 The parties agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States

located in New York City ("**Federal Courts**") or in the courts of the State of New York ("**New York State Courts**") located in the City and County of New York. To effect this agreement and intent, the Contractor agrees:

63.2.1 If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Agreement, or to such other address as the Contractor may provide to the City in writing; and

63.2.2 With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (1) to move to dismiss on grounds of forum non conveniens; (2) to remove to Federal Court, and (3) to move for a change of venue to a New York State Court outside New York County.

63.2.3 With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

63.2.4 If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

63.3 If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 64
SERVICES OF NOTICES

64.1 The Contractor hereby designates the business address on page 1 of this Agreement as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place or deposit of the same in a postpaid wrapper addressed thereto in any post office box regularly maintained by the United States Post Office Department shall be conclusively deemed to be sufficient service thereof upon the Contractor as of the date of such delivery or deposit.

64.2 Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Commissioner.

64.3 Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor is a corporation, upon any officer or director thereof.

64.4 The City hereby designates the following as its address for the service of any notice hereunder:

Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101
Attention: Commissioner

ARTICLE 65
AUDIT AND EXAMINATION

65.1 This Contract and all payments hereunder shall be subject to examination by the Engineering Audit Officer ("**EAO**") of DDC and post-audit by the Comptroller of the City of New York in accordance with Law.

ARTICLE 66
MODIFICATION

66.1 In addition to the authority of the Commissioner to order Extra Work pursuant to the Contract or omit certain Work pursuant to the Contract, this Agreement may be modified from time to time in a writing signed by both parties in order to carry out and complete more fully and perfectly the Work agreed to be performed under this Contract, provided, however, in no event shall such modification exceed the cost limitation approved by the Bureau of the Budget.

ARTICLE 67
MacBRIDE PRINCIPLES PROVISIONS

67.1 Notice to all Prospective Contractors: Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of work place opportunity.

67.2 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 dollars, or for construction involving an amount greater than fifteen thousand 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 percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

67.3 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 percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

67.4 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 Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity 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.

67.5 In accordance with section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten 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.

67.6 For purposes of this section, the following terms shall have the following meanings: "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:

67.6.1 increase the representation of individuals from under represented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs;
67.6.2 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;
67.6.3 ban provocative religious or political emblems from the work place;
67.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
67.6.5 establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
67.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
67.6.7 develop training programs that will prepare substantial numbers of current employees from underrepresented 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 underrepresented religious groups;
67.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
67.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

67.7 The Contractor agrees that the covenants and representations in this Article above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this Contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and

the cost to the contracting entity of completing performance of this Contract either itself or by engaging another contractor or contractors. In the case of a requirement contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its Contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this Contract or by operation of law.

ARTICLE 68
SEVERABILITY

68.1 In the event that any of the provisions, or portions or applications thereof, of the Contract (and its Exhibits), for any reason, are held to be unenforceable or invalid, or illegal in any respect, by any court of competent jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 69
ENTIRE AGREEMENT

69.1 This Contract constitutes the entire Contract between the Parties hereto and supersedes all other prior written or oral understandings. This Contract may only be amended, supplemented, modified, or cancelled by a duly executed document in writing pursuant to this Contract. This Contract supersedes and takes precedence over any prior agreements with the City of New York.

ARTICLE 70
ULTRA LOW SULFUR DIESEL FUEL

70.1 Ultra Low Sulfur Diesel Fuel: In accordance with the provision of Section 24-163.3 of the New York City Administrative Code, the Contractor specifically agrees as follows:

70.2 Definitions: For the purpose of this Article, the following definitions apply:

70.2.1 "**Contractor**" means any person or entity that enters into a Public Works Contract with a City agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such Public Works Contract.

70.2.2 "**Lower Manhattan**" means the area of New York County consisting of the area to the south of and within Fourteenth Street.

70.2.3 "**Motor Vehicle**" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

70.2.4 "**Nonroad Engine**" means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards

promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

70.2.5 "**Nonroad Vehicle**" means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

70.2.6 "**Public Works Contract**" means a contract with a City agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a City agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a City agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

70.2.7 "**Ultra Low Sulfur Diesel Fuel**" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

70.3 Ultra Low Sulfur Diesel Fuel

70.3.1 All Contractors shall use Ultra Low Sulfur Diesel Fuel in diesel-powered Nonroad Vehicles in the performance of this contract.

70.3.2 Notwithstanding the requirements of paragraph A, Contractors may use diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this Part II, where the Commissioner of the New York City Department of Environmental Protection ("**DEP Commissioner**") has issued a determination that a sufficient quantity of Ultra Low Sulfur Diesel Fuel is not available to meet the needs of City agencies and Contractors. Any determination made pursuant to this subdivision shall expire after six months unless renewed.

70.3.3 Contractors shall not be required to comply with this Article where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Contractor in its fulfillment of the requirements of this contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty (60) days, at which time the requirements of this Article shall be in full force and effect unless the agency renews the finding in writing and such renewal is approved by the DEP Commissioner.

70.3.4 Contractors may check on determinations and approvals issued by the DEP Commissioner pursuant to Section 24-163.3 of the Administrative Code, if any, at www.nyc.gov/dep or by contacting the Department issuing this solicitation.

70.3.5 The requirements of this Article do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

70.3.6 The requirements of this Article do not apply to Public Works Contracts entered into or renewed prior to June 19, 2004.

70.4 BEST AVAILABLE TECHNOLOGY

70.4.1 All Contractors shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this contract. For determinations of best available technology for each type of diesel-powered Nonroad Vehicle, Contractors shall comply with the regulations of the City Department of Environmental Protection, as and when adopted, Chapter 14 of Title 15 of the Rules of the City of New York ("**RCNY**"). The Contractor shall fully document all steps in the best available technology selection process and shall furnish such documentation to the Department or the DEP Commissioner upon request. The Contractor shall retain all documentation generated in the best available technology selection process for as long as the selected best available technology is in use.

70.4.2 No Contractor shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered Nonroad Vehicle in accordance with the provisions of this Article within three years of having first utilized such technology for such vehicle.

70.4.3 This Article shall not apply to any vehicle used to satisfy the requirements of a specific Public Works Contract for fewer than twenty (20) calendar days.

70.4.4 The Contractor shall not be required to comply with this Article with respect to a diesel-powered Nonroad Vehicle under the following circumstances:

70.4.4.i Where the agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.

70.4.4.ii Where the DEP Commissioner has issued a written waiver based upon the Contractor having demonstrated to the DEP Commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.

70.4.4.iii In determining which technology to use for the purposes of the

subsections above, Contractor shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.

70.4.4.iv Contractors shall submit requests for a finding or a waiver pursuant to this subsection in writing to the DEP Commissioner, with a copy to the ACCO of the Department issuing the solicitation. Any finding or waiver made or issued pursuant to the subsections above shall expire after one hundred eighty (180) days, at which time the requirements of the subsection above shall be in full force and effect unless the agency renews the finding, in writing, and the DEP Commissioner approves such finding, in writing, or the DEP Commissioner renews the waiver, in writing.

70.4.5 The requirements of this subsection do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

70.5 Section 24-163 of the Administrative Code. Contractors shall comply with Section 24-163 of the New York City Administrative Code related to the idling of the engines of motor vehicles while parking.

70.6. COMPLIANCE

70.6.1 Contractor's compliance with these provisions may be independently monitored. If it is determined that the Contractor has failed to comply with any provision of this rider, any costs associated with any independent monitoring incurred by the City shall be reimbursed by the Contractor.

70.6.2 Any Contractor who violates any provision of this Article, except as provided in the subsection below, shall be liable for a civil penalty between the amounts of one thousand and ten thousand ($1,010.00) dollars, in addition to twice the amount of money saved by such Contractor for failure to comply with this Article.

70.6.3 No Contractor shall make a false claim with respect to the provisions of this Article to a City agency. Where a Contractor has been found to have done so, such Contractor shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such Contractor in association with having made such false claim.

70.7 REPORTING

70.7.1 For all Contracts covered by this Article, the Contractor shall report to the Department the following information:

70.7.1.i The total number of diesel-powered Nonroad Vehicles used to fulfill the requirements of this Public Works Contract;

70.7.1.ii The number of such Nonroad Vehicles that were powered by Ultra Low Sulfur Diesel Fuel;

70.7.1.iii The number of such Nonroad Vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology;

70.7.1.iv The number of such Nonroad Vehicles that utilized such other authorized technology in accordance with this Article, including a breakdown by vehicle model and the type of technology used for each such vehicle;

70.7.1.v The locations where such Nonroad Vehicles were used; and

70.7.1.vi Where a determination is in effect pursuant to the subsections above, detailed information concerning the Contractor's efforts to obtain Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty (30) parts per million.

70.7.2 The Contractor shall submit the information required by Paragraph A at the completion of work under the Public Works Contract and on a yearly basis no later than August 1st throughout the term of the Public Works Contract. The yearly report shall cover work performed the preceding fiscal year (July 1st - June 30th).

ARTICLE 71
ULTRA LOW SULFUR DIESEL FUEL COORDINATED CONSTRUCTION ACT FOR LOWER MANHATTAN

71.1 In accordance with the Coordinated Construction Act for Lower Manhattan, as amended:

71.2 DEFINITIONS: For purposes of this Article, the following definitions apply:

71.2.1 "**Lower Manhattan**" means the area to the south of and within the following lines: a line beginning at a point where the United States pierhead line in the Hudson river as it exists now or may be extended would intersect with the southerly line of West Houston street in the borough of Manhattan extended, thence easterly along the southerly side of West Houston street to the southerly side of Houston street, thence easterly along the southerly side of Houston street to the southerly side of East Houston street, thence northeasterly along the southerly side of East Houston street to the point where it would intersect with the United States pierhead line in the East river as it exists now or may be extended, including tax lots within or immediately adjacent thereto.

71.2.2 "**Lower Manhattan Redevelopment Project**" means any project in Lower Manhattan that is funded in whole or in part with federal or State funding, or any project intended to improve transportation between Lower Manhattan and the two air terminals in the City of New York known as LaGuardia Airport and John F. Kennedy International Airport, or between Lower Manhattan and the air terminal in Newark known as Newark Liberty International Airport, and that is funded in whole or in part with federal funding.

71.2.3 "**Nonroad Engine**" means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

71.2.4 "**Nonroad Vehicle**" means a vehicle that is powered by a Nonroad Engine, fifty (50) horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this terms shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

71.2.5 "**Ultra Low Sulfur Diesel Fuel**" means diesel fuel that has a sulfur content of no more than fifteen (15) parts per million.

71.3. REQUIREMENTS: Contractors and Subcontractors are required to use only Ultra Low Sulfur Diesel Fuel to power the diesel-powered Nonroad Vehicles with engine horsepower (HP) rating of fifty (50) HP and above used on a Lower Manhattan Redevelopment Project and, where practicable, to reduce the emission of pollutants by retrofitting such Nonroad Vehicles with oxidation catalysts, particulate filters, or technology that achieves lowest particulate matter emissions.

ARTICLE 72
VENDEX QUESTIONNAIRES

72.1 Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, the Contractor may be obligated to complete and submit VENDEX Questionnaires. If required, Vendex Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed Subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal or the Contractor, disapproval of a Subcontractor, subsequent withdrawal of approval for the use of an approved Subcontractor, or the cancellation of the contract after its award.

72.2 Vendex Questionnaires must be submitted directly to the:

Mayor's Office of Contract Services
ATTN: Vendex
253 Broadway, 9th Floor
New York, New York 10007

In addition, the Contractor must submit a Confirmation of Vendex Compliance to the Department.

72.3 Obtaining Forms: Vendex Questionnaires, as well as detailed instructions, may be obtained at www.nyc.gov/vendex. The Contractor may also obtain Vendex forms and instructions by contacting the ACCO or the contact person for this contract.

ARTICLE 73
CONFIDENTIALITY

73.1 The Contractor agrees to hold confidential, both during and after the completion or termination of this Contract, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Contract. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The

Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Article 73.2, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Article to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("**FOIL**"), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

73.2 The Contractor shall provide notice to the Department within three (3) calendar days of the discovery by the Contractor of any breach of security, as defined in Administrative 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 Administrative Code § 10-501 ("**Personal Identifying Information**"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, Subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Contract are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

73.3 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, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Contract.

73.4 The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Contract, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Contract at least twenty-four (24) hours prior to any statement to the press or at least five (5) business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information.

73.5 At the end of six years from the date of final payment or the date of earlier termination, Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its Subcontractors. If the Contractor or its Subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the

confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information.

73.6 A breach of this Article shall constitute a material breach of this Contract for which the Department may terminate this Contract. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 74
PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES (WMBE) IN CITY PROCUREMENT

74.1 DDC 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 contract. The Contractor will make a good faith effort to procure the services of M/WBEs to the fullest extent possible under the circumstances.

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and the Contractor, have executed this agreement in quadruplicate, two of which are to remain with the Commissioner, another to be filed with the Comptroller of the City, and the fourth to be delivered to the Contractor.

THE CITY OF NEW YORK

By:_____
Commissioner

CONTRACTOR:

_____

By: _____

Print Name: _____

Title:_____

EIN: _____

APPROVED AS TO FORM AND CERTIFIED AS TO LEGAL AUTHORITY

_____
Acting Corporation Counsel

DATE _____

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

On this _____ day of _____, _____ before me personally came _____,

to me known and known to me to be the Commissioner of the Department of Design and Construction of the City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Commissioner for the purposes therein mentioned.

_____

Notary Public or Commissioner of Deeds

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except

_____.

Full name of Proposer or Bidder *[below]*

_____

Address_____

City_____ State_____ Zip Code_____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

☐ B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

☐ C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By_____

Signature

_____

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

EXHIBIT A
(APPLIES TO THE EIGHT WORK CATEGORIES ONLY)

CONTRACT INFORMATION

1. Types of Services:

   a. Specific Scope of Work Category:

      1. ___ Critical Public Facility Restoration
      2. ___ Provisions of Temporary Housing
      3. ___ Construction Support for Urban Search and Rescue (US&R)
      4. ___ Debris Removal
      5. ___ Debris Removal – Marine Transportation
      6. ___ Provision of Medical Space and/or Shelters
      7. ___ Communications/IT Services Restoration
      8. ___ Provision of Environmental Testing Services

   b. Such Task Orders projects will be located in the Boroughs of Manhattan, Queens, Brooklyn, Staten Island, and the Bronx.

2. Total Not to Exceed Amount: $36,000,000.00
   (per contract within each category of work)

   a. Allowance for Emergency Construction and Construction-Related Services: $35,900,000.00
      (per contract within each category of work)

   b. Allowance for Disaster Readiness and Mobilization Plan: $100,000.00
      (per contract within each category of work)

3. Contract Time Frame:

Contract Term:	730 consecutive calendar days	
Renewal of Contract Term:	Duration:	365 consecutive calendar days
	Increase:	up to $18,000,000

EXHIBIT A
(APPLIES TO THE NINTH WORK CATEGORY ONLY)

CONTRACT INFORMATION

1. Types of Services:

   a. Specific Scope of Work Category:

      9. ___ Supervision, Management and Administrative Services

   b. Such Task Orders projects will be located in the Boroughs of Manhattan, Queens, Brooklyn, Staten Island, and the Bronx.

2. Total Not to Exceed Amount: $36,000,000.00
   (per contract within each category of work)

   a. Allowance for Supervision, Management and Administrative Services: $35,800,000.00
      (per contract within each category of work)

   b. Allowance for the Preparation of the Disaster Readiness and Mobilization Plan: $100,000.00
      (per contract within each category of work)

   c. Allowance for the Review of the Disaster Readiness and Mobilization Plan(s): $100,000.00
      (per contract within each category of work)

3. Contract Time Frame:

Contract Term:	730 consecutive calendar days
Renewal of Contract Term:	Duration: 365 consecutive calendar days Increase: up to $18,000,000

CERTIFICATES OF INSURANCE

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 B: KEY PERSONNEL

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

Title	**Name**
Contract Executive	_____
Project Executive	_____
	_____
	_____
Project Manager	_____
	_____
	_____
Safety Manager	_____
	_____
	_____

EXHIBIT C

ALL INCLUSIVE HOURLY RATES

UNIT PRICE SCHEDULE AND SPECIFICATIONS, IF APPLICABLE

EXHIBIT D

PARTIAL PAYMENT FOR STORED MATERIAL

The Commissioner may authorize partial payment for certain materials, fixtures and equipment, prior to their incorporation in the Work, but only in strict accordance with and subject to all the terms and conditions set forth in Paragraphs 1 through 16 below. The Contractor may request such partial payment on behalf of its Subcontractors.

Depending on the nature of the Work, if there is a requirement for work to be performed twenty-four (24) hours a Day for seven (7) Days a week, then the Parties will negotiate rates for having equipment and machinery available and on standby, as well as machinery and equipment that needs to be taken down for routine maintenance and/or replacing broken parts. The costs will be based on some combination of the Green and Blue Books and any other price indicators.[1]

1. The Contractor shall submit to the Commissioner a written request, in quadruplicate, for payment for materials purchased or to be purchased for which it desires to be paid prior to their actual incorporation in the Work. The request shall be accompanied by a schedule of the types and quantities of materials, and shall state whether such materials are to be stored on or off the site.
2. Where the materials are to be stored off the site, they shall be stored at a place other than the Contractor's or Subcontractor's premises (except with the written consent of the Commissioner) and under the conditions prescribed or approved by the Commissioner. The Contractor shall set apart and separately store at the place or places of storage all materials and shall clearly mark same "PROPERTY OF THE CITY OF NEW YORK", and further, shall not at any time move any of said materials to another off-site place of storage without the prior written consent of the Commissioner. Materials may be removed from their place of storage off the site for incorporation in the work upon approval of the Commissioner's Representative.
3. Where the materials are to be stored at the site, they shall be stored at such locations as shall be designated by the Commissioner's Representative and only in such quantities as, in the opinion of the Commissioner's Representative, will not interfere with the proper performance of the Work by the Contractor or by other contractors then engaged in performing work on the site. Such materials shall not be removed from their place of storage on the site except for incorporation in the Work, without the approval of the Commissioner's Representative.

4. INSURANCE

   a. STORAGE OFF-SITE: Where the materials are stored off the site and until such time as they are incorporated in the Work, the Contractor shall fully insure such materials against any and all risks of destruction, damage or loss including but not limited to fire, theft, and any other casualty or happening. The policy of insurance shall be payable to the City of New York. It shall be in such terms and amounts as shall be approved by the Commissioner and shall be placed with a company duly licensed to do business in the State of New York. The Contractor shall deliver the original and one copy of such policy or policies marked "Fully Paid" to the Commissioner.

[1] This was added based on the WTC experience.

b. STORAGE ON THE SITE: Where the materials are stored at the site, the Contractor shall furnish satisfactory evidence to the Commissioner that they are properly insured against loss, by endorsements or otherwise, under the policy or policies of insurance obtained by the Contractor to cover losses to materials owned or installed by him. The policy of insurance shall cover fire and extended coverage against windstorm, hail, explosion and riot attending a strike, civil commotion, aircraft, vehicles and smoke.

c. Subject to approval by the Commissioner, the above described insurance may be provided by the Contractor's Subcontractor.

5. All costs, charges and expenses arising out of the storage of such materials, shall be paid by the Contractor and the City hereby reserves the right to retain out of any partial or final payment made under the Contract an amount sufficient to cover such costs, charges and expenses with the understanding that the City shall have and may exercise any and all other remedies at law for the recovery of such cost, charges and expenses. There shall be no increase in the Contract price for such costs, charges and expenses and the Contractor shall not make any claim or demand for compensation therefor.

6. The Contractor shall pay any and all costs of handling and delivery of materials, to the place of storage and from the place of storage to the site of the work; and the City shall have the right to retain from any partial or final payment an amount sufficient to cover the cost of such handling and delivery.

7. In the event that the whole or any part of these materials are lost, damaged or destroyed in advance of their satisfactory incorporation in the Work, the Contractor at his own cost, shall replace such lost, damaged or destroyed materials of the same character and quality. The City will reimburse the Contractor for the cost of the replaced materials to the extent, and only to the extent, of the moneys actually received by the City under the policies of insurance hereinbefore referred to. Until such time as the materials are replaced, the City will deduct from the value of the stored materials or from any other money due under the Contract, the amount paid to the Contractor for such lost, damaged or destroyed materials.

8. Should any of the materials paid for the City hereunder be subsequently rejected or incorporated in the Work in a manner or by a method not in accordance with the Contract Documents, the Contractor shall remove and replace such defective or improperly incorporated material with materials complying with the Contract Documents. Until such materials are replaced, the City will deduct from the value of the stored materials or from any other money due the Contractor, the amount paid by the City for such rejected or improperly incorporated materials.

9. Payments for the cost of materials made hereunder shall not be deemed to be an acceptance of such materials as being in accordance with the Contract Documents, and the Contractor always retains and must comply with his duty to deliver to the site and properly incorporate in the Work only materials which comply with the Contract Documents.

10. The Contractor shall retain any and all risks in connection with the damage, destruction or loss of the materials paid for hereunder to the time of delivery of the same to the site of the Work and their proper incorporation in the Work in accordance with the Contract Documents.

11. The Contractor shall comply with all laws and the regulations of any governmental body or

agency pertaining to the priority purchase, allocation and use of the materials.

12. When requesting payment for such materials, the Contractor shall submit with the partial estimate duly authenticated documents of title, such as bills of sale, invoices or warehouse receipts, all in quadruplicate. The executed bills of sale shall transfer title to the materials from the Contractor to the City (in the event that the invoices state that the material has been purchased by a Subcontractor, bills of sale in quadruplicate will also be required transferring title to the materials from Subcontractor to the Contractor).

13. Where the Contractor, with the approval of the Commissioner has purchased unusually large quantities of materials in order to assure their availability for the Work, the Commissioner at his option, may waive the requirements of paragraph "12" provided the Contractor furnishes evidence in the form of an affidavit of the Contractor in quadruplicate, and such other proof as the Commissioner may require, that he is the sole owner of such materials and has purchased them free and clear of all liens and other encumbrances. In such event, the Contractor shall pay for such materials and submit proof thereof, in the same manner as provided in paragraph "12" hereof, within seven (7) days after receipt of payment therefor from the Comptroller. Failure on the part of the Contractor to submit satisfactory evidence that he has paid in full for all such materials shall preclude him from payments under the Contract.

14. The Contractor shall include in each succeeding partial estimate requisition a summary of materials stored which shall set forth the quantity and value of materials in storage, on or off the site, at the end of each preceding estimate period; the amount removed for incorporation in the Work; the quantity and value of materials delivered during the current period and the total value of materials on hand for which payment thereof will be included in the current payment estimate.

15. Upon proof to the satisfaction of the Commissioner of the actual cost of such materials and upon submission of proper proof of title as required under paragraph "12" or "13" hereof, payment will be made therefore to the extent of 85%, provided however, that the cost so verified, established and approved shall not exceed the estimated cost of such materials included in the approved detailed breakdown estimate submitted in accordance with the Contract; if it does, the City will pay only 85% approved estimated cost.

16. Upon the incorporation in the Work of any such materials, which have been paid for in advance of such incorporation in accordance with the foregoing provisions, payment will be made for such materials incorporated in the Work pursuant to the Contract, less any sums paid pursuant to paragraph "15" herein.

[NO MORE TEXT ON THIS PAGE.]

EXHIBIT E
SAFETY REQUIREMENTS

THE DDC SAFETY REQUIREMENTS INCLUDE THE FOLLOWING SECTIONS:

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

I. POLICY ON SITE SAFETY

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

- U. S. Department of Labor 29 Code of Federal Regulations (CFR) Part 1926 and applicable Sub-parts of Part 1910 – U.S. Occupational Safety and Health Administration (OSHA) including, but not limited to "Respiratory Protection" (29 CFR 1910.134), "Permit-Required Confined Spaces" (29 CFR 1910.146), and "Hazard Communication" (29 CFR 1910.1200);
- New York State Department of Labor Industrial Code Rule 23 – Protection in Construction, Demolition and Excavation;
- New York City Construction Codes, Title 28
- NYC Department of Transportation Title 34 Chapter 2 – Highway Rules
- New York State Department of Labor Industrial Code Rule 753
- NYC Local Law No. 113 (2005) Noise Control Code

In addition, all regulations promulgated by the NYC Department of Transportation, including requirements for Maintenance and Protection of Traffic (MPT), are applicable when contained in contract specifications. While MPT is a significant component of work in our Infrastructure Division, it does not supersede or exempt Contractors from complying with other applicable health and safety standards (for example, excavating and trenching standards, operation of heavy equipment and compliance with City environmental and noise regulations).

II. PURPOSE

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

III. DEFINITIONS

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

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

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

Construction Safety Unit: A part of QACS within the Division of Technical Support that assesses contractor safety on DDC jobsites and advises responsible parties of needed corrective actions.

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

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

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

Job Hazard Assessment (JHA): A process of identifying site-specific hazards that may be present during construction and establishing the means and methods to reduce or eliminate those hazards.

Jobsite Safety Coordinator: A person designated by the Contractor to be onsite during all activities. This individual shall have received, at a minimum, the OSHA 10-hour construction safety program. Other

examples of acceptable training are the 30-hour OSHA Safety and Health Standards for the Construction Industry training program (OSHA 510) or a degree/certificate in a safety and health from a college-level curriculum. This person does not necessarily have to be dedicated full-time to site safety, but must have sufficient experience and authority to undertake corrective action and must qualify to be a competent person. For certain projects, as defined in NYC Construction Codes – Title 28, this person may be required to have a Site Safety Manager's License issued by the NYC DOB.

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

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

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

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

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

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

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

IV. RESPONSIBILITIES

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

A. Resident Engineer / Construction Project Manager / Construction Manager

- Monitors the issuance of safety- related permits, approvals and drawings and maintains copies on site.

- Monitors construction-related work activities to confirm that they are conducted in accordance with DDC policies and all applicable regulations that pertain to construction safety.
- Maintains documentation and periodically attends weekly safety meeting.
- Notifies the Construction Safety Unit and the ACCO's Insurance and Risk Management Unit of project- related accidents and emergencies, as per DDC's Construction Safety Emergency Protocol.
- Gathers facts related to all accidents and prepares DDC Accident Reports.
- Notifies the Construction Safety Unit of outside regulatory agency inspections and forwards a copy of the inspection report within three days of its receipt.
- Monitors the conditions at the site for conformance with the Site Safety Plan and DDC construction documents.
- Notifies the contractor and DDC in the event that any condition or activity exists that is not in compliance with the Site Safety Plan, applicable federal, state or local codes or any condition that presents a potential risk of injury to the public or workers or possible damage to property.
- Notifies DDC of any emergency condition and directs the contractor to provide such labor, materials, equipment and supervision to abate such conditions.
- Reports gross safety violations to the Construction Safety Unit immediately.

B. Contractors

- Complete a Safety Questionnaire and submit with its bid or as part of a pre-qualification package.
- Provide a Written Job Hazard Assessment (JHA) that identifies expected safety issues of the work to be performed. JHA shall be included with the Site Safety Plan submitted by the contractor.
- Submit a Site Safety Plan and Safety Program within 10 business days of notification from DDC that it has been identified as the low bidder. The Site Safety Plan and Safety Program are subject to review and acceptance by the Construction Safety Unit prior to an award of contract. The Site Safety Plan shall be revised and updated as necessary.
- Ensure that all employees are aware of the hazards associated with the project through formal and informal training and/or other communications. Conduct and document weekly safety meetings for the duration of the project. Documentation to be provided to the RE/CPM/CM on a monthly basis.
- Name a Construction Superintendent, if required.
- Name a Job Site Safety Coordinator. The Contractor will be required to identify the Job Site Safety Coordinator in the Site Safety Plan.
- Comply with all mandated federal, state and local safety and health rules and regulations.
- Comply with all provisions of the Site Safety Plan.
- As part of the Site Safety Plan, prepare a site specific MPT (if not otherwise provided in the contract documents) and comply with all of its provisions.
- Conduct and document site-specific safety orientation for Contractor personnel to review the hazards associated with the project as identified in the Site Safety Plan and the specific safety procedures and controls that will be used to protect workers, the general public and property. The Job Site Safety Coordinator will conduct this training prior to mobilization and provide documentation to the RE/CPM/CM.
- Provide, replace and adequately maintain at or around the project site, suitable and sufficient signage, lights, barricades and enclosures (fences, sidewalk sheds, netting, bracing, etc.).
- Report unsafe conditions or hazards to the DDC RE/CPM/CM as soon as practical, but no more than 24 hours after discovery, and take action to remove or abate such conditions.

- Report any accident involving injuries to workers or the general public, as well as property damage, to the DDC RE/CPM/CM within two (2) hours.
- Notify the DDC RE/CPM/CM within two (2) hours of the start of an inspection by any regulatory agency personnel, including OSHA.
- Maintain all records pertaining to all required compliance documents and accident and injury reports.
- Respond to DDC recommendations on safety, which shall in no way relieve the Contractor of its responsibilities for safety on the project. The Contractor has sole responsibility for safety.

V. SAFETY QUESTIONNAIRE

DDC requires that all Contractors provide information regarding their current and past safety and environmental performance and programs. This will be accomplished by the use of the DDC Safety Questionnaire. As a part of the bid submittal package, the contractor must submit a completed DDC Safety Questionnaire listing their workers' compensation experience modification rating and OSHA Incidence Rates for the three (3) years prior to the date of the bid opening. DDC may request a Contractor to update its Questionnaire at any time or to provide more detailed information. The Contractor must provide the requested update within 30 days.

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

Criteria 1: OSHA Injury and Illness Rates (I&IR) are no greater than the average for the industry (based on the most current Bureau of Labor Statistics data for the Contractors SIC code); and
Criteria 2: Insurance workers compensation Experience Modification Rate (EMR) equal to or less than 1.0; and
Criteria 3: Any willful violations issued by OSHA or NYC DOB within the last three years; and
Criteria 4: A fatality (worker or member of public) experienced on or near Contractor's worksite within the last three (3) years; and
Criteria 5: An unacceptable rating by QACS based on past performance on DDC projects; and
Criteria 6: Contractor has in place an acceptable corporate safety program and its employees shall have completed all documented relative safety training; and
Criteria 7: Contractor shall provide OSHA Injury Records (currently OSHA 300 Log) for the last three (3) years.

If the Contractor fails to meet the basic criteria listed above, the Construction Safety Unit may request, through the ACCO, more detail concerning the Contractor's safety experience. DDC may request the Contractor to provide copies of, among other things, OSHA records, OSHA and DOB citations, EPA citations and written Safety Programs.

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

The Contractor shall submit the following within 10 days of notification from DDC that it has been identified as the low bidder: (1) Safety Program, and (2) Site Safety Plan. The Safety Program shall set forth the Contractor's overall safety policy, regulatory compliance plan and minimum safety standard, and the Site Safety Plan shall identify hazards associated with the project, and include specific safety

precautions and training appropriate and necessary to complete the work. The Safety Program and the Site Safety Plan are subject to review and acceptance by the Construction Safety Unit prior to an award of contract.

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

1. Responsibility and Organization: Identify the person or persons with authority and responsibility for implementing the Site Safety Plan. Provide an organization chart and define levels of authority and responsibility. Identify the Competent Person, the Construction Superintendent (if required), the Job Safety Coordinator and the Qualified Person required for this project.

2. Communication: Establish a system for communicating with employees and Subcontractors on matters relating to worker and public safety and health and environmental protection, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. An emergency response notification protocol is to be established that also includes after hours contact numbers. The plan must also include provisions for weekly safety meetings held by the Job Site Safety Coordinator.

3. Job Hazard Assessment: A written document submitted by the contractor, used to identify expected job hazards and public safety risks and state the specific means and methods to reduce, control or eliminate those hazards. This part of the Site Safety Plan must also include how on-going evaluations of those risks and hazards will be carried out, including plans for periodic inspections to identify unsafe conditions, work practices and public safety hazards.

4. Accident/Exposure Investigation: Establish a procedure to investigate and report occupational and public injury or illness, property damage, vehicle accidents or other mishaps.

5. Hazard Correction: Establish means, methods and/or procedures for correcting unsafe or unhealthy conditions that might be exposing both the public and workers to hazards. Corrective actions must be taken immediately when observed or discovered. Should an imminent hazard exist which cannot be immediately abated without endangering employees, the public and/or property, remove or restrict all exposed persons from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards. When corrective actions cannot be taken immediately, temporary measures should be taken until such time permanent measures are taken to eliminate the potential risks or hazards

6. Training: Describe site-specific hazard training programs. In addition to the required safety orientation, additional site specific training, in the form of required weekly safety meetings, will be required. Contractors must also initiate training when: a) new employees are hired; b) employees are given new job assignments for which training has not been previously received; c) new substances, processes, procedures or equipment are introduced that might represent a new public or worker hazard; d) the employee is made aware of a new or previously unrecognized hazard; e) new supervisors are assigned to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed; and f) after a jobsite incident or accident has occurred.

7. Recordkeeping: Establish procedures to maintain records of scheduled and periodic inspections, weekly safety meetings, and training records. Updated records shall be maintained at the jobsite, accessible to the Construction Safety Auditors and/or Quality Assurance Auditors/RE/CPM, and retained in accordance with DDC policy.

The most critical component of the Site Safety Plan is the Job Hazard Assessment section. This section must address specific hazards that are anticipated throughout the project. Each Site Safety Plan must address, at a minimum:

- Public and pedestrian safety
- Fall protection
- Electrical hazards
- Scaffolding
- Fire protection
- Emergency notification & response
- Housekeeping / debris removal
- Dust control
- Maintenance and protection of traffic
- Trenching and excavating
- Heavy equipment operations
- Material / equipment storage
- Environmental contamination
- Sheeting and shoring
- Alcohol and Drug Abuse Policy

The following additional hazards must be addressed, if applicable, based on the contract safety specifications and/or the results of the JHA (the list is not all-inclusive):

- Basic Personal Protective Equipment
- Compressed Air
- Compressed Gas Cylinders
- Cranes, Derricks and Hoists
- Demolition
- Electrical safety
- Excavations and Trenching
- Fall Protection – Floor openings/Stairways
- Fall Protection – Guardrails Toe boards etc.
- Fall Protection – Leading Edge
- Fall Protection – Personal Fall Protection Devices
- Fire Protection and Fire Prevention
- Hazard Communication (RIGHT TO KNOW)
- Hazardous Energy & Lock Out / Tag Out
- Housekeeping/ Sanitation
- Maintenance and Protection of Traffic (MPT)
- Man Lifts /Aerial Lifts
- Marine Operations
- Motor Vehicle Safety
- Overhead Power lines
- Permit Required Confined Space
- Portable Ladders
- Powered Actuated Tools

- Powered Material Handling Equipment
- Scaffolds – Mobile
- Scaffolds – Stationary
- Scaffolds – Suspended
- Slings
- Steel Erection
- Welding and Cutting (Hot Work)
- Airborne Contaminants – Particulates – General
- Asbestos
- Blood borne Pathogens
- Hearing Protection
- Lead in Construction
- Mercury in Construction
- PCB's
- Respiratory Protection
- Silica
- Thermal Stress
- West Nile Virus
- Rodents and Vermin
- Noise Mitigation Plan

Certain DDC programs, such as Job Order Contracting System (JOCS), may not necessarily require Site Safety Plans. The JOCS contractor will be required to submit a Safety Program. In addition, certain DDC Operating Units may establish program or client-specific safety requirements. The contractor's Site Safety Plan must address such program or client specific safety requirements.

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

As part of the construction kick-off meeting, a Site Safety Plan review will be part of the agenda. A QACS representative will participate in this meeting with the contractor prior to the start of the project for the purpose of:

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

VIII. EVALUATION DURING WORK IN PROGRESS

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

A. Use of a safety checklist by a representative of the Construction Safety Unit or other designated DDC representative or Consultant during regular, unannounced inspections of the job site. Field

Exit Conferences will be held with the RE/CPM, Contractor Superintendents or Safety Representatives.

B. The RE/CPM will continually monitor the safety and environmental performance of the contractor's employees and work methods. Deficiencies shall be brought to the attention of the contractor's representative on site for immediate correction. The DDC representative will maintain a written record of these deficiencies and forward them to the Construction Safety Unit on a weekly basis. Any critical deficiencies shall be immediately reported to QACS phone# (718) 391-1624 or (718) 391-1911.

C. If the Contractor's safety performance during the project is not up to DDC standards (safety performance measure, accident/incident rate, etc.) the Director- QACS, or designee will meet with the Contractor's safety representative, the DDC project manager, the RE/CPM, or the DDC Environmental Specialist (if environmental issues are involved). The purpose of this meeting is to 1) determine the level of non-compliance; 2) explain and clarify the safety/environmental provisions; 3) agree on a future course of action to correct the deficiencies.

D. If the deficiencies continue to occur with inadequate attention by the contractor, this shall, among other remedies available, be grounds for default.

E. The contractor shall inform the Construction Safety Unit and ACCO Insurance and Risk Management Unit of all medical injuries or illnesses that require doctors' treatment resulting from an on-the-job incident within 24 hours of the occurrence. The Construction Safety Unit shall also be immediately informed of all fatalities, catastrophic accidents with more than one employee hospitalized, any injuries to members of the general public and major equipment damage (e.g., property damage, equipment rollovers, loads dropped from crane). QACS shall maintain a record of all contractor injuries and illnesses during the project and provide regular reports to the Agency.

F. The Construction Safety Unit shall be immediately notified at the start of any NYS-DOL/ NYC-COSH/ OSHA/ EPA inspections. The Director of Quality Assurance & Construction Safety shall maintain a log of all contractor OSHA/EPA inspections and citations during the project.

IX. SAFETY PERFORMANCE EVALUATION

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

[NO MORE TEXT ON THIS PAGE.]

EXHIBIT F

FORM OF BID, PERFORMANCE AND PAYMENT BONDS

BID BOND 1
FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS. That we, _____
_____
_____

hereinafter referred to as the "Principal", and _____
_____
_____

hereinafter referred to as the "Surety" 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 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 to the City all 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 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.

BID BOND 2

In the event that the Proposal of the Principal shall be accepted and the Contract be awarded to him the Surety hereunder agrees subject only to the payment by the Principal of the premium therefore, 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 and 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 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 Contract.

The surety, for the 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 hereto affixed and these presents to be signed by their proper officers the _____ day of _____, _____.

(Seal) _____(L.S.)
Principal

By: _____

(Seal) _____
Surety

By: _____

BID BOND 3

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of _____ County of _____ ss:
On this _____ day of _____, _____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he resides at_____
that he is the _____ of _____
the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

_____
Notary Public

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of _____ County of _____ ss:
On this _____ day of _____, _____, before me personally appeared _____ to me known and known to me to be one of the members of the firm of _____described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

_____
Notary Public

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of _____ County of _____ ss:
On this _____ day of _____, _____, before me personally appeared _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.

_____
Notary Public

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATION OF SURETIES

PERFORMANCE BOND 1

PERFORMANCE BOND

KNOW ALL MEN BY THESES PRESENTS; That we;_____

hereinafter referred to as the "Principal", and_____
_____
_____
_____

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to
_____

hereinafter referred to as the "CM", or to its successors, or to its 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 CM for
_____
_____
_____
_____

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 CM from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay the CM for all outlay and expense which the CM may incur in making good any such default, and shall protect the said CM against, and pay any and all amounts, damages, costs and judgments which may or shall be recovered against said CM or any of its officers or agents of which the said CM may be called upon to pay any person or corporation by reason of any damages arising or growing out of the doing of said Work, or the repair or maintenance thereof, or the manner of doing the same, or the neglect of the said PRINCIPAL, or his (their, its) agents or servants, or the improper performance of the said Work by the said PRINCIPAL, or his (their, its) agents or servants, or the infringement of any patent or patent rights by reason of the use of any materials furnished or work done as aforesaid or otherwise, 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, if requested to do so by the CM, to fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof, if the CM determines that the Principal, for any cause, has failed or neglected to fully perform and complete such Work. The Surety (Sureties) further agrees 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

CM and to complete all Work within such time as the CM may fix. The Surety and the CM 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 Work to be performed thereunder, or by any payment 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. 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 assignment by the CM of its rights, title and interest in and to such bond, and said Surety (Sureties) hereby waives notice of any such assignment by the CM.

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 _____, _____.

(Seal) _____(L.S.)
Principal

By:_____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

PERFORMANCE BOND 3

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.

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of _____ County of _____ ss:

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

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, _____ before me personally appeared
_____
to me known, and known to me to be one of the members of the firm of
_____
described in and who executed the foregoing instrument; and he acknowledged to me that he executed the same as and for the act and deed of said firm.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____ day of _____, _____ before me personally appeared
_____
to me known, and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.

_____
Notary Public or Commissioner of Deeds

Each executed bond should be accompanied by: (a) appropriate acknowledgments of the respective parties; (b) appropriate duly certified copy of Power of Attorney or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety; (c) a duly certified extract from By-Laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued, and (d) certified copy of latest published financial statement of assets and liabilities of Surety.

* * * * * * * *

Affix Acknowledgments and Justification of Sureties.

PAYMENT BOND 1

PAYMENT BOND

KNOW ALL MEN BY THESES PRESENTS; That we;_____
_____
_____
_____

hereinafter referred to as the "Principal", and_____
_____
_____
_____

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to
_____,

hereinafter referred to as the "CM", or to its successors, or to its 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 CM for
_____
_____
_____
_____

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

(a) 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 any such Subcontractor, 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

(b) Materials and supplies (whether incorporated in the permanent structure or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any Subcontractor 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 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 materialmen or laborer having a just claim, as well as the CM.

(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 persons as party plaintiff.

(c) The Principal and Surety (Sureties) agree that neither of them will hold the CM liable for any judgment for costs of otherwise, obtained by either or both of them against 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 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 CM 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 CM 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 bonds 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 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 or in relation to said Principal. 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 assignment by the CM of its rights, title and interest in and to such bond, and said Surety (Sureties) hereby waives notice of any such assignment by the CM.

PAYMENT BOND 3

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 _____, _____.

(Seal) _____(L.S.)
Principal

By:_____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

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.

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of _____ County of _____ ss:

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

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, _____ before me personally appeared _____
to me known, and known to me to be one of the members of the firm of _____
described in and who executed the foregoing instrument; and he acknowledged to me that he executed the same as and for the act and deed of said firm.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____ day of _____, _____ before me personally appeared _____
to me known, and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.

_____
Notary Public or Commissioner of Deeds

Each executed bond should be accompanied by: (a) appropriate acknowledgments of the respective parties; (b) appropriate duly certified copy of Power of Attorney or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety; (c) a duly certified extract from By-Laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued, and (d) certified copy of latest published financial statement of assets and liabilities of Surety.

* * * * * * * *

Affix Acknowledgments and Justification of Sureties.

THIS AGREEMENT made and entered into this_____day of _____ , _____, by and between
_____ (hereinafter the "CM"), located at _____, and the City of New York, Department of Design and Construction (hereinafter the "City"), located at 30-30 Thomson Avenue, Long Island City, New York.

W I T N E S S E T H:

WHEREAS the City has entered into a certain contract with the CM, bearing Comptroller's Registration Number _____ (hereinafter the "Contract"); and

WHEREAS pursuant to the Contract, the CM is obligated to subcontract certain work and to obtain payment and performance bonds from the subcontractors; and

WHEREAS pursuant to the Contract, the CM has agreed to assign all its rights, title and interest under the subject bonds, in the manner set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto do hereby agree as follows:

The CM hereby makes an irrevocable assignment to the City of all its rights, title and interest in and to the below described performance and payment bonds, including any subrogation or other right of the CM to receive any payments that may become due and owing by the Surety thereunder:

Performance and Payment Bonds (Bond # _____) issued to _____,
by _____, designating _____ as Obligee, with respect to a contract for_____
_____

provided, however, this assignment shall become effective only upon the happening of one or more of the events set forth below:

(1) The Commissioner of the Department of Design and Construction, or his authorized designee, in his sole and absolute discretion, determines in writing that:

(a) The CM has been terminated for cause with respect to the Contract; or
(b) The CM has been terminated without cause with respect to the Contract; or
(c) The CM has abandoned the Contract; or
(d) The CM has failed to make demand upon the Surety to perform its obligations under the above described bond(s), when circumstances have warranted that such action should be taken and the City has so notified the CM in writing.

(2) A voluntary or involuntary petition in bankruptcy has been filed by or against the CM, or, in the event the CM is a joint venture, a voluntary or involuntary petition in bankruptcy has been filed by or against either or both of the joint venture partners acting as the CM.

IN WITNESS WHEREOF, the parties hereto do set their hands and agree as follows.

CM: _____ City of New York, Department of Design and Construction:

By: _____ By: _____

Title: _____ _____
Deputy Commissioner

ACKNOWLEDGMENT BY CORPORATION

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

Exhibit G

NOT USED

Exhibit H

Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts (November 2015 Version)

(Separate attachment)

UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

(11/10/2015)

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

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

(1) "Awarding Entity" means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.

(2) "City" means the City of New York.

(3) "Commissioner" means the head of the City agency entering into this Contract.

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

(5) "Contract" refers to the contract or the agreement between the Awarding Entity and the Contractor.

(6) "Contractor" means the entity performing the services pursuant to a Contract.

(7) "Federal Agency" means the U.S. agency or agencies funding this Contract in whole or in part.

(8) "Government" means the U.S. government.

(9) "Rider" means this Uniform Federal Contract Provisions Rider.

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

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

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or

(iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the City may be charged against and deducted out of monies earned by the Contractor.

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

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

i. *Notice to Cure.* The City shall give written notice of the conditions of default signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Contract pending the outcome of the default proceedings pursuant to this section.

ii. *Opportunity to be Heard.* If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Contractor must be given an opportunity to be heard upon not less than five (5) business days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole

or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination ("Notice of Termination"), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.

iv. *Grounds for Default*. The City shall have the right to declare the Contractor in default:

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

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

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

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

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

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

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

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18

U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

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

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

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

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

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

b. **Termination for Convenience**. The City shall have the right to terminate the Contract for convenience, by providing written notice ("Notice of Termination") according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally

delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

c. **Termination due to Force Majeure**

i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Force Majeure Events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

ii. In the event the Contractor cannot comply with the terms of the Contract (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.

iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

d. **Termination due to Reductions in Federal Funding**

i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this

paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.

ii. In the case of the reduction option referred to in subparagraph (i), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the City shall not be bound to utilize any of the Contractor's suggestions and that the City shall have sole discretion as to how to effectuate the reductions.

iii. If the City reduces funding pursuant to this paragraph (c), the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

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

(1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.

(2) *Non-Discrimination*. Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.

(3) *Environmental Protection.* If the Contract is in excess of $150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.

(4) *Energy Efficiency*. The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).

(5) *Debarment.* The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor

its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.

(6) *Byrd Anti-Lobbying Amendment (31 USC §1352).* Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining this Contract. If the Contract is $100,000 or more, the Contractor shall disclose to the City any lobbying with non-Federal funds that took place in connection with obtaining this Contract. Each lower tier subcontractor shall make such certification and forward any required disclosures from tier to tier up to the City as grant recipient. (Certification appears in Federal Appendix A)

(7) *Solid Waste Disposal Act*. Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.

(9) *Records Retention.* The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract for three years after final payment under the Contract is made and all other pending matters are closed.

(10) *Records Access.* The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

(11) *Small Firms, M/WBE Firms, and Labor Surplus Area Firms.* Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

(12) *Intangible Property*.

a. Pursuant to 2 CFR § 200.315(d), the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.

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

permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.

c. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

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

e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

f. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

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

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

a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): <u>If required by the federal program legislation</u>, in Construction contracts involving an excess of $2000, <u>and subject to any other federal program limitations</u>, all laborers and mechanics must be paid at a

rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.

b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of $2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.

c. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but "permissible" salary deductions.

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

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

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

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

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

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

procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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

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

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

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

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

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

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

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

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

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

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

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

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

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

i. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*).

ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.

iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

v. "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

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

b. *Allocation of Principal Rights*. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to

practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. *Invention Disclosure, Election of Title and Filing of Patent Application by Contractor*.

i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.

iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign

patent applications where such filing has been prohibited by a Secrecy Order.

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

d. Conditions When the Government May Obtain Title

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

i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Federal Agency may only request title within 60 calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.

ii. In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.

iii. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

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

i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

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

f. Contractor Action to Protect the Government's Interest

i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary

to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

iii. The Contractor will notify the Federal Agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.

iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."

g. Subcontracts

i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.

h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal

Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

i. *Preference for United States Industry*. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. *March-in Rights*. The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;

iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or

iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

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

i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;

iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding Small Business Firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps

to implement more effectively the requirements of this paragraph (k)(iv).

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

Federal Appendix A

Certification Regarding Lobbying

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

_____

Date

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

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

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such

geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

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

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

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

<u>FEDERAL EXHIBIT 2</u>
[Insert Exhibit 2 for applicable federal grant program]

Applicability

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

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

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

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Exhibit I

Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Rider

(November 2015 Version)

FEMA Rider (October 2015 Version)

Federal Exhibits 1 and 2

(Separate attachments)

CDBG-DR Rider

(Version 11.10.2015)

INSTRUCTIONS TO NYC AGENCIES AND OFFICES

This CDBG Rider contains supplementary general conditions for use with procurement contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. For all procurement contracts and subrecipient agreements funded by the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program, ***except those funded by the regular CDBG ("CDBG") Program***, this CDBG-DR Rider must be included as an attachment, expressly made a part of, and incorporated by reference. A different rider with terms specific to the regular CDBG Program should be attached to CDBG funded procurement contracts and subrecipient agreements.

FEDERAL REGISTER NOTICES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Register Notices applicable to the use of CDBG-DR Funds for Hurricane Sandy disaster recovery are available on the HUD Web site at https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices.

SECTION 3 NOTICE

HUD recently issued proposed amendments to the Section 3 regulations in 24 CFR Part 135. If HUD finalizes and promulgates the amendments to 24 CFR Part 135 during the term of this Agreement, the Contractor or Subrecipient will be required to adhere to the amended 24 CFR Part 135.

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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 entity, or entities, executing this Agreement on behalf of the City of New York.

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

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

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

(f) “Contractor” and/or “Subrecipient” means the entity or entities executing this Agreement, other than the Agency.

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

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

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

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

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

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

(m) “Subcontractor” means any person, firm or corporation, other than employees of the Contractor or the Subrecipient, or another Subcontractor who is engaged by the Contractor or the Subrecipient to furnish (i) services, (ii) labor or (iii) services and/or labor and materials at the site of the work performed under this Agreement.

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

[Applicable to Contractors and Subrecipients]

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

(a) the Agency has received from the City's Office of Management and Budget instructions to proceed, evidencing compliance with the National Environmental Policy Act, as amended, and with regulations of the U.S. Department of Housing and Urban Development, related thereto, found at 24 CFR Part 58, and

(b) the Contractor or Subrecipient has been notified of such instructions by the Agency. Furthermore, the Contractor or Subrecipient and the City mutually agree that the Contractor or Subrecipient shall not advance any funds, from any source without limitation, to pay for costs intended to be paid for under this Agreement prior to the receipt and notification described in this paragraph (a), and the City shall not reimburse the Contractor or Subrecipient for any costs incurred in violation of this provision.

ARTICLE 3. LABOR REQUIREMENTS

[Applicable to Contractors and Subrecipients; must be included in all subcontracts]

(a) ***Section 3.*** This Agreement is subject to Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448) and implementing regulations at 24 CFR Part 135, as may be amended during the term of this Agreement. Pursuant to 24 CFR § 135.38, the Contractor or Subrecipient agrees to the following:

1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.

3. The Contractor or Subrecipient agrees to send to each labor organization or representative of workers with which the Contractor or Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's or Subrecipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Contractor or Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor or Subrecipient will not subcontract with any Subcontractor where the Contractor or Subrecipient has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.

5. The Contractor or Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor or Subrecipient is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's or Subrecipient's obligations under 24 CFR Part 135.

6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

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

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

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

ARTICLE 4. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS

[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section D(1)(c)-(d), (2) and (3).]

If this Agreement involves Construction work, design for Construction, or Construction services, all such work or services performed by the Subrecipient and its Subcontractors shall be subject to the following requirements:

(a) ***Impermissible Salary Deductions.*** In Construction contracts of any amount, the Subrecipient shall cause its Subcontractor to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but "permissible" salary deductions.

(b) ***Federal Labor Standards.*** In Construction contracts of any amount, the Subrecipient shall cause its Subcontractors to comply with the more detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

(c) ***Equal Employment Opportunity.*** In Construction contracts or subcontracts in excess of $10,000, the Subrecipient shall cause its Subcontractors to comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of $10,000. (Federal Notice Required by 41 CFR 60-4.3)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades

which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

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

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

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

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

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

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

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

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

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

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

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

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

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

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation

employment to minority and female youth both on the site and in other areas of a contractor's work force.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A. **Equal Opportunity Clause [Effective through January 10, 2016]** Subrecipient shall include the following provisions, which are required by 41 CFR section 60-1.4(b), in all federally assisted contracts and subcontracts.

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

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

applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

(B) **Equal Opportunity Clause [Effective starting January 11, 2016]** Subrecipient shall include the following provisions, which are required by 41 CFR section 60-1.4(b), in all federally assisted contracts and subcontracts.

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

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

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

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

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

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

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

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or

federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS

[Applicable to Contractors and Subrecipients]

This Agreement is subject to:

(a) Section 109 of the Act, which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The Contractor or Subrecipient agrees to comply with provisions of 24 CFR Part 6, 8, and 146.

(b) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.

(c) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107, which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.

(d) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this Agreement.

(e) Consistent with 24 CFR § 570.614, the Contractor or Subrecipient warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and 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).

(f) If the Contractor or Subrecipient is, or may be deemed to be, a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, the Contractor or Subrecipient agrees that in connection with services to be provided under this Agreement:

i. it shall not discriminate against any employee or applicant for employment on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion.

ii. it shall not discriminate against any person applying for such public services on the basis of religion or religious belief and shall not limit such services or give preference to persons on the basis of religion or religious belief.

iii. it shall provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services.

iv. it shall not use CDBG funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under 24 CFR Part 570. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in 24 CFR Part 570. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property is subject to 24 CFR § 570.200(j)(5). In addition, payment may be authorized for a portion of eligible rehabilitation or construction costs attributable to the non-religious use of a facility that is not used exclusively for

religious purposes, pursuant to Section VI(A)(4)(c) of HUD Docket No. FR-56960-N-01.

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

(g) Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

ARTICLE 6. ENIVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT

[Paragraphs (a) – (e) applicable to Contractors and Subrecipients; paragraph (f) applicable to Subrecipients]

(a) For agreements, subcontracts, and subgrants of amounts in excess of $150,000, the Contractor or Subrecipient shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33 U.S.C. §§ 1251, et seq.) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).

(b) The Subrecipient and Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L 94-163). Further, the Contractor or Subrecipient shall comply with the construction standards concerning energy efficiency set forth in section VI(A)(1)(a)(5) of HUD Docket No. FR-5696-N-01.

(c) This Agreement is subject to laws and authorities listed in 24 CFR § 58.5, including the Historic Preservation Act of 1966 (P.L. 89-665; 16 U.S.C. §§ 470 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

(d) This Agreement is subject to the Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.

(e) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

(f) Subrecipients shall implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements set forth in Section VI(B)(31) of HUD Docket No. FR-56960-N-01.

ARTICLE 7. UNIFORM RELOCATION ASSISTANCE

[Applicable to Contractors and Subrecipients]

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

ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

[Subdivision (a) is applicable to Contractors and Subrecipients; subdivision (b) is applicable to Subrecipients only; subdivision (c) is applicable to Contractors only]

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

(b) For the procurement of all subcontracts and goods contracts, Subrecipients are required to follow the procurement standards in 2 CFR §§ 200.318-200.326, except as allowed by 2 CFR § 200.110.

(c) Contractors are subject to the Uniform Federal Contract Provisions Rider, attached to this Agreement.

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

[Paragraphs (a), (b), (d), and (e) are applicable to Contractors and Subrecipients; paragraph (d) is applicable to Subrecipients only]

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

The Contractor or Subrecipient agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor or Subrecipient shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of Community Development Block Grant

funds, including 24 CFR § 570.503(b)(3), which provides that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs). Alternative program requirements concerning the definition of "program income" are set forth in Section VI(A)(17)(a)-(b) of Docket No. FR-56960-N-01, as amended by Section II(5) of Docket No. FR-5710-N-01.

(b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and readily accessible.

(c) The Subrecipient shall submit to the Agency a detailed description of its accounting, reporting and internal control systems, including but not limited to the procedures for cash receipts, cash disbursements, payrolls, personnel policies, fixed petty cash controls and other systems which are necessary under the circumstances. The Agency shall evaluate and document all systems and only upon acceptance and approval of the accounting, reporting and internal control systems by the Agency, shall funds be disbursed to the Subrecipient, other provisions of the Agreement notwithstanding.

(d) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor's or Subrecipient's chief fiscal officer or its insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount equal to cash advances from the City. If the bond is cancelled or coverage is substantially reduced, the Contractor or Subrecipient shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor or Subrecipient until it has received assurance that adequate coverage has subsequently been obtained.

(e) No money under this Agreement shall be disbursed by the Agency to any Contractor or Subrecipient except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor or Subrecipient is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR Part 58.

ARTICLE 10. RECORDS AND AUDITS

[Applicable to Contractors and Subrecipients]

(a) Records shall be maintained in accordance with requirements prescribed by or in 2 CFR § 200.333, HUD and/or the City with respect to all matters covered by this Agreement and retained for at least three years after the City makes final payments and all other pending matters concerning this Agreement are closed, subject to the exceptions in 2 CFR § 200.333.

(b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information, as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:

(i) Quarterly Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Quarterly Performance Reports.

(ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased equipment.

(c) At any time during normal business hours and as often as the City, the Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor or Subrecipient shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

ARTICLE 11. SUBCONTRACTORS

[Applicable to Contractors and Subrecipients]

(a) The provisions of this Agreement shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor or Subrecipient. The Contractor or Subrecipient shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor or Subrecipient.

(b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor or Subrecipient.

(c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor or Subrecipient, and the Contractor or Subrecipient shall remain responsible therefor.

(d) Any subcontracts entered into pursuant to this Agreement shall include Exhibit 3 (Investigations Clause, Conflicts of Interest Clause; and Executive Order No. 50 provisions, which shall be binding on every Subcontractor.

ARTICLE 12. CONFLICTS; EXHIBITS

[Applicable to Contractors and Subrecipients]

(a) If any provision in this CDBG Rider directly conflicts with any other provision in the Agreement, the provision in CDBG Rider shall be controlling.

(b) Federal Exhibits 1 and 2 are attached to, and made a part of this CDBG Rider.

ARTICLE 13. REVERSION OF ASSETS

[Applicable to Subrecipients]

(a) At the Agreement's expiration, the Subrecipient shall transfer to the City all CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.

(b) Any real property under the Subrecipient's control that was acquired or improved in whole or in part with Community Development funds in excess of $25,000 must be used to either (i) meet the national objectives in Section 570.208 for a period of five years after acquisition if the property or completion of the improvements, as applicable, or (ii) disposed in a manner which results in the Program being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property.

(c) Title to all Equipment in excess of $5,000 purchased pursuant to this Agreement with CDBG funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

[Applicable to Subrecipients. Contractors must follow section C(11) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.]

Subrecipient shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

(e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

ARTICLE 15. INTANGIBLE PROPERTY

[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section C(12).]

(a) Pursuant to 2 CFR § 200.315(d), the federal Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Agreement or subcontract; and (b) any rights of copyright to which a Subrecipient purchases ownership with grant support.

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

(c) The Subrecipient acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Subrecipient shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

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

(e) The Subrecipient shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Agreement and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

(f) If the Subrecipient publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

ARTICLE 16. HATCH ACT; LOBBYING; CONFLICTS OF INTEREST

[Applicable to Subrecipients.]

(a) Hatch Act: The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

(b) Lobbying: The Subrecipient agrees that no funds provided will be used by it or its Subcontractors in violation of 24 CFR § 87.100.

(c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 2 CFR §§ 200.112 and 200.318(c) and 24 CFR § 570.611.

ARTICLE 17. SUSPENSION AND TERMINATION

[Applicable to Subrecipients.]

(a) The City may take enforcement action against a Subrecipient for non-compliance, as described in 2 CFR §§ 200.338 and 200.339(a)(1) & (2), including suspension or termination.

(b) The City may terminate for convenience pursuant to 2 CFR § 200.339(a)(3).

ARTICLE 18. PERFORMANCE REQUIREMENTS AND REMEDIES

[Applicable to Contractors]

The Disaster Relief Appropriations Act, 2013 (Public L. 113-2) of January 29, 2013, requires contracts to contain "performance requirements and penalties." Accordingly, Contractor shall be subject to any performance requirements and remedial provisions and/or liquidated damages set forth in this Agreement. Contractor acknowledges that negative performance evaluations may impair its ability to win future contracts with the City as follows: Under City Procurement Policy Board (PPB) Rules section 4-01, Contractor is subject to performance evaluations at least once

annually. The City shall enter such performance evaluations into the VENDEX system. To the extent allowed by the PPB Rules, such performance evaluations shall be considered by the City in:

(1) making a determination of the Contractor's responsibility or non-responsibility in future City procurements, under PPB Rule section 2-08(g)(1)(ii) and

(2) deciding to renew or not to renew the Agreement, under PPB Rule section 4-04(c)(10).

FED. EXHIBIT 1

NOTICE TO BIDDERS

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

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

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

Goals and Timetables for Minorities

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

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals

established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved Construction.

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

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

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

EXHIIBIT 2

Applicability

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

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

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

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") RIDER
(10/27/2015)

For use with contracts funded by the FEMA Grant and Cooperative Agreement Programs, including the Public Assistance Program

(This Rider should not be used with contracts funded by the following FEMA Programs: Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. This Rider should be accompanied by the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.)

1. Suspension and Debarment. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:

   (a) This contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this contract, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.

   (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the term of this contract and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

   (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

2. Davis-Bacon Act. For the purposes of Section D(1)(a) of the Uniform Federal Contract Provisions Rider, compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) is not required of the Contractor pursuant to FEMA regulations. However, if this Contract is funded by another federal funding source (e.g., the U.S. Department of Housing and Urban Development CDBG or CDBG-DR programs), compliance with the Davis-Bacon Act is required to the extent required by law and as set forth in the contract documents.

3. Rights to Inventions Made Under a Contract or Agreement. Section E of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts does not

apply to the following FEMA Programs: Public Assistance Program, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program.

4. Copeland "Anti-Kickback" Act. The Contractor shall comply with provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (A).

5. Contract Work Hours and Safety Standards Act. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (B).

6. Access to Records.

   (a) The Contractor agrees to provide the City of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

   (b) The Contractor agrees to permit any of the foregoing parties to reproduce said documents by any means or to copy excerpts and transcriptions as reasonably needed.

   (c) The Contractor agrees to provide the FEMA Administrator or his/her authorized representative access to construction or other work sites pertaining to the work being completed under the contract.

7. Logos. The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

8. Compliance with Law. The Contractor acknowledges that FEMA financial assistance will be used to fund the contract only and agrees to comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

9. Federal Government not a Party. The Contractor acknowledges and understands that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the contract.

10. False Claims. The Contractor acknowledges that 31 U.S.C. Chap. 38 applies to the Contractor's actions pertaining to this contract.

EXHIBIT 2
Federal Labor Standards Provisions (Non-Davis Bacon)[1]
Federal Emergency Management Agency
(10/27/2015)

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

A. Compliance with the Copeland "Anti-Kickback" Act.

1. **Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

2. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause in paragraph 1 above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

3. **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

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

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-halftimes the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this Section B the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In

[1] This version of Exhibit 2 applies to contracts funded by FEMA Grant and Cooperative Agreement Programs, including the Public Assistance Program. Do not use this version of Exhibit 2 in connection with FEMA programs that are subject to the Davis-Bacon Act; such programs are the Emergency Management Preparedness Grant Program, the Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program.

addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages.** The City of New York shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated §damages as provided in the clause set forth in paragraph (2) of this section.

4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this Section B and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section B.

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

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

3. The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as FEMA or the Secretary of Labor shall direct as a means of enforcing such provisions.

Exhibit J

Whistleblower Protection Expansion Act Notice

REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

Department of Investigation (DOI) Complaint Bureau
212-825-5959

or by mail or in person at:

DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE, 17th FLOOR
NEW YORK, NEW YORK 10038
Attention: COMPLAINT BUREAU

or file a complaint on-line at:
www.nyc.gov/doi

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

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

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of the Big Apple.