Department of Design and Construction

Two-Stage Request for Proposal

Project
Construction Management Services for the New Gansevoort Marine Transfer Station, Borough of Manhattan

PIN
8502015TR0005P

Pre-Proposal Conference
Tuesday July 7,2015

Submission Deadline
Tuesday July 21,2015

Bill de Blasio
Mayor

Dr. Feniosky Peña-Mora
Commissioner

Christine Flaherty, CCM
Associate Commissioner
Public Buildings Construction

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF PUBLIC BUILDINGS

REQUEST FOR PROPOSALS, TWO-STAGE

FOR CONSTRUCTION MANAGEMENT SERVICES FOR:

PROJECT: S216-404A

NEW GANSEVOORT MARINE TRANSFER STATION

TABLE OF CONTENTS

PREFACE

I. TIMETABLE

II. SUMMARY OF THE REQUEST FOR PROPOSALS

III. SCOPE OF WORK AND CONTRACT CONDITIONS

IV. FORMAT AND CONTENT OF THE PROPOSAL

V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

VI. GENERAL INFORMATION TO PROPOSERS

VII. ATTACHMENTS AND ENCLOSURES

ATTACHMENT 1 - STATEMENT OF UNDERSTANDING AND CERTIFICATION
ATTACHMENT 2 - IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NYCCONTRACTORS
ATTACHMENT 3 - STAFFING PLAN
ATTACHMENT 4 - FEE PROPOSAL: FORM FOR FEE FOR PROFIT
ATTACHMENT 5 - FEE PROPOSAL: FORM FOR STAFFING EXPENSES
ATTACHMENT 6 - ACKNOWLEDGEMENT OF ADDENDA
ATTACHMENT 7 - CONFIRMATION OF VENDEX COMPLIANCE
ATTACHMENT 8 - SCHEDULE B: M/WBE UTILIZATION PLAN
ATTACHMENT 9 - DOING BUSINESS DATA FORM
ATTACHMENT 10 - WHISTLEBLOWER PROTECTION EXPANSION ACT
ATTACHMENT 11 - SUBCONTRACTOR REPORTING
ATTACHMENT 12 - DISPLACEMENT DETERMINATION FORM- PURSUANT TO CITY CHARTER § 312(A)

APPENDIX 1 – CONTRACT DOCUMENT

Printed on paper containing 30% post-consumer material.

PREFACE

This Request for Proposals (RFP) is comprised of a two-stage selection process. In stage one, proposers will submit the materials prescribed in Section IV, to document the proposer's ability to act as a Construction Management firm for the project that is the subject of this RFP. Based on an evaluation of these materials, DDC will establish a short list of firms to be further considered in the second stage of the selection process. In stage two, the short listed firms only will be requested to submit technical proposals, including information on related standard forms 254 and 255. The technical proposals will be evaluated to determine the proposer's ability to carry out the project.

SECTION I. TIMETABLE

A. RFP Issuance

Pre-Proposal Conference

A pre-proposal conference will be held at **10:00AM** on **Tuesday, July 7, 2015** at the Department of Sanitation, 2 Bloomfield Street Located on Gansevoort Peninsula, New York, NY 10014. Attendance is strongly encouraged, but not mandatory, to propose on the contract described in this RFP. **Anyone who wishes to attend will meet outside, at the former Destructor Plant's northeast corner, assembling next to the building's vehicular entrance. Attendees must wear safety vests. Note that parking is not available at the site**.

B. Submission Deadline:

Stage One Submissions:

The proposer shall deliver, on or before **4:00PM** on **Tuesday July 21, 2015**, the Stage One Proposal in a clearly marked envelope or package. The proposal shall consist of TWO separate clearly marked, sealed packages containing the following: (1) Portfolio, including Acknowledgment of Addenda, (1 original and 6 copies), and (2) Doing Business Data Form (1 original). The project name and "Stage One Proposal" shall be clearly marked on the exterior of the envelope or other packaging.

Stage Two Submissions (Applicable to Stage One Short-Listed Proposers Only):

The proposer shall deliver, on a date to be determined, the Stage Two Proposal in a clearly marked envelope or package. The proposal shall consist of TWO separate clearly marked, sealed packages containing the following: (1) Technical Proposal (1 original and 6 copies), and (2) Schedule B: M/WBE Utilization Plan (1 original) The project name and "Stage Two Proposal" shall be clearly marked on the exterior of the envelope or other packaging.

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.

Belkis Palacios (718) 391-1866
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: palaciob@ddc.nyc.gov

NOTE: Respondents are held responsible for ensuring that the Professional Contract 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 house number.

C. 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 at http://ddcftp.nyc.gov/rfpweb/. **All inquiries must be directed ONLY to the contact person listed above.**

D. 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.

E. 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. Establish Shortlist of Stage One Firms: Within four weeks of submission deadline

b. Identify Consultant: Within two weeks of Stage Two submission deadline

c. Complete Contract Registration: Approximately three months from date of consultant selection.

d. Commence Work: When directed by DDC.

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. General

The New York City Department of Design and Construction, Division of Public Buildings, is seeking a Construction Management firm to provide services for the Project described in this RFP. The selected CM will be required to provide services for the duration of the project (i.e., pre-construction, construction and post-construction services). The selected CM will be required to provide all services necessary and required for the inspection, management, coordination and administration of the Project, from commencement through substantial completion, final acceptance and project close-out. The project for which Construction Management services are required is the design and construction of the New York City Department of Sanitation's (DSNY) New Marine Transfer Station at Gansevoort Peninsula in the Borough of Manhattan. The project is being managed for DSNY by the New York City Department of Design and Construction (DDC).

B. Background and Objectives of Project

Development of the New Gansevoort Marine Transfer Station (MTS) is part of the City of New York's Solid Waste Management Plan (SWMP) adopted by the New York City Council and approved by New York State in 2006. The SWMP establishes a comprehensive framework for managing the City's solid waste with the goal of dramatically reducing the number of truck trips associated with City waste export while establishing an environmentally sound barge and rail dependent waste export system for managing the waste over the next 20 years. The MTS will be used for the transfer of recyclables such as glass, metal, plastic and paper products from truck to barge.

The MTS will be located on the Hudson River, west of Gansevoort Peninsula, which is one of Manhattan's earliest landfills. The MTS's siting within Hudson River Park is stipulated in the New York State Legislature's 2008 Amendment to the earlier Hudson River Park Act of 1998, the Act which created the park; development and administration of Hudson River Park is managed by Hudson River Park Trust. Access to the MTS will be provided by a roadway and ramp from New York State Route 9A to the MTS truck entrance at the tipping floor level, referenced in the 2008 Amendment text. It is the intent of this RFP that the design of the new MTS, along with its associated access structure, be designed in a manner that is harmonious and compatible with both the park design and park uses being developed at Gansevoort Peninsula by Hudson River Park Trust.

The multi-level, pile-supported MTS will include: a lower pier level consisting of two (2) barge slips framed by finger piers utilized during barge maneuvering activities; an upper tipping floor level intended for DSNY vehicles transferring recyclables from truck to barges in the slips below. DSNY anticipates that the facility's operating capacity will be a minimum of 30 trucks-per-hour. DSNY administrative offices, locker rooms, lunch/break rooms, utility, mechanical and electrical rooms, and equipment associated with the facility's truck-to-barge activities will be housed in the building. An environmental education facility, for use by the community, is also located in the building. Design documents for the project will be prepared by Grimshaw Architects. The project is required to achieve a LEED Silver rating

C. Joint Ventures and Other Consultant Relationships

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

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

D. Cost Estimate and Contract Term

The estimated cost of the required construction work for the project is $180,000,000. The term of the Contract shall commence as of the date of Notice to Proceed following registration of the Contract by the Comptroller and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required CM services for the Project. The term shall be based on the detailed Project Schedule submitted by the proposer as part of its Technical Proposal.

E. Insurance

Requirements for insurance that must be provided by the CM and its subconsultants are specified in Article 7 of Appendix A, which is included as an Exhibit to the contract. The cost of all insurance is deemed included in payments to the CM, as set forth in the contract.

F. Payment Provisions

Payments for all required services for the Project shall be in accordance with Article 7 of the attached contract. The payment terms are summarized below.

1. Staffing Expenses: The CM shall be paid for staffing expenses for individuals identified in the approved Staffing Plan as construction management personnel. Staffing expenses shall be calculated based on direct salary rates for specified individuals, subject to a Multiplier of 1.75. The CM shall not be entitled to payment for staffing expenses for (1) any project executive(s), and/or (2) any individual not included in the approved Staffing Plan.

2. Fee for Profit: The CM shall be paid a Fee for Profit: The Fee for Profit shall be deemed to include the following items: (a) profit, and (b) any costs and expenses for overhead that are in excess of the amount paid to the CM through the Multiplier of 1.75. The amount of the Fee for Profit shall be calculated as a percent of the total actual cost of construction in accordance with the proposer’s fee curve. The terms and conditions applicable to payment of the Fee for Profit are set forth in the attached Contract.

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Scope of Services

The selected CM shall provide the following services during Pre-Construction:

- The CM shall review and provide written reports with respect to the design documents at various stages of the design process, as set forth in Article 6.2.5 of the attached Contract.

- The CM shall provide a minimum of three (3) cost estimates, additional to the requirements of the Contract, during the pre-construction phase. Milestones for preparation of cost estimates are still to be determined.

The selected CM shall provide the following services during Construction:

- The selected CM shall provide all construction management services necessary and required for the inspection, supervision, management, coordination and administration of the Project, so that the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the construction documents and to good construction practice. The selected CM will be required to provide such services from Project commencement through substantial completion, final acceptance, and project close-out.

B. Building Information Modeling

Throughout the project, the selected CM shall provide oversight to ensure that BIM services and/or uses are properly implemented by all construction contractors, as described in the DDC BIM Guidelines (Exhibit G to the Contract). BIM services and/or uses include, without limitation, the following: clash detection, cost estimation, scope delineation, construction system design, phase planning, digital fabrication, record modeling, and asset management. The selected CM shall prepare a Project BIM Execution Plan, and shall ensure that all construction contractors comply with the Submission Requirements outlined in such plan, as well as in the DDC BIM Guidelines.

C. Contract Provisions

The services to be provided by the CM 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 this form of 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.

D. Staffing Plan

The CM shall be required to provide personnel for the Project in accordance with the Staffing Plan approved by the Commissioner. Such Staffing Plan must include the individuals identified by the CM as Key Personnel in its Proposal, as well as other construction management personnel required for the Project.

E. 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 go 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.

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

If the contract resulting from this Request for Proposals will be subject to M/WBE participation requirements under Section 6-129 of the Administrative Code of the City of New York, as indicated by the inclusion of Schedule B – M/WBE Utilization Plan (Attachment 8) and the Participation Goals indicated in Part I thereof, proposers must complete the Schedule B – M/WBE Utilization Plan and submit it with their proposals. Please refer to the Schedule B – M/WBE Utilization Plan and the Notice to All Prospective Contractors (Attachment 8) for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms. If the proposer intends to seek a full or partial waiver of the Participation Goals on the grounds described in Section 10 of the Notice to All Prospective Contractors, including but not limited to, proposer's intention to use its own forces to perform any or all of the required contract work would result in a failure to attain the Participation Goals, the proposer must request and obtain from the Agency a full or partial waiver of the Participation Goals (M/WBE Utilization Plan, Part III) in advance of proposal submission and submit the waiver determination with the proposal. Please note that if a partial waiver is obtained, the proposer is required to submit a completed Schedule B-M/WBE Utilization Plan based on the revised Participation Goals in order to be found responsive.

Note: As fully explained in Attachment 8, if you are planning to request a waiver of the Participation Goals, the waiver must be submitted to the Agency at least seven calendar days prior to the proposal due date and time in order to be considered.

G. Compliance with Local Law 34 of 2007

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

G. Whistleblower Protection Expansion Act Rider

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain

City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read Attachment 10, the Whistleblower Protection Expansion Act Rider, carefully.

J. Subcontractor Compliance Notice

The selected vendor will be required to utilize the City's web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment 11, the subcontractor compliance notice as it relates to competitive solicitations.

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

A. Proposal Subdivision Instructions:

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with 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/epawaste/conserve/tools/cpg/index.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. Submit proposal in a clearly labeled, sealed package as follows:

B. Stage 1 Proposal Requirements:

This project is being designed by a consultant selected on the basis of design excellence. The CM firm who is selected for the construction phase of the project should exhibit an understanding of quality contemporary design, as well as an exemplary track record in the management of large, complex projects.

1. Portfolio (1 original and 6 copies): Provide a portfolio of up to five projects built within the last ten years that demonstrate the proposer's ability to provide quality construction management services for large, complex projects. Present each project on one sheet of no more than on 8 ½ x 11 inches bound in covers no longer than 9 x 12 inches. The format may be either portrait or landscape but not both. Include the following for each project: a) a site plan; b) a three dimensional image of the project; c) a brief written description indicating how the firm contributed to the timely completion of the project; d) project area and cost information; and e) the name and contact information for the designer and owner.

C. Stage II Proposal Requirements (Applicable to Stage One Short-Listed Proposers Only):

For those firms short-listed in Stage One, the Stage Two Proposal will serve to highlight their management and technical ability to carry out a project of the scope and type that is the subject of this RFP. In addition to the Stage Two Proposal, each short-listed firm will be required to make a one hour presentation of its submission. See Section V. (B) for a more detailed description of the presentation requirements.

1. Technical Proposal (one original and 6 copies): The Technical Proposal shall contain all information listed in this Subsection C, plus completed Standard Forms 254 and 255 for Proposer and its subconsultants (if any). (These forms are available at the following website: http://www.nyc.gov/html/ddc/html/business/otherfrm.shtml).
Standard Forms shall not be altered in any way.

2. Cover Letter: Submit a Cover Letter of no more than three pages, 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.)*** Include a brief history of the firm, the overall organization of the firm, and a statement of its goals and objectives.

3. Experience of Firm & Subconsultants (if any): Provide examples of up to seven (7) projects, for which the proposer has provided construction management services within

the last ten (10) years. The submitted projects must demonstrate the proposer's construction management experience in each of the categories listed below. Of the projects submitted, include at least one (1) large construction project, the definition for the purposes of this RFP shall mean a project with a construction cost of at least One hundred million ($100,000,000.00) Dollars. This large construction project should demonstrate experience in at least one of the following areas:

(1) Marine construction (for example, dredging, bulkheads, pier construction)
(2) Highway ramp construction
(3) Construction of underground utilities (such as sanitary and storm sewers, high pressure gas lines, power distribution)
(4) Heavy building construction

Additionally, in consideration of the sensitive nature of this project's location in New York City the proposer should include specific examples of any highly visible projects which required the proposer to employ a community liaison subconsultant.

For each project, the proposer shall provide the following: (a) visual materials (i.e., photographs, drawings, brochures), and (b) information indicating whether the project was completed on time and within budget. If the proposer intends to use any subconsultants on the Project, it shall also submit prior projects completed by the subconsultant, clearly stating the role of the subconsultant on the submitted project as well as their proposed role on management of the project stated in this RFP.

4. Staffing Plan: Submit a Staffing Plan for the Project. The Staffing Plan shall only include personnel for the performance of construction management and/or technical services for the Project. The Staffing Plan shall not include any personnel who perform administrative, overhead and/or home office functions. A form for the submission of the Staffing Plan is included as Attachment 3 to this RFP. As described in Attachment 3, the proposer shall identify the following:

- Project Executive: Identify the Project Executive. The Project Executive shall serve as the CM's principal representative with respect to its obligations under this contract. The Project Executive will be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project.

- Key Construction Management (CM) Personnel: Identify Key CM Personnel for the Project, including a BIM Project Manager. This means the team of specific CM personnel determined by the proposer to be necessary for successful completion of the Project. Key CM Personnel shall provide services for the entire duration of the Project.

- Other Construction Management (CM) Personnel: Identify by title other Construction Management (CM) Personnel for the Project. This means CM personnel who will provide services that are supportive or ancillary to the services provided by the Key CM Personnel.

- Total Estimated Hours Per Title: For all titles identified in the Staffing Plan, indicate the total estimated hours per title. The total estimated hours per title must be in accordance with the Project Schedule submitted by the proposer. (See requirement below). The total estimated hours per title shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).

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

5. Management Strategy: Provide a statement, of no more than three (3) pages, describing its management strategy, including (1) its understanding of the objectives and complexities of the Project, (2) its methodology for tracking and maintaining the Project's budget and schedule and (3) its techniques for problem solving.

6. Project Schedule: Submit a detailed, coordinated schedule demonstrating the time frame for completion of the entire Project. The Project Schedule shall detail time frames for all required construction operations, as well as interrelationships between significant contracts and/or components of the work. The Project Schedule shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours). The Project Schedule shall be in consecutive calendar days and shall specify time frames for the following activities:

   - Pre-construction 750 consecutive calendar days.
   - Bidding to Contractors: DDC anticipates that the time frame required for bidding of the construction contracts is 90 consecutive calendar days.
   - Construction duration is 1,185 consecutive calendar days.
   - Substantial Completion of construction.
   - Final Acceptance of construction.
   - Project Close-out and completion of all post construction services is 90 consecutive calendar days.

7. Statement of Understanding and Certification: The Statement of Understanding and Certification (Attachment 1 of this RFP) should be signed by a responsible partner or corporate officer of the proposing firm and submitted with firm's Technical Proposal.

8. Acknowledgement of Addenda: The Acknowledgement of Addenda form (Attachment 6) 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.

D. Fee Proposal

Forms for the submission of the Fee Proposal are included as Attachments 4 and 5 of the RFP. Upon written notification, the proposer must submit the Fee Proposal in a separate clearly labeled, sealed package within ten business days of such notice. The Fee Proposal shall consist of the following: (1) Fee for Profit (Attachment 4), and (2) Total Estimated Amount for Staffing Expenses (Attachment 5).

E. Proposal Package Contents ("Checklist"):

The Proposal Package should contain the following materials. Each package shall be clearly marked with the Project Name, Project Identification Number and the Name of the Proposer.

Stage One:

1. Portfolio (1 original and 6 copies)
   Sealed envelope clearly marked with "Stage One Submission"

   - Acknowledgement of Addenda (Attachment 6)

2. Doing Business Data Form (Attachment 9)
   Separate sealed envelope clearly marked as
   "Doing Business Data Form" containing a completed Doing Business Data Form.

Stage Two (Applicable to Stage One Short-Listed Proposers Only):

1. Technical Proposal (1 original and 6 copies):
   Sealed envelope, clearly marked as "Technical Proposal", including

   - Items listed in Section IV C of the RFP
   - Completed Forms 254 and 255
   - Statement of Understanding and Certification (Attachment 1)
   - Completed and *Notarized* Proposer's Certification of Compliance with Iran Divestment Act (Attachment 2)
   - Staffing Plan (Attachment 3)
   - Acknowledgement of Addenda (Attachment 6)

2. Schedule B: M/WBE Utilization Plan: (Attachment 8)
   Separate sealed envelope, clearly marked as "Schedule B: M/WBE Utilization Plan

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Stage One Selection Process:

Selection Process: A DDC evaluation committee comprised of DDC staff and an independent construction management professional will review, evaluate and score all Stage One portfolios pursuant to the criteria prescribed below. This evaluation and scoring will determine the proposer's Stage One Technical Rating. Proposers will then be ranked in accordance with their overall Stage One Technical Ratings.

The rankings will be submitted to the Executive Consultant Selection Committee who will certify the results and determine the number of top ranked firms to be included on the short list of firms to be further considered in the Stage Two selection process.

Proposal Evaluation Criteria: The projects submitted will be evaluated based on the following criteria:

a. Fit, finish and construction quality (Weight 35%)

b. Timeliness of completion (Weight 35%)

c. The quality of the cost management (Weight 30%)

B. Stage Two Selection Process (Applicable to Stage One Short-Listed Proposers Only):

Selection Process: A DDC evaluation committee, including an independent construction management professional, will review, evaluate, and score all technical proposals in accordance with qualitative and quantitative criteria established in Subsection 2 below. This evaluation and scoring will determine the proposer's initial Stage Two Technical Score. Proposers shall be ranked in accordance with their initial Stage Two Technical Scores.

Each Stage Two proposer will be requested to make a one-hour presentation of its submission to the selection committee. Such presentation will take place in the proposer's office and should include the following: (1) an introduction of the firm, Key Personnel identified in the Proposal, and any subconsultant(s) critical to the success of the project, and (2) an explanation of the proposer's management strategy, including its understanding of the objectives and complexities of the Project, its methodology for tracking and maintaining the Project's budget and schedule, and its techniques for problem solving. The presentation should be structured to highlight the proposer's response to the Stage Two Proposal requirements. In addition, the portfolio of projects submitted for Stage One will be available for further evaluation.

The evaluation committee may amend a proposer's initial Stage Two Technical Score based on the proposer's presentation. Proposers shall be ranked in accordance with their final Stage Two Technical Scores. The ranking will be submitted to the Executive Consultant Selection Committee (ECSC) who will certify the results and authorize fee negotiations to commence with the highest ranked firm. Should negotiations fail with highest ranked firm, the ECSC will authorize fee negotiations with the next highest ranked firm. The CM firm whose proposal is determined to be the most advantageous to the City will be awarded the project.

Proposal Evaluation Criteria: The Proposal evaluation criteria are as follows:

a. Experience of the Firm & Subconsultants: (Weight 30%)

b. Staffing Plan: (Weight 25%)

c. Management Strategy: (Weight 20%)

d. Project Schedule: (Weight 25%)

C. Basis of Award:

DDC will award a contract to the responsible proposer whose proposal is determined to be the highest quality and most advantageous to the City, taking into consideration the overall quality of the proposal as measured against factors or criteria as set forth in the RFP and successful negotiation of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude no more than thirty days thereafter.

D. Supply and Service Employment Report:

Upon selection, the successful proposer 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/ddc/html/business/otherfrm.shtml. Upon written notification, the proposer must submit the Supply and Service Employment Report within ten days of such notification.

E. VENDEX:

Upon selection, the successful proposer will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of VENDEX Compliance to DDC within ten days of official notification. A form for this confirmation is set forth in the RFP as Attachment 7.

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.

2. 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.

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

SECTION VI. GENERAL INFORMATION TO PROPOSERS

A. Complaints

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

B. Applicable Laws

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

C. General Contract Provisions

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

D. Contract Award

Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of 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.

_____ _____

ACCO Signature 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**

CERTIFICATION FOR M/WBE UTILIZATION PLAN: By signing in the space below, the proposer agrees to the Vendor Certification and Required Affirmations set forth below, unless a full waiver of the Participation Goals is granted. The Vendor Certification and Required Affirmations will be deemed to satisfy the requirement to complete Section V of Part II of Schedule B: M/WBE Utilization Plan.

Section V: Vendor Certification and Required Affirmations

I hereby:

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

_____
Name of Proposer
(Full Business Name)

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:

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

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

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

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

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

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

ATTACHMENT 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 FOR STAFFING PLAN

FMS ID: S216-404A
Project: CM Services for the New Gansevoort Marine Transfer Station, Borough of Manhattan

Submission: The proposer shall submit Attachment 3 as part of its Technical Proposal.

Staffing Plan: The proposer shall submit a Staffing Plan for the Project. The Staffing Plan shall only include personnel for the performance of construction management and/or technical services for the Project. The Staffing Plan shall not include any personnel who perform administrative, overhead and/or home office functions. In the space provided below, the proposer shall identify the following: (1) Project Executive, (2) Key Construction Management Personnel, and (3) other Construction Management Personnel. For all specified personnel (except the Project Executive), the proposer shall indicate the total estimated hours per title for each phase of the Project. The total estimated hours per title must be in accordance with the proposer's Project Schedule and shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).

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

****

Project Executive: The proposer shall identify the Project Executive. The Project Executive shall serve as the Contractor's principal representative with respect to its obligations under this contract. The Project Executive shall be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project.

Project Executive: _____

Key Construction Management Personnel: The proposer shall identify Key Construction Management (CM) Personnel for the Project. This means the team of specific CM personnel determined by the proposer to be necessary for successful completion of the Project. Key CM Personnel shall provide services for the entire duration of the Project (Pre-construction, Construction and Post Construction Phases). For each phase, the proposer shall indicate the total estimated hours per title. The total estimated hours per title shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).

Key Construction Management Personnel: The proposer may add additional lines if necessary.

		Total Estimated Hours per Phase		
Title:	**Name:**	**Pre-construction**	**Construction**	**Post Construction**
Project Manager	_____	_____	_____	_____
Assistant Project Manager	_____	_____	_____	_____
QA/QC	_____	_____	_____	_____
Superintendent	_____	_____	_____	_____

Office Engineer / Inspector	_____	_____	_____	_____
Assistant Office Engineer / Inspector	_____	_____	_____	_____
Senior Estimator	_____	_____	_____	_____
Regulatory Specialist	_____	_____	_____	_____
BIM Project Manager	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Other Construction Management Personnel: The proposer shall identify other Construction Management (CM) Personnel for the Project. This means CM personnel who will provide services that are supportive or ancillary to the services provided by the Key CM Personnel. For each phase, the proposer shall indicate the total estimated hours per title. The total estimated hours per title shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).

Other Construction Management Personnel: The proposer may add additional lines if necessary.

		Total Estimated Hours per Phase		
Title:	**Name:**	**Pre-construction**	**Construction**	**Post Construction**
Estimator / Reviewer	_____	_____	_____	_____
Safety Officer	_____	_____	_____	_____
Scheduler	_____	_____	_____	_____
Community Liaison	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Certification: By signing in the space provided below, the proposer certifies that (1) the individuals proposed as Key CM Personnel are currently employed by the proposer, and (2) if the proposer is selected for the Project, it will assign such individuals to the Project as Key CM Personnel for the entire duration thereof.

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

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

_____
Name of Proposer

By:_____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Firm EIN #

ATTACHMENT 4: FEE PROPOSAL – FORM FOR FEE FOR PROFIT

FMS ID: S216-404A
Project: CM Services for the New Gansevoort Marine Transfer Station, Borough of Manhattan

To be submitted ONLY upon request: The proposer shall submit Attachments 4 and 5 as its Fee Proposal. Attachments 4 and 5 are to be submitted together in a clearly marked, sealed envelope.

Fee for Profit: The CM shall be paid a Fee for Profit, the amount of which shall be calculated as a percent of the total actual cost of construction for the Project in accordance with the Fee Curve negotiated by the parties. For the purpose of calculating the Fee for Profit, the total actual cost of construction of the Project shall be as defined in Article 7 of the Contract. If the total actual cost of construction falls between the dollar levels designated in the Fee Curve, the Fee for Profit shall be interpolated on a straight line basis between the corresponding two dollar levels. The Fee for Profit shall be paid to the CM during the Construction Phase, in accordance with the completion milestones set forth in Article 7.

Instructions: In the space provided below, for each increment in actual construction cost, the proposer shall indicate a Fee for Profit, calculated as a percent of the total actual cost of construction.

Total Actual Construction Cost	Fee for Profit as a Percent of Actual Construction Cost	Amount of Fee for Profit
$ 50,000,000 or less	_____%	$_____
$ 55,000,000	_____%	$_____
$ 60,000,000	_____%	$_____
$ 65,000,000	_____%	$_____
$ 70,000,000	_____%	$_____
$ 75,000,000	_____%	$_____
$ 80,000,000	_____%	$_____
$ 85,000,000	_____%	$_____
$ 90,000,000	_____%	$_____
$ 95,000,000	_____%	$_____
$100,000,000	_____%	$_____
$105,000,000	_____%	$_____
$110,000,000	_____%	$_____
$115,000,000	_____%	$_____
$120,000,000	_____%	$_____
$125,000,000	_____%	$_____
$130,000,000	_____%	$_____
$135,000,000	_____%	$_____
$140,000,000	_____%	$_____
$145,000,000	_____%	$_____
$150,000,000	_____%	$_____
$155,000,000	_____%	$_____
$160,000,000	_____%	$_____
$165,000,000	_____%	$_____
$170,000,000	_____%	$_____
$175,000,000	_____%	$_____
$180,000,000	_____%	$_____
$185,000,000	_____%	$_____
$190,000,000	_____%	$_____
$195,000,000	_____%	$_____
$200,000,000	_____%	$_____
$225,000,000	_____%	$_____
$250,000,000 or more	_____%	$_____

Do not leave blanks - do not retype this sheet.

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

_____ _____
Firm EIN #

ATTACHMENT 5

FEE PROPOSAL: FORM FOR STAFFING EXPENSES

FMS ID: S216-404A
Project: CM Services for the New Gansevoort Marine Transfer Station, Borough of Manhattan

To be submitted ONLY upon request: The proposer shall submit Attachments 4 and 5 as its Fee Proposal. Attachments 4 and 5 are to be submitted together in a clearly marked, sealed envelope.

Total Estimated Staffing Expenses: The proposer shall calculate the total estimated staffing expenses for the Project based on direct salary rate information for specified CM personnel. In completing this Attachment 5, the proposer shall provide information IDENTICAL to that provided in Attachment 4 regarding the specific CM personnel to be assigned to the Project, as well as the total estimated hours per title. The total estimated hours per title shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).

Direct Salary Rate: An employee's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) all payments for services performed during other than regular business hours; (2) all employer payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) all employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) all costs for any and all other fringe and/or supplemental benefits.

To compute an employee's actual annual direct salary on an hourly basis, the employee's actual annual direct salary, as defined above, shall be divided by 2080.

Phase 1: **Pre-Construction** The proposer may add additional lines if necessary.

CM Personnel Name and Title	Direct Salary Rate (per hour)		Total Estimated Hours Per Title		Total Estimated Amount per Title
(1) Project Manager:					
Name: _____	_____	x	_____	=	_____
(2) Assistant Project Manager:					
Name: _____	_____	x	_____	=	_____
(3) BIM Project Manager:					
Name: _____	_____	x	_____	=	_____
(4) Title: _____					
Name: _____	_____	x	_____	=	_____
(5) Title: _____					
Name: _____	_____	x	_____	=	_____
(6) Title: _____					
Name: _____	_____	x	_____	=	_____

ATTACHMENT 5 (Continued)

Total Estimated Amount for All Titles for Pre-Construction Phase: _____
(Addition of Total Estimated Amount per Title for all titles)

Total with Multiplier of **1.75**: _____

Total Estimated Staffing Expenses for Pre-Construction Phase: _____

Phase 2: **Construction** The proposer may add additional lines if necessary.

CM Personnel Title and Name	Direct Salary Rate (per hour)		Total Estimated Hours Per Title		Total Estimated Amount per Title
(1) Project Manager:					
Name: _____	_____	x	_____	=	_____
(2) Assistant Project Manager:					
Name: _____	_____	x	_____	=	_____
(3) BIM Project Manager:					
Name: _____	_____	x	_____	=	_____
(4) Title: _____					
Name: _____	_____	x	_____	=	_____
(5) Title: _____					
Name: _____	_____	x	_____	=	_____
(6) Title: _____					
Name: _____	_____	x	_____	=	_____
(7) Title: _____					
Name: _____	_____	x	_____	=	_____

Total Estimated Amount for All Titles for Construction Phase: _____
(Addition of Total Estimated Amount per Title for all titles)

Total with Multiplier of **1.75**: _____

Total Estimated Staffing Expenses for Construction Phase: _____

Phase 3: **Post Construction** The proposer may add additional lines if necessary.

CM Personnel Title and Name	Direct Salary Rate (per hour)		Total Estimated Hours Per Title		Total Estimated Amount per Title
(1) Project Manager:					
Name:_____	_____	x	_____	=	_____

ATTACHMENT 5 (Continued)

(2) Assistant Project Manager:

Name: _____ _____ x _____ = _____

(3) BIM Project Manager:

Name: _____ _____ x _____ = _____

(4) Title: _____

Name: _____ _____ x _____ = _____

(5) Title: _____

Name: _____ _____ x _____ = _____

Total Estimated Amount for All Titles for Post Construction Phase: _____
(Addition of Total Estimated Amount per Title for all titles)

Total with Multiplier of **1.75**: _____

Total Estimated Staffing Expenses for Post Construction Phase: _____

****

Grand Total: Total Estimated Staffing Expenses for the Project: _____
(Addition of Total Estimated Staffing Expenses for
Pre-Construction, Construction and Post Construction Phases)

The proposer must sign the Total Estimated Staffing Expenses for the Project in the space provided below.

_____
Name of Proposer

By:_____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Printed Name Title

_____ _____
Firm EIN #

ATTACHMENT 6

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS: S216-404A, CM Services for the New Gansevoort Marine Transfer Station, Borough of Manhattan	PIN: 8502015TR0005P

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 7

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.

(3) **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: _____

(4) **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 8

SCHEDULE B: M/WBE UTILIZATION PLAN

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

Schedule B: M/WBE Utilization Plan: Schedule B: M/WBE Utilization Plan for this Contract is set forth in this RFP on the pages following the section entitled "Notice to All Prospective Contractors". The Schedule B: M/WBE Utilization Plan (Part I) indicates whether Participation Goals have been established for this Contract. If Participation Goals have been established for this Contract, the proposer must submit a Schedule B: M/WBE Utilization Plan (Part II) with its proposal.

Waiver: The proposer may seek a full or partial pre-award waiver of the Participation Goals in accordance with the "Notice to All Prospective Contractors" (See Part A, Section 10). The proposer's request for a waiver must be submitted at least seven (7) calendar days prior to the proposal submission date. Waiver requests submitted after the deadline will not be considered. The form for requesting a waiver of the Participation Goals is set forth in the Schedule B: M/WBE Utilization Plan (Part III).

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

NOTICE TO ALL PROSPECTIVE CONTRACTORS

PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes the program for participation in City procurement ("M/WBE Program") by minority- owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

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

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

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

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

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

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

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

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

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

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

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

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

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

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award

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

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

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

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

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

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

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

weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

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

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

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

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

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

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

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE** Utilization Plan and has committed to

subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

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

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

PART B: MISCELLANEOUS

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

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

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

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

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

ARTICLE II. ENFORCEMENT

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

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

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

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

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

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

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

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

Tax ID #: _____

APT E-PIN #: 85015P0012001/8502015TR0005P

SCHEDULE B – M/WBE Utilization Plan
Part I: M/WBE Participation Goals

Part I to be completed by contracting agency

Contract Overview

APT E- Pin #	85015P0012001	**FMS Project ID#:**	S216-404A
Project Title/ Agency PIN #	Construction Management services for the new Gansevoort marine Transfer Station, Borough of Manhattan/ Pin: 8502015TR0005P		
Bid/Proposal Response Date	07/21/2015		
Contracting Agency	Department of Design and Construction		
Agency Address	30-30 Thomson Ave. **City** Long Island City **State** NY **Zip Code** 11101		
Contact Person	Jin Zhang	**Title**	Deputy Director
Telephone #	718-391-1399	**Email:**	zhangji@ddc.nyc.gov

Project Description *(attach additional pages if necessary)*

Project ID: S216-404A

Construction Management Services for the New Gansevoort Marine Transfer Station, Borough of Manhattan

M/WBE Participation Goals for Services

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

Prime Contract Industry: Professional

Group	Percentage	
Unspecified*	**15%**	
or		
Black American	**UNSPECIFIED**	
Hispanic American	**UNSPECIFIED**	
Asian American	**NO GOAL**	
Women	**UNSPECIFIED**	
Total Participation Goals	**15%**	**Line 1**

**Note: For this procurement, individual ethnicity and gender goals are not specified. The Total Participation Goal for professional service contracts may be met by using either Black-American, Hispanic-American, or Women certified firms or any combination of such firms.*

Tax ID # : _____ PIN # : _____

SCHEDULE B - Part II: M/WBE Participation Plan

Part II to be completed by the bidder/proposer.

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

Section I: Prime Contractor Contact Information

Tax ID # _____ **FMS Vendor ID #** _____

Business Name _____ **Contact Person** _____

Address _____

Telephone # _____ **Email** _____

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

PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS

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

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

☐ **For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals.**	**Total Bid/Proposal Value**		**Adjusted Participation Goal (From Partial Waiver)**		**Calculated M/WBE Participation Amount**
Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	**$**	**X**		**=**	**$ Line 3**

Tax ID # : _____ PIN # : _____

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

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

☐ MBE ☐ WBE

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

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

Section IV: General Contract Information

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

✓ Scopes of Subcontract Work

Enter brief description of the type(s) and dollar value of subcontracts for all/any services you plan on subcontracting if awarded this contract. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.

1. _____
2. _____
3. _____
4. _____
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6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____

Tax ID # : _____ PIN # : _____

Section V: Vendor Certification and Required Affirmations

I hereby:

1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;

2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;

3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;

4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and

5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature _____ **Date** _____

Print Name _____ **Title** _____

Tax ID # : _____ PIN # : _____

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

Contract Overview

Tax ID # _____ **FMS Vendor ID #** _____

Business Name _____

Contact Name _____ **Telephone #** _____ **Email** _____

Type of Procurement ☐ Competitive Sealed Bids ☐ Other **Bid/Response Due Date** _____

APT E-PIN # (for this procurement): _____ Contracting Agency: _____

M/WBE Participation Goals *as described in bid/solicitation documents*

_____ % Agency M/WBE Participation Goal

Proposed M/WBE Participation Goal *as anticipated by vendor seeking waiver*

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture.

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

☐ **Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.**

☐ **Vendor subcontracts *some* of this type of work but at a *lower* % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)**

☐ **Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.**

References

List 3 most recent contracts performed for NYC agencies (if any). Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

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

Tax ID # : _____ PIN # : _____

Item of Work Subcontracted and Value of subcontract	Item of Work Subcontracted and Value of subcontract	Item of Work Subcontracted and Value of subcontract

List 3 most recent contracts performed for other entities. Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

(Complete ONLY if vendor has performed fewer than 3 New York City contracts.)

TYPE OF Contract _____ **ENTITY** _____ **DATE COMPLETED** _____

Manager at entity that hired vendor (Name/Phone No./Email) _____

Total Contract Amount $ _____ **Total Amount Subcontracted** $ _____

Type of Work Subcontracted _____

TYPE OF Contract _____ **AGENCY/ENTITY** _____ **DATE COMPLETED** _____

Manager at agency/entity that hired vendor (Name/Phone No./Email) _____

Total Contract Amount $ _____ **Total Amount Subcontracted** $ _____

Item of Work Subcontracted and Value of subcontract	Item of Work Subcontracted and Value of subcontract	Item of Work Subcontracted and Value of subcontract

TYPE OF Contract _____ **AGENCY/ENTITY** _____ **DATE COMPLETED** _____

Manager at entity that hired vendor (Name/Phone No./Email) _____

Total Contract Amount $ _____ **Total Amount Subcontracted** $ _____

Item of Work Subcontracted and Value of subcontract	Item of Work Subcontracted and Value of subcontract	Item of Work Subcontracted and Value of subcontract

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

Signature: _____ **Date:** _____

Print Name: _____ **Title:** _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____ **Date:** _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature: _____ **Date:** _____

Waiver Determination

Full Waiver Approved: ☐

Waiver Denied: ☐

Partial Waiver Approved: ☐

Revised Participation Goal:_____%

ATTACHMENT 9

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: DDC **Transaction ID:** 8502015TR0005P/85015P0012001

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

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

3. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

(a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

(b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

(c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

(iii) 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
(iv) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

(d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of $100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of $100,000.

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

ATTACHMENT 10 (continued)

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

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

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

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

ATTACHMENT 11:

SUBCONTRACTOR REPORTING

NOTICE TO BIDDERS

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

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

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

Contractor hereby agrees to these provisions.

ATTACHMENT 12

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:	85015P0012	**Agency:**	DDC
Your Name:	John Ziedonis		
Phone:	718-391-1122	**Email:**	ziedonijo@ddc.nyc.gov

Please specifically identify the service(s) being procured.

S216-404A, Posted on City record on Monday December 29, 2014,Construction Management Services for the New Gansevoort Martine Transfer Station, Borough of manhattan

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

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

Part 1: Certification of No Displacement

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

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

Do any civil service and/or job titles within this Agency currently perform the services sought by the proposed contract and/or services of a substantially similar nature or purpose?
Yes __ 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 expand existing capacity. The services sought by the proposed contact will secure architectural and engineering design and construction related services. The role of the DDC staff in the Architecture and Engineering 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 the agency budget for personnel services, in addition to fluctuations in our capital design and construction portfolio has prevented the agency from hiring qualified personnel to meet these 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.

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

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

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

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).**

THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF PUBLIC BUILDINGS

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

CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES

PROJECT:	**New Gansevoort Marine Transfer Station**
BOROUGH:	**Manhattan**
FMS ID:	**S216-404A**
REGISTRATION NUMBER:	_____
E-PIN:	**85015P0012001**
PIN NUMBER:	**8502015TR0005P**
CM:	_____ _____ _____

Standard Project Specific Contract
Construction Management Services
July 2013

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

WITNESSETH:

WHEREAS, the City desires to have construction management services performed for the construction project described in Exhibit A (the "Project"), and

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

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

ARTICLE 1 - Definitions

1.1 "Agreement" shall mean the various documents that constitute the contract between the CM and the City, including (1) the Request for Proposals for the Contract ("RFP"), (2) the CM's Proposal for the Contract, and (3) the Exhibits set forth below. In the event of any conflict between the RFP and the CM's Proposal, the RFP shall prevail.

Exhibit A	Contract Information
Exhibit B	Staffing Plan
Exhibit C	Progress Schedule
Exhibit D	Fee Curve for Fee for Profit
Exhibit E	DDC Safety Requirements
Exhibit F	Schedule B: M/WBE Utilization Plan
Exhibit G	DDC BIM Guidelines dated July 2012
Exhibit H	Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services

1.2 "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.

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

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

1.5 "Building Information Modeling" or "BIM" shall mean a computerized process that involves the generation and management of digital representations of physical and functional characteristics of a facility. The resulting Building Information Models ("BIMs") serve as shared knowledge resources to support decision-making about a facility throughout the entire design and construction process. BIM provides a process for the virtual construction of a facility prior to its actual physical construction, thereby reducing uncertainty, improving safety, working out problems, and simulating and analyzing potential impacts. BIM embodies and is capable of generating the following documents: Design Documents, Shop Drawings, and Record Drawings (also known as "As Built Drawings").

1.6 "Building Information Model(s)" or "BIM(s)" shall mean the digital model(s) generated through the BIM process.

1.7 "City" shall mean the City of New York.

1.8 "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

1.9 “Commissioner” or “Agency Head” shall mean the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

1.10 "Commissioner's Representative" shall mean the Project Manager designated by the Commissioner or any successor or alternate representative designated by the Commissioner.

1.11 "Comptroller" shall mean the Comptroller of the City of New York, his/her successors, or duly authorized representatives.

1.12 “Construction Documents” are the final stage of “Design Documents”, as defined herein. “Construction Documents” shall mean the final plans, drawings and specifications for the construction work and all modifications thereto prepared by Consultant(s) engaged by the Department and approved in writing by the Commissioner.

1.13 “Construction Manager” or “CM” shall mean the entity entering into this Agreement with the Department.

1.14 “Consultant” or “Consultant(s)” shall mean any person, firm, partnership or corporation engaged by the Department to furnish architectural, engineering, design, or any other consulting services for the Project.

1.15 "Contract" or "Contract Documents" shall mean the Agreement referred to in Paragraph 1.1 of this Article.

1.16 “Contractor” or “Construction Manager” or “CM” shall mean the entity entering into this Agreement with the Department.

1.17 “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

1.18 “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.

1.19 “Design Documents” shall mean all plans, drawings and specifications for the construction work and all modifications thereto prepared by Consultant(s) engaged by the Department and approved in writing by the Commissioner. As an integral part of the design process, the Consultant is required to utilize “Building Information Modeling” (“BIM”), thereby ensuring that BIM embodies and is capable of generating the Design Documents.

1.20 “Drawings” shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.

1.21 "Final Acceptance" shall mean the final written acceptance of all required construction work for the Project, as determined by the Commissioner.

1.22 "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.

1.23 “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

1.24 "Mayor" shall mean the Mayor of the City of New York, his/her successors or duly authorized representatives.

1.25 "Modification" shall mean any written amendment of this Agreement signed by both the DDC and the CM.

1.26. “Notice to Proceed” shall mean the written notice issued by the Commissioner specifying the time for commencement of the work.

1.27 “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is

to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

1.28 “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

1.29 “Project” shall mean the Project described in Exhibit A.

1.30 "Safety Standards" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through Final Acceptance of the construction work, pertaining to worker safety and accident prevention applicable to the Project and/or the construction work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

1.31 "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 construction work.

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

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

1.34 “State” shall mean the State of New York.

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

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

ARTICLE 2 - General Provisions

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

ARTICLE 3 - Agreement to Serve

3.1 The City hereby retains the CM to perform the services hereinafter described, on the terms and conditions specified herein, and the CM agrees to so serve. The CM agrees to provide, to the satisfaction of the Commissioner, all services necessary and required for the inspection, management, coordination and administration of the Project, so that the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the construction contract and to good construction practice. The services to be provided by the CM shall include without limitation the services set forth in Article 6. The CM hereby certifies that it has the necessary experience, expertise, manpower and resources to fulfill its obligations under this Contract competently and efficiently. The CM agrees to use its best efforts to complete the Project as soon as possible and at the lowest possible cost to the City.

ARTICLE 4 - Time Provisions

4.1 Term of the Contract: The Contract shall commence on the date set forth in the Notice to Proceed and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services hereunder, including post construction services. The anticipated time frame for completion of all required services is set forth in Exhibit A.

4.2 Project Schedule: The Project Schedule is set forth in Exhibit C. Such Project Schedule shall be strictly adhered to by the CM. When appropriate and directed by the Commissioner, the Project Schedule shall be revised, subject to written approval by the Commissioner. The revised Project Schedule shall be strictly adhered to by the CM.

4.3 Extension of Contract: Upon written application by the CM, the Agency Chief Contracting Officer (“ACCO”) 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 ACCO shall be final and binding as to the allowance of an extension and the number of days allowed.

4.4 Time of Essence: In performing services hereunder, the CM shall place emphasis on considerations which will aid in expediting the construction of the Project consistent with the construction standards and procedures of the City. The CM agrees to use all resources at its command so that the Project is completed on or before the established Project completion date by the construction contractor(s). To accomplish such timely completion, the CM shall give constant attention to the adequacy of the contractor's planning, personnel, equipment and the availability of materials and supplies. The CM acknowledges that time will be of the essence in bringing the Project to completion and agrees to use its best efforts to prevent delays. If a situation cannot be resolved, the CM shall bring it to the immediate attention of the Commissioner.

4.5 Responsibility for Delay: In the event the Project is not completed within the timeframe set forth in the original Project Schedule (i.e., the Project Schedule submitted by the CM as part of its Proposal for the Contract), the Commissioner shall prepare a report analyzing the causes of the delay and determining responsibility for the same.

4.5.1 If the report indicates that the CM, as a result of its actions or inactions, is responsible for the delay, or any portion thereof, the Commissioner shall deduct from any amount due and owing to the CM under this Contract, the total amount of staffing expenses paid to the CM for the period of the delay, or any portion thereof, for which the Commissioner determines the CM is responsible. For the purpose of this deduction, staffing expenses shall mean the Direct Salary Rates for all Assigned Employees times the Multiplier set forth in Article 7.

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

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

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

ARTICLE 5 - The CM's Personnel

5.1 General: The CM agrees, throughout the term of the Contract, to provide personnel for the performance of all required services for the Project, as directed by the Commissioner. The CM specifically agrees that its employees, agents and consultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

5.2 Staffing Plan: The CM shall provide personnel in accordance with the final approved Staffing Plan. Prior to finalization, the Staffing Plan is subject to review and approval by the Commissioner in accordance with the process described below. The Staffing Plan submitted by the CM as part of its Proposal for the Contract is set forth in Exhibit B.

5.2.1 Contents of Staffing Plan: The CM's Staffing Plan shall include the items set forth below.

(a) Project Executive, identified by the CM in its Proposal for the Contract.
(b) Key CM Personnel: Required titles of Key Personnel and specific individual for each title identified by the CM in its Proposal for the Contract.
(c) Other CM Personnel: Required titles and specific individual for each title
(d) Direct Salary Rate per hour for each specified individual (except Project Executive), determined by the Commissioner in accordance with Article 7.
(e) Total estimated hours per title per Phase (Pre-Construction, Construction and Post Construction)
(f) Total estimated amount per title per Phase (Pre-Construction, Construction, and Post Construction)
(g) Total estimated amount for all required titles

5.2.2 Limitations on Payment: The specific individuals identified in the Staffing Plan, except for any Project Executive(s), shall be considered assigned personnel for the purpose of the CM's entitlement to payment for services performed by such individuals in accordance with Article 7. As specified therein, the CM shall not be entitled to payment for staffing expenses for: (1) any Project Executive(s), and (2) any individual not included in the approved Staffing Plan.

5.2.3 Project Executive: The Project Executive, identified in Exhibit B, shall serve as the CM's principal representative with respect to its obligations hereunder. Such Project Executive shall be responsible for coordinating the activities of personnel performing services and for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project. The CM shall not be entitled to payment for services provided by any Project Executive(s). Compensation for services provided by any Project Executive(s) is deemed included in the Multiplier.

5.2.4 Key Construction Management (CM) Personnel: The Key CM Personnel, identified in Exhibit B, shall provide all services necessary and required for the inspection, supervision, management, coordination and administration of the Project, so the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the Construction Documents, as well as to good construction practice.

5.2.5 Agreement to Assign: The CM specifically agrees to assign to the Project for its entire duration, the specific individuals identified in Exhibit B ("Staffing Plan") as the Project Executive and the Key CM Personnel. These individuals were identified by the CM in its Proposal for the Contract. Failure by the CM to provide any of the individuals identified in the Staffing Plan as Project Executive and/or Key CM Personnel shall be considered a material breach of the Contract and grounds for termination for cause. Replacement of such Project Executive and/or Key CM Personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer employed by the CM, or (2) if the City does not direct the CM to commence work on the Project within nine (9) months of the date on which the CM submitted its Proposal for the Contract. Replacement of such Project Executive and/or Key CM Personnel must comply with the conditions set forth below.

5.2.6 Other Construction Management (CM) Personnel: In addition to the Key CM Personnel, other CM personnel were identified by the CM in its Proposal for the Contract. Such other CM personnel shall provide services that are supportive or ancillary to the services provided by the Key CM Personnel. Replacement of such CM personnel must comply with the conditions set forth below.

5.2.7 Proposed Staffing Plan: Within five (5) business days of a written request from the Commissioner, the CM shall submit a proposed Staffing Plan for the Project. Such Staffing Plan shall include the items listed above. With respect to each individual, the CM shall provide: (1) the individual's resume, as well as any other information detailing his/her technical qualifications and expertise, and (2) direct salary information, including the individual's current actual annual direct salary, as defined in Article 7, and direct salary history for the past three years.

5.2.8 Review and Approval of Staffing Plan: The Commissioner shall review the CM'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 the following: (1) whether the Staffing Plan includes the individuals identified by the CM as Key Personnel its Proposal for the Contract, (2) whether each specific individual is qualified for the applicable title, and (3) the direct salary rate per hour to be paid for each specific individual, computed in accordance with Article 7. The CM shall revise the Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

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

(a) Replacement Personnel: No substitutions for assigned personnel 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 the Project Executive and/or the Key CM Personnel will only be permitted under the circumstances set forth in Article 5.2.5.

(b) Changes by the Commissioner: The Commissioner reserves the right to direct changes to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Project and increasing or decreasing the personnel assigned to the Project, based upon the scope of the required Work. The CM shall increase or decrease the personnel assigned to the Project, as directed by the Commissioner.

(c) Removal of Personnel: At the Commissioner's request at any time, the CM shall remove any personnel and substitute another employee of the CM reasonably satisfactory to the Commissioner. The Commissioner

may request such substitution at any time, in his/her sole discretion.

(d) Revisions Due to Delay: In the event completion of the Project is delayed for any reason, including without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the CM, the Commissioner shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The CM shall be paid for the cost of the staffing it is directed by the Commissioner to maintain. Upon termination of the delay, the CM shall restore the level of staffing as directed by the Commissioner.

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

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

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

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

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

ARTICLE 6 – Construction Management Services

6.1 General: The CM shall provide, to the satisfaction of the Commissioner, the services set forth in this Article 6.

6.1.1 Construction Management (CM) Services: The CM shall provide all services necessary and required for the inspection, management, coordination and administration of the Project, so that the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the construction contract and to good construction practice. The construction management services to be provided by the CM shall include without limitation the services set forth in this Article 6. The CM shall cooperate in all respects with representatives of the Commissioner concerning all aspects of the Project.

(a) The CM shall serve as the representative of the Commissioner at the site and shall, subject to review by the Commissioner, be responsible for the services delineated in the article of the Standard Construction Contract entitled "The Resident Engineer". DDC shall notify the construction contractor(s) in writing that the CM has been designated by the Commissioner to serve as his/her representative in connection with the Project.

(b) The CM shall ascertain the standard practices of the City prior to the performance of services required by this Contract. All CM services performed hereunder shall be in accordance with these standard practices.

(c) The Commissioner or his duly authorized representative(s) shall have the right at all times to inspect the work of the CM and contractors.

(d) The CM's services shall include the management, supervision and coordination of any Reimbursable Services required for the Project.

6.1.2 Building Information Modeling (BIM) Services: Throughout the project, the CM shall provide oversight to ensure that BIM services and/or uses are properly implemented by all construction contractors, as described in the DDC BIM Guidelines (Exhibit G). BIM services and/or uses include, without limitation, the following: clash detection, cost estimation, scope delineation, construction system design, phase planning, digital fabrication, record modeling, and asset management. The CM shall prepare a Project BIM Execution Plan, and shall ensure that all construction contractors comply with the Submission Requirements outlined such plan, as well as in the DDC BIM Guidelines.

6.1.3 Not Used.

6.1.4 Data Management: The CM shall provide and maintain throughout the Project a digital data management system and collaboration platform for communication and sharing of all project files, documents and BIM's. The data management system, including the categories into which the data is organized, is subject to prior written approval by the Commissioner. Such data management and collaboration platform shall have varying levels of access for all project participants, including construction contractor(s), sub-contractors, design consultant(s), end-users and DDC project management staff. Such data management and collaboration platform shall be organized to manage all project related data in a manner consistent with industry practice, including without limitation, organization into the following categories: Contract Documents, Sketches, Requests for Information, BIM's, and Shop Drawings.

6.1.5 Reimbursable Services: The CM shall provide Reimbursable Services as directed in writing by the Commissioner. Reimbursable Services are described in Article 6.5.

6.16 Non-Reimbursable Services: Throughout the Contract, the CM shall be responsible for providing the non-reimbursable items and/or services set forth below. All costs for providing such items and/or services are deemed included in the Multiplier.

(a) Overnight Delivery: Upon request, the CM shall provide overnight delivery of the following Project documents: (1) design documents; (2) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (3) change orders; (4) documents with respect to payment, and (5) any other critical communications and/or documents.

(b) Transportation: The CM shall provide transportation for all personnel performing services, including without limitation: (1) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.5), (2) expenses for time spent by personnel commuting or traveling, and (3) expenses for parking and tolls. CMs and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.

(c) Equipment: The CM shall provide the items set forth below for all personnel performing services, including any Project Executive(s).

(1) All computer hardware and software necessary for the CM to perform the required services, including CADD
(2) All computer hardware and software necessary for the CM to perform the required BIM services
(3) All necessary office supplies and/or tools
(4) Communications equipment and service, including without limitation cellular telephones. The telephone numbers of all personnel shall be submitted to the Commissioner.
(5) Hard hats, safety vests, and all other necessary and required Personal Protective Equipment (P.P.E.).

(d) In the event the CM is directed in advance in writing by the Commissioner to provide services which require long distance travel, the CM shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel is defined in Article 6.5.

6.2 Services During Pre-Construction Phase: The services to be provided by the CM during the Pre-Construction Phase shall include without limitation the services set forth below, as directed in writing by the Commissioner.

6.2.1 Review and evaluate the overall budget for the Project, taking into account all funds available or to be

made available, and identify amounts, including contingencies, available for each major activity, including design, construction, and construction management. The budget for the Project must take into consideration any anticipated increases in the cost of labor and/or material. The CM shall provide monthly reports to the Commissioner updating the budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete.

6.2.2 Schedule and conduct meetings with representatives of the Commissioner, the Consultant(s), the sponsoring agency, regulatory agencies and any other entities or individuals involved with the Project. The CM shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees.

6.2.3 Prepare correspondence or other communications to the Consultant(s) as required in order to advance the Project.

6.2.4 Take appropriate action to ensure that all required filings with regulatory agencies with respect to the design have been made.

6.2.5 Reports: Provide reports with respect to design documents at various stages of the design process, as directed by the Commissioner. Unless otherwise specified, such reports shall include the items set forth below.

(a) Review of Design Documents: The CM shall review and provide written comments with respect to design documents for the Project prepared by the Consultant. The CM's review and comments shall address the issues set forth below.

(1) Constructability;
(2) Coordination and elimination of conflicts and/or overlaps (utilizing BIM clash detection);
(3) Economy and efficiency;
(4) Construction methods and materials;
(5) Availability of materials and labor;
(6) Minimalization of impact on agency operations;
(7) Division of the Work for the purpose of bidding, taking into account such factors as the type or scope of Work to be performed (utilizing BIM scope delineation), time of performance, availability of labor, community relations and other pertinent data relating to the various trades involved;
(8) Time of performance;
(9) Compliance with the required scope of Work;
(10) Compliance with criteria set forth in the DDC Design Consultant Guide and the DDC BIM Guidelines;
(11) Compliance with DDC comments;
(12) Avoidance of possible conflicts and overlapping jurisdiction among the Subcontractors performing Work for the Project, including proposed solutions for the elimination of such conflicts or overlaps, at least one of which proposed solutions shall utilize BIM scope delineation, and
(13) Avoidance of inconsistencies, problems, delays and change orders during the construction process.

In addition to and without limiting the foregoing, the CM shall, as part of its review of the design documents, (1) identify any issues that may generate problems during construction; (2) make recommendations for any changes in the Work it considers necessary or desirable, and (3) make any observations or raise any concerns it may have concerning the design or the structural integrity of the same. Notwithstanding anything to the contrary contained in this Article 6, the CM shall have no obligation to identify and/or correct professional errors or omissions in the design documents.

(b) Detailed Cost Estimate: The CM shall provide a detailed cost estimate for the Project, based upon design documents prepared by the Consultant. In preparing its estimate, the CM shall use quantities derived from BIM. The CM shall reconcile the BIM derived quantities in its estimate with the quantities in the estimate prepared by the Consultant.

6.2.6 Review and evaluate the qualifications and prior experience of construction contractors seeking to be included on the list of Pre-Qualified contractors for the Project, if applicable.

6.2.7 Review Bid and Contract Documents for the Project and evaluate the same for completeness and

compliance with DDC requirements. The CM's review shall ensure that the Bid and Contract Documents include the following: (a) all construction Work, (b) DDC General Conditions, and (c) quantities derived from BIM. If required for the Project, such General Conditions shall include provisions for temporary facilities necessary to enable the contractors to perform their work. If directed by DDC, the CM shall assist in the preparation of such Bid and Contract Documents for the Project; provided, however, the CM shall have no responsibility for the preparation of design documents or other documents for which Consultant has responsibility.

6.2.8 During the bidding process for the construction contracts, make recommendations to the Commissioner to coordinate the work of the Consultant(s) to assure that any required addenda are promptly issued.

6.2.9 Following the receipt of bids, make recommendations to the Commissioner as to the capabilities and qualifications of bidders for the Project, as well as any subcontractors and/or suppliers of equipment and materials proposed by them.

6.3 Services During Construction Phase: The services to be provided by the CM during the Construction Phase shall include without limitation the services set forth below, as directed in writing by the Commissioner.

6.3.1 Prior to the commencement of the Work, obtain or verify that the construction contractor(s) have obtained all necessary permits, certificates, licenses or approvals, required for the performance of the Work by the New York City Building Code, the Electrical Code or any other applicable law, rule or regulation of any government entity. Assure that no Work proceeds in the absence of such necessary permits, certificates, licenses or approvals.

6.3.2 Undertake the following responsibilities with respect to submittals and approvals:

(a) Implement procedures to be followed by construction contractors for the expeditious processing of submittals, including without limitation shop drawings, material samples and catalogue cuts. Such procedures shall be in accordance with DDC Guidelines and the General Conditions. Such procedures shall require the construction contractors to submit shop drawings in hard copy, as well as in digital form (i.e., in the form of BIMs).

(b) Make recommendations to the Commissioner regarding the approval of proposed subcontractors and material vendors.

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

(a) Provide technical inspection, supervision and coordination of the Work on the Project until final completion of the Work and Final Acceptance thereof by the Commissioner, verifying that the materials furnished and Work performed are in accordance with all requirements of the Construction Documents, and that Work on the Project is progressing on schedule.

(b) Provide offsite plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Commissioner, to insure conformance with the material specifications of the Construction Documents.

(c) Take appropriate action to prevent the installation of Work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the Construction Documents, and inform Commissioner promptly of such action and the reasons for and outcome of such action.

(d) Supervise the performance of all inspections, quality control tests, or any other tests required by law, rule or regulation or by the Construction Documents, to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include without limitation, semi-controlled or off-site inspections and controlled inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel or any other material or equipment. If directed by the Commissioner in writing as a reimbursable service, the CM shall retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory services will be provided to the CM pursuant to the Allowance for Reimbursable Services.

(e) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative on a periodic basis and prior to Substantial Completion, occupancy by the City, or Final Acceptance, as set forth below in this Article 6. The CM shall furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.

(f) Inspect the Project and provide a report prior to the expiration of the guarantee period, as set forth below in this Article 6.

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

(a) Review and coordinate proposed Progress Schedule(s), and any updates thereto, submitted by the construction contractor(s) and direct revisions to the Progress Schedule(s) as required by the Commissioner.
(b) Make recommendations to the Commissioner regarding approval or disapproval of the Progress Schedule(s).
(c) If necessary, prepare a combined Progress Schedule for the Project in the form of a bar chart or equivalent. Utilize 4D scheduling and link any combined project schedule to the BIM.
(d) Monitor compliance with the Progress Schedule(s) by the contractor(s).
(e) Review the adequacy of the personnel, including BIM coordinators, and equipment of the contractor(s) and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule(s).
(f) Notify the Commissioner of any anticipated delays in fabrication, erection or construction.
(g) If performance of the work by the contractor(s)falls behind the Progress Schedule(s), advise the Commissioner of the same and make recommendations as to what methods should be adopted to make up for lost time.
(h) Render assistance when required to minimize delays to the Project caused by labor disputes during construction.
(i) If directed in writing by the Commissioner, implement Lean Construction Strategies, as described in Article 6.1.3.

6.3.5 Review and evaluate the means and methods of construction proposed by the construction contractor(s) and advise the Commissioner in the event the CM reasonably believes that such proposed means and methods of construction will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the Construction Documents.

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

(a) Perform all CM responsibilities set forth in the DDC Safety Requirements (Exhibit C).
(b) Monitor contractor compliance with (1) Safety Program, (2) Site Safety Plan, (3) DDC Safety Requirements, and (4) all applicable regulations that pertain to construction safety. The CM shall perform a daily inspection of the Project site at the beginning and end of each day and shall issue directives to the contractor(s) to correct any deficiencies which may be identified.
(c) Promptly notify the Commissioner and the contractor(s) if the CM observes any hazardous conditions at the site or non-compliance by the contractor(s) with its Safety Program, Site Safety Plan, DDC Safety Requirements, any applicable safety regulations or subcontract requirements.
(d) In the event of an emergency, provide such labor, materials, equipment and supervision necessary to cure such emergency condition. The CM shall immediately notify the Commissioner of any such emergency condition.
(e) Monitor the activities of the contractor(s) and conditions at the site for conformance with the Construction Documents to ensure that a clean and safe environment is maintained at the site

6.3.7 Undertake the following responsibilities with respect to Project record keeping:

(a) Keep accurate and detailed written records of the progress of the Project during all stages of planning and construction.
(b) Maintain 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 construction contractor(s), the number of hours worked, material shortages, labor difficulties, weather conditions, visits by officials, decisions reached, specific problems encountered, general and specific observations, and all other pertinent data relative to the performance of the 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, construction contract documents, including all addenda, change orders, supplemental drawings and all other project-related documents. The CM shall provide any records, documents or information concerning the Project to the Commissioner as directed.
(d) 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.

(e) Ensure that the construction contractors comply with the General Conditions by: (1) producing Record Drawings (also known as "As Built Drawings") in a timely fashion, and (2) submitting such Record Drawings in hard copy, as well as in digital form (i.e., in the form of BIMs). The CM shall review the Record Drawings and verify that such Drawings are accurate and complete.

(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.

6.3.8 Monitor compliance by the construction contractor(s) with the following requirements applicable to the work: (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA), (3) requirements for the participation of LBEs, and (4) requirements for the participation of M/WBE's.

6.3.9 Prepare correspondence or other communications to the construction contractor(s) as required in order to advance the Project, including without limitation letters for the signature of the Commissioner or the Commissioner's Representative.

6.3.10 Undertake the following responsibilities with respect to construction contractor payments:

(a) Review all requisitions for payments submitted by the construction contractor(s), including without limitation partial payments, payments for extra work, substantial completion and final payments.

(b) Make recommendations to the Commissioner for approval or disapproval of all contractor requisitions for payment in accordance with the City's procedures.

(c) Verify all estimates for payments of work performed, computations, as well as field measurements and sketches necessary for payment purposes.

(d) With respect to each requisition for payments submitted by the construction contractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.

6.3.11 Review all applications for extensions of time submitted by the construction contractor(s) and make recommendations to the Commissioner for approval or disapproval thereof in accordance with the City's procedures.

6.3.12 Review, evaluate and respond to requests from construction contractor(s) for explanatory information and/or interpretation of the meaning and intent of the Construction Documents. The CM shall confer with the Consultant, ascertain the Consultant's interpretation and prepare a response to the contractor setting forth the Consultant's interpretation. In the event the contractor disagrees with such interpretation, the CM shall prepare a detailed report to the Commissioner setting forth the Consultant's interpretation, the contractor's interpretation and that by the CM.

6.3.13 Undertake the responsibilities set forth herein with respect to disputes submitted by the construction contractor(s). Disputes shall mean disputes of the kind delineated in the article of the standard construction contract entitled "Resolution of Disputes". Review, evaluate and prepare a recommended determination with respect to disputes filed by the construction contractor(s). The CM's recommendation shall be in writing, and shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the contractor, as well as the requirements of the construction contract and the Construction Documents.

6.3.14 Review and evaluate all requests for change orders from the construction contractor(s) and obtain proposals from the contractor(s). Prepare a report to the Commissioner recommending approval or disapproval of the requested change order in accordance with City procedures. Such report shall include the CM's review and evaluation of the following: (1) the validity of the proposed change order, (2) the cost of the proposed change order submitted by the contractor(s), and (3) the quantities of labor, equipment and materials necessary to perform the proposed change order. The CM must be prepared to substantiate the information contained in its report to the Commissioner, the Engineering Audit Officer, the Comptroller and any other agency having jurisdiction in this area. The Commissioner will make all final determinations regarding change orders, modifications and additions to the construction contract. If directed by the Commissioner, the CM 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. If directed by the Commissioner, the CM shall provide cost estimates for the proposed change order.

6.3.15 Schedule and conduct job meetings with the construction contractor(s), Consultant(s), representatives of the

Commissioner, the sponsoring agency, regulatory agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, coordination and clash detection, scheduling and related issues. Such meeting with construction contractor(s) shall include implementation of Lean Construction Strategies, as described in Article 6.1.3, if the use of such strategies is directed by the Commissioner. The CM shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees. In addition, the CM shall provide reports regarding BIM coordination and clash detection in a format authorized by the Commissioner.

6.3.16 Undertake the following responsibilities with respect to Project reports:

(a) 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 contractor(s) and the percentage of completion of the Work. The CM shall also, through BIM, provide a digital model representing the progression 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) Progress photographs, as set forth below in this Article 6.

(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.

6.3.17 Determine the need for and recommend to the Commissioner the institution of default proceeding against the construction contractor(s) or the assessment of liquidated damages. Assist the Commissioner in selecting an alternate contractor(s) to perform the work and assist in evaluating back charges or other deductions to be assessed.

6.3.18 Undertake the following responsibilities with respect to substantial completion of the Project:

(a) Inspect the Project 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) Make recommendations to the Commissioner regarding a determination of substantial completion.
(d) Prepare and/or finalize all necessary punch lists, including completion dates for all items, and expedite execution of the same by the contractor(s).
(e) Perform the above duties in the event the City is to take over, use, occupy or operate the Project, or any part thereof.

6.3.19 Undertake the following responsibilities with respect to final acceptance of the Project:

(a) Inspect the Project 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) Make recommendations to the Commissioner regarding a determination of final acceptance.
(d) Assemble and deliver to the Commissioner all Record Drawings (also known as "As-Built Drawings"). Such Record Drawings shall be submitted in hard copy, as well as in digital form (i.e., in the form of BIMs). The CM shall review the Record Drawings and verify that such Drawings are accurate and complete. The CM shall notify the Commissioner of any issues, problems or observations relative to such Record Drawings.

6.3.20 Collect warranties and/or guarantees from the manufacturer, maintenance and operations manuals, keying schedules and other data required of the construction contractor(s), and maintain photographic records, material and equipment delivery records, visual aids, charts and graphs. The CM shall ensure that all such warranties and/or guarantees from the manufacturer, as well as maintenance and operations manuals, are organized and available in the BIM.

6.3.21 Prior to the expiration of the guarantee period set forth in the construction contract, inspect the Project 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.

6.3.22 Take photographs 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.

6.3.23 Provide or cause to be provided all temporary facilities and utilities as necessary for the performance of the Work.

6.3.24 Prepare and submit DDC's construction contractor performance evaluation form. Such performance evaluation form shall be completed when fifty percent (50%) of the contract amount has been vouchered and at substantial completion of the Project. The form shall be submitted to DDC no later than fifteen (15) calendar days after each of these events has occurred.

6.3.25 In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the CM shall diligently render to the City all assistance which the City may require. Such services shall be rendered by the CM 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 CM.

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

6.4 Services During Post Construction Phase: The services to be provided by the CM during the Post Construction Phase shall include without limitation the services set forth below, as directed in writing by the Commissioner.

6.4.1 Manage and supervise the delivery and installation of fixtures, furniture and equipment for the Project, as specified by the Commissioner.

6.4.2 Manage and supervise user acceptance orientation sessions provided by the construction contractors for all equipment and/or systems installed. Such orientation sessions shall provide instructions regarding the use and navigation of project information and records in digital form (i.e., in BIM), including As Built Drawings.

6.4.3 Assist the Commissioner in obtaining a permanent Certificates of Occupancy for the Project.

6.4.4 Submit to the Commissioner originals of all final Project records, including without limitation, (1) all reports for the Project, including inspector's reports, as well as laboratory and plant testing reports; (2) all certificates, warranties and guarantees from manufacturers; (3) office and/or field diaries or log books; (4) all original records with respect to contractor payments; (5) all Record Drawings (also known as "As-Built Drawings"), in hard copy, as well as in digital form (i.e., in the form of BIMs); (6) progress photographs of the construction, (7) the final and complete BIM, and (8) any other Project records required by the Commissioner.

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

6.5.1 No Reimbursable Services shall be provided by the CM, 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.

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

6.5.3 The CM 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.

6.5.4 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) Provision of the Field Office and all items in connection with the Field Office, except for items to be provided by the CM, as set forth in Article 6.1.6(c)
(b) Printing of contract documents and reports
(c) Express mail postage, except as otherwise provided herein and excluding mail from the CM's main or home office to the Field Office
(d) Laboratory services for testing of materials and/or items of work
(e) Purchase of long lead items for the construction work
(f) Performance of general conditions items
(g) Long distance travel. In the event the CM is directed in advance in writing by the Commissioner to provide services which require long distance travel, the CM 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 CM's home office. Reimbursement for long distance travel expenses shall be as set forth in Article 7. Long distance travel shall not include travel expenses for the CM and/or any Subconsultants that are not located in New York City or its vicinity.
(h) Any other services, determined by the Commissioner to be necessary for the Project.

6.5.5 In the event the CM 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 CM 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 CM shall turn such items and/or equipment over to the City.

6.6 Communications in Writing: All recommendations and communications by the CM to the Commissioner that will affect the cost of the Project shall be made or confirmed by it in writing. The Commissioner may also require other recommendations and communications by the CM to be made or confirmed by it in writing. All recommendations relating to proposed changes in the work, work schedules, instructions to contractor(s) and all other matters requiring action by the Commissioner and the contractor(s) shall be made directly to the Commissioner, unless otherwise directed by the Commissioner. After approval by the Commissioner, the CM shall issue instructions directly to the contractor(s).

6.7 Ownership of Documents: As set forth in the General Provisions (Appendix A), any reports, documents, drawings, models (including, without limitation, BIMs), records, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials related to such items produced pursuant to this Agreement, in any format, whether in hard copy or digital form (i.e., in the form of BIMs), shall upon their creation become the exclusive property of the City.

During the term of this Contract and at any time within the retention period set forth in the General Provisions (Appendix A), the CM 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 CM. 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 CM bears no responsibility whatsoever for such re-use except in those instances where he is re-employed for re-use of the documents.

6.8 Patented and Proprietary Items: The CM 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.

ARTICLE 7 - Payment Terms and Conditions

7.1 General

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

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

7.1.3 Allowances: In the event the allowance amounts described in this Article are not sufficient, as determined by the Commissioner, to cover the cost of the items of required Work for which allowance amounts are specified, the City will increase the amounts of such allowances. Notwithstanding the specific amounts allocated for allowances, as set forth in Exhibit A, the Commissioner may, by issuance of a "No Cost Change Order" to the Contractor, reallocate such specific allowance amounts within this Article 7.

7.1.4 Requisitions: Payment requisitions shall be accompanied by the documentation set forth in Article 7.5.

7.2 Fee for Profit

7.2.1 General: An Allowance in the amount set forth in Exhibit A is established for payment of the Fee for Profit in accordance with the provisions set forth below.

7.2.2 Payment: The CM shall be paid a Fee for Profit, the amount of which shall be calculated as a percent of the total actual cost of construction for the Project in accordance with the Fee Curve set forth in Exhibit D. For the purpose of calculating the Fee for Profit, the total actual cost of construction for the Project shall be as defined in Article 7.2.3.

(a) Completion Milestones: The Fee for Profit shall be paid to the CM during the Construction Phase, if and only if the Commissioner determines that: (a) the CM has achieved completion of the Completion Milestone, and (b) all required work in connection with the Completion Milestone is acceptable.

Completion Milestones	Percent of Fee for Profit Payable
25% Completion of the Work	25%
50% Completion of the Work	25%
Substantial Completion of the Work	35%
Completion of all Post Construction Services	15%

(b) Partial Payment: Throughout the Construction Phase, partial payment of the Fee for Profit shall be based on the Total Estimated Cost of Construction. Upon final completion of the Project, payments of the Fee for Profit based on the Total Estimated Cost of Construction shall be subject to adjustment in accordance with Article 7.2.4. For partial payment purposes, the Total Estimated Cost of Construction shall be the amount of the pre-preliminary reconciled construction cost estimate for the Project. The Commissioner may by written directive modify the estimated construction cost based upon revisions to the estimate or the receipt of bid prices for the construction contracts.

7.2.3 Total Actual Construction Cost: For the purpose of the Fee Curve (Exhibit D), the total actual cost of construction for the Project shall be defined as the total dollar value of all required construction work for the Project, calculated in accordance with bid prices contained in the construction contract(s), which have been accepted by the Commissioner and paid for thereunder. The total actual cost of construction for the Project shall be determined by the Commissioner upon completion of the Project, and his/her determination shall be final, binding and conclusive. Such total actual cost of construction for the Project shall not include the items set forth below.

(a) Any amounts for change orders to the construction contracts, except for a change order which meets the following conditions: (1) the change order increases the scope of work for the Project, and (2) the total amount of other scope increasing change orders issued to date exceeds five (5%) percent of the total dollar value of all construction Work as described above;

(b) Any amounts for the assessment of liquidated damages which has been deducted from the total price for the construction contract(s) for the Project;

(c) Any allowance amounts or otherwise designated amounts for construction work, whether for specified lump sum items or for unit price items, included in the original price for the construction contract(s) which remain unexpended at the conclusion of the Project;

(d) Any amounts for bonus payments to the construction contractor(s), whether payment is by change order or through allowances provided in the construction contract(s);

(e) Any amounts for work omitted from the construction contract(s), and

(f) Any amounts for construction work which is determined to be defective, unsatisfactory or not in accordance with the construction contract(s).

7.2.4 Total Fee for Profit: Upon completion of all required services by the CM, the total Fee for Profit for the Project shall be determined as follows: the total actual cost of construction for the Project, as defined above, shall be multiplied by the applicable percent set forth in the Fee Curve (Exhibit D). If the total actual cost of construction falls between the dollar levels designated in the Fee Curve, the Fee for Profit shall be interpolated on a straight line basis between the corresponding two dollar levels. The Fee Curve set forth in Exhibit D shall apply to the Contract term and any extension thereof. Partial payments to the CM of the estimated Fee for Profit shall be subject to adjustment as set forth below.

(a) In the event the total of all partial payments of the estimated Fee for Profit is more than the total Fee for Profit determined hereunder, the City shall deduct and retain such excess out of the amount due and owing to the CM. In the event the amount due and owing to the CM is less than the amount of such excess payment of the Fee for Profit, the CM shall be liable to pay the difference upon demand by the Commissioner.

(b) In the event the total of all partial payments of the estimated Fee for Profit is less than the total Fee for Profit determined hereunder, the City shall pay such difference to the CM.

7.3 Staffing Expenses

7.3.1 General: An Allowance in the amount set forth in Exhibit A is established for payment of the CM's staffing expenses for those individuals who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner.

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

(a) Inclusion in Staffing Plan: The CM shall not be entitled to payment for any individual not included in the approved Staffing Plan. The specific individuals identified in the approved Staffing Plan shall be considered Assigned Employees for the purpose of the CM's entitlement to payment for services performed by such individuals.

(b) Project Executive: The CM shall not be entitled to payment for the services of the Project Executive. Compensation for the Project Executive is deemed included in the Multiplier.

7.3.3 Payment: For any week during which an Assigned Employee performs services for the Project, payment to the CM for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in paragraph (a) by the number set forth in paragraph (b), and then multiply the result by a Multiplier of 1.75; provided, however, such Multiplier shall **NOT** apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during other than regular business hours.

(a) Assigned Employee's Direct Salary Rate per hour, determined and approved in writing by the Commissioner in accordance with the provisions set forth below. In the event the CM receives written authorization from the Commissioner to have the Assigned Employee perform services during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.

(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for this Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for the Project for which the CM is not entitled to compensation, and (5) any non-regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.

(c) Non-billable hours shall be defined as any hours set forth time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed for this Project. Non-billable hours 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.

(d) The costs deemed included in the Multiplier are set forth in Article 7.3.8 below.

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

(a) Total number of hours for which the Assigned Employee was actually paid by the CM for the week in question, less any non-billable hours, as defined above.

(b) Total number of hours actually billed by the CM to all entities for the Assigned Employee's services for the week in question, including the number of hours billed for this Project

7.3.5 Direct Salary Rate Per Hour: The Direct Salary Rate per hour for each Assigned Employee shall be determined and approved in writing by the Commissioner, as set forth below. Upon approval by the Commissioner, the Direct Salary Rate per hour for each Assigned Employee shall be included in the Staffing Plan.

(a) Actual Annual Direct Salary Rate per Hour: For each Assigned Employee, the CM shall submit the items set forth below. The CM shall also submit any records or documentation requested by the Commissioner to verify the Assigned Employee's actual annual direct salary, including without limitation, the CM's payroll register for the past twelve (12) months.

(1) Actual Annual Direct Salary: The Assigned Employee's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) any payments for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (2) any employer payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) any costs for any other fringe and/or supplemental benefits.

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

(b) Determination of Direct Salary Rate: For each Assigned Employee, the Commissioner shall determine and approve in writing the Direct Salary Rate per hour to be paid for such employee.

(1) Once determined and approved by the Commissioner as set forth above, the Assigned Employee's Direct Salary Rate per hour shall not be eligible for any increase whatsoever, except for the increase described in Article 7.3.6 below. Any such increase must be approved in writing by the Commissioner.

(2) The Direct Salary Rate per hour for an Assigned Employee, determined and approved by the Commissioner, may be adjusted in accordance with Article 7.3.7 below, in the event the CM receives written authorization from the Commissioner in the particular instance to have the Assigned Employee perform services during other than regular business hours.

7.3.6 Increases: An Assigned Employee's Direct Salary Rate per hour, determined and approved by the Commissioner, shall be subject to an increase on a yearly basis, subject to the limitations set forth below. The first such increase shall be made one (1) year after the commencement date (i.e., the date set forth in the Notice to Proceed), and thereafter, for the remainder of the term of the Contract, including the extended term, on a yearly basis, on the anniversary of commencement date. Any increase in the Direct Salary Rate(s) shall be based on whatever increase may have occurred in

the Employment Cost Index for Professional, Scientific and Technical Services, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO"). If for the prior year, EAO determines that the Index showed an increase, the Direct Salary Rate(s) shall be increased. If, for the prior year, EAO determines that the Index declined or showed no increase, the Direct Salary Rate(s) shall remain unchanged. Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only and shall have no impact on the rate paid to date.

(a) The CM shall not be entitled to payment of any increase in an Assigned Employee's Direct Salary Rate per hour unless the total amount of such increase is actually paid in full by the CM to the Assigned Employee, as determined by the Commissioner. The CM shall submit its payroll register to verify the amount actually paid by the CM to the Assigned Employee.

(b) Any increase in an Assigned Employee's Direct Salary Rate that is in excess of the increase specified above shall not be payable hereunder, even if paid by the CM.

7.3.7 Night Differential / Overtime: The Commissioner may authorize the CM in advance in writing to have an Assigned Employee perform services during other than regular business hours. In the event of such authorization, the CM shall be entitled to payment of a premium or increase in the Assigned Employee's Direct Salary Rate per hour for such services, subject to the limitations set forth below. Any premium or increase payable hereunder shall not be subject any Multiplier.

(a) The CM's policy is subject to approval by the Commissioner in accordance with Article 5.

(b) The premium for Night Differential shall not exceed ten (10%) percent of the Assigned Employee's Direct Salary Rate per hour, and the premium for Overtime shall not exceed fifty (50%) percent of such Direct Salary Rate.

(c) The CM shall not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the CM to the Assigned Employee, as evidenced by the CM's payroll register.

7.3.8 Multiplier: The Multiplier of 1.75 shall be deemed to include all costs and expenses for overhead incurred by the CM in connection with providing services for the Project, including expenses for management and administration. The CM agrees to make no claim for overhead expenses in excess of the Multiplier provided for herein. The Multiplier shall include, without limitation, the items of overhead set forth below:

(a) All expenses for compensation paid to personnel of the CM (other than construction management personnel identified in the approved Staffing Plan, except for the Project Executive). Such other personnel of the CM shall include without limitation all officers, principals, employees and personnel of the CM, serving in whatever capacity, including any Project Executive(s). Compensation for such other personnel is deemed included in the Multiplier. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.

(b) All expenses for compensation paid to construction management personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include without limitation the items listed in item (a) above.

(c) All expenses in connection with the performance of services, including without limitation: (1) expenses for non-reimbursable services, as set forth in Article 6, (2) meals, and (3) lodging.

(d) All expenses for home office general facilities, including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls to the job site and DDC (except for long distance calls to other locations as specifically required by the Commissioner), sales, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, copying, postage, and any other office expenses or overhead costs, except as otherwise expressly provided in this Agreement.

(e) All expenses for applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.

(f) All expenses for insurance coverage determined by the CM to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required by this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the CM, including without limitation, burglary and theft, general fidelity and payroll insurance.

(g) All expenses in connection with losses due to theft or robbery sustained by CM.
(h) All expenses in connection with fixed capital or moneys borrowed, including interest.
(i) All expenses with respect to legal services.
(j) All management, administrative or overhead expenses of any kind whatsoever, including such expenses in connection with providing Reimbursable Services.

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

7.4 Allowance for Reimbursable Services

7.4.1 General: An allowance in the amount set forth in Exhibit A is established for payment for Reimbursable Services, as set forth in Article 6. In providing Reimbursable Services, the CM shall comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Commissioner. If so directed, the CM 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.

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

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

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

7.4.4 No Mark Up: The CM shall not be entitled to any mark-up for overhead and profit on payments for Reimbursable Services. All costs and expenses for overhead and/or profit in connection with the provision of Reimbursable Services are deemed included in the Multiplier.

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

7.5 Requisitions for Payment

7.5.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the CM and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into the following categories: (1) Fee for Profit, (2) Staffing Expenses, and (3) Reimbursable Services. The CM shall submit one (1) original and two (2) copies of each requisition for payment. Requisitions must be accompanied by the documentation set forth below.

(a) Project Progress Report: The CM shall submit a current report indicating (1) the percentage of completion of all required Work for the Project, and (2) the services the CM provided during the payment period.

(b) Staffing Expenses: For any period for which the CM is requesting payment for staffing expenses for an Assigned Employee, the CM 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) Assigned Employee's direct salary rate determined and approved by the Commissioner and included in the Staffing Plan;

(4) Statement that Multiplier for Overhead is 1.75.

(5) Number of hours worked each day by the Assigned Employee for the week(s) in question. The number of hours per day shall be broken down to indicate the number of regular business hours and the number of non-regular business hours. The Multiplier shall not apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during other than regular business hours.

(6) 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 the employee performed services for this Project; (2) actual hours during which the employee performed services for other projects; (3) non-billable hours, as defined above; (4) actual hours, if any, during which the Assigned Employee spent performing services for this Project for which the CM is not entitled to compensation, and (5) non-regular business hours, if any.

(7) Copy of the CM's payroll register for the week(s) in question reflecting the amount actually paid by the CM to the Assigned Employee for that week,

(8) Applicable only if services were performed during other than regular business hours: (i) copy of authorization by Commissioner for such services, and (ii) copy of Commissioner's approval of the CM's policy regarding payment of a premium for services performed during other than regular business hours.

(c) Reimbursable Services: For any period for which the CM is requesting payment for Reimbursable Services, the Consultant shall submit the documentation set forth below:

(1) Description of the Reimbursable Service the Consultant was directed to provide.

(2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required services.

(3) If payment is on a unit price basis, a report indicating the number of completed units.

(4) If payment is based on actual cost, receipted bills or any other data required by the Commissioner.

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

ARTICLE 8 - Authorized Action

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

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

ARTICLE 9 - Services Furnished by the City

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

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

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

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

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes the program for participation in City procurement ("M/WBE Program") by minority- owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan"), and are detailed below. The Contractor must comply with all applicable MBE and WBE requirements for this Contract. All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129. Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

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

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

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

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

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

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

4. A. If Participation Goals have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to

award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the Participation Goals, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

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

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

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

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

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the Participation Goals. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York,

10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

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

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

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

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

(b) To apply for a full or partial waiver of the Participation Goals, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at rodrigur@ddc.nyc.gov or via facsimile at (718) 391-1505. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

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

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

11. Modification of M/WBE Utilization Plan. (a) A Contractor may request a modification of its M/WBE Utilization Plan after award of this Contract. PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in New York City) or if the Contract is subject to a project labor agreement in

accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission. The Agency may grant a request for Modification of a Contractor's M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Participation Goals. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

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

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

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

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

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

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

PART B: MISCELLANEOUS

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

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

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

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

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

ARTICLE II. ENFORCEMENT

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

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

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

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

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

under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

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

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

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

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

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

CONSTRUCTION MANAGER:

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 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 A

CONTRACT INFORMATION

- Project: Construction of the New Gansevoort Marine Transfer Station, in the Borough of Manhattan

- Subconsultant(s): If any, to be inserted after selection of the CM

- Total Not to Exceed Amount: $_____
  (Total of the Allowances listed below)

  - Allowance for Fee for Profit: $_____

  - Allowance for Staffing Expenses: $_____

  - Allowance for Reimbursable Services: $_____

- Term of Contract: The Contract shall commence on the date set forth in the Notice to Proceed and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services hereunder. The anticipated time frame for Final Acceptance of all required construction work for the Project and completion of all required services is **2,115** consecutive calendar days (CCDs), broken down as follows: (1) Pre-construction Phase (Public Bidding and Award of construction contracts): **840** CCDs, (2) Construction Phase (Start to Substantial Completion): **1,185** CCDs, and (3) Post Construction Phase: **90** CCDs.

- Insurance Requirements: General Provisions governing the Contract, including insurance coverage the CM and its subconsultants are required to provide, are set forth in Appendix A. Appendix A is included as Exhibit G to the Contract. Insurance Requirements are set forth in Article 7 of Appendix A.

EXHIBIT B

STAFFING PLAN

STAFFING PLAN: The CM's Staffing Plan is set forth on the following pages. Such Staffing Plan was submitted by the CM as part of its Proposal for the Contract. As set forth in Article 5, the final Staffing Plan is subject to review and approval by the Commissioner.

EXHIBIT C

PROJECT SCHEDULE

PROJECT SCHEDULE: The CM's Project Schedule is set forth on the following pages. Such Project Schedule was submitted by the CM as part of its Proposal for the Contract.

EXHIBIT D

FEE CURVE FOR FEE FOR PROFIT

Fee for Profit: The CM shall be paid a Fee for Profit, the amount of which shall be calculated as a percent of the total actual cost of construction for the Project in accordance with the Fee Curve set forth below. For the purpose of calculating the Fee for Profit, the total actual cost of construction of the Project shall be as defined in Article 7 of the Contract. If the total actual cost of construction falls between the dollar levels designated in the Fee Curve, the Fee for Profit shall be interpolated on a straight line basis between the corresponding two dollar levels. The Fee for Profit shall be paid to the CM during the Construction Phase, in accordance with the completion milestones set forth in Article 7.

TOTAL ACTUAL CONSTRUCTION COST	FEE FOR PROFIT AS A PERCENT OF TOTAL ACTUAL CONSTRUCTION COST	AMOUNT OF FEE FOR PROFIT
$ 50,000,000 or less	_____%	$_____
$ 55,000,000	_____%	$_____
$ 60,000,000	_____%	$_____
$ 65,000,000	_____%	$_____
$ 70,000,000	_____%	$_____
$ 75,000,000	_____%	$_____
$ 80,000,000	_____%	$_____
$ 85,000,000	_____%	$_____
$ 90,000,000	_____%	$_____
$ 95,000,000	_____%	$_____
$100,000,000	_____%	$_____
$105,000,000	_____%	$_____
$110,000,000	_____%	$_____
$115,000,000	_____%	$_____
$120,000,000	_____%	$_____
$125,000,000	_____%	$_____
$130,000,000	_____%	$_____
$135,000,000	_____%	$_____
$140,000,000	_____%	$_____
$145,000,000	_____%	$_____
$150,000,000	_____%	$_____
$155,000,000	_____%	$_____
$160,000,000	_____%	$_____
$165,000,000	_____%	$_____
$170,000,000	_____%	$_____
$175,000,000	_____%	$_____
$180,000,000	_____%	$_____
$185,000,000	_____%	$_____
$190,000,000	_____%	$_____
$195,000,000	_____%	$_____
$200,000,000	_____%	$_____
$225,000,000	_____%	$_____
$250,000,000 or more	_____%	$_____

EXHIBIT E

CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

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 City's Procurement Policy Board Rules.

EXHIBIT F

SCHEDULE B: M/WBE UTILIZATION PLAN

SCHEDULE B: M/WBE UTILIZATION PLAN: The CM's M/WBE Utilization Plan is set forth on the following pages. Such M/WBE Utilization Plan was submitted by the CM as part of its proposal for the Contract.

EXHIBIT G

DDC BIM GUIDELINES (JULY 2012)

****

DDC BIM Guidelines, dated July 2012, are available at the website below.

http://www.nyc.gov/html/ddc/html/home/home.shtml

EXHIBIT H

APPENDIX A

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

APPENDIX A

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

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions……1

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement……1

Section 2.02 Conflicts of Interest…….2

Section 2.03 Fair Practices……...2

Section 2.04 VENDEX……..2

Section 2.05 Political Activity……...3

Section 2.06 Religious Activity…….....3

Section 2.07 Unlawful Discriminatory Practices: City Admin. Code § 6-123…….……3

Section 2.08 Bankruptcy and Reorganization……3

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment……...…3

Section 3.02 Subcontracting…….……4

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status……..5

Section 4.02 Employees…….5

Section 4.03 Removal of Individuals Performing Work……5

Section 4.04 Minimum Wage……...5

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e……..…5

Section 4.06 Non-Discrimination: City Admin. Code § 6-108…….……6

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity…….6

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records…….…...7

Section 5.02 Retention of Records…….....……7

Section 5.03 Inspection……..….8

Section 5.04 Audit……...8

Section 5.05 No Removal of Records from Premises……...……8

Section 5.06 Electronic Records……...……..8

Section 5.07 Investigations Clause…….8

Section 5.08 Confidentiality……...……10

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS AND ANTITRUST

Section 6.01 Copyrights……..11

Section 6.02 Patents and Inventions…….……12

Section 6.03 Pre-existing Rights……...……..12

Section 6.04 Antitrust……...……...12

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure…….……12

Section 7.02 Commercial General Liability Insurance ……..……12

Section 7.03 Professional Liability Insurance…….……...…..12

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance ……....…...……..…13

Section 7.05 Unemployment Insurance ……13

Section 7.06 Business Automobile Liability Insurance……....13

Section 7.07 General Requirements for Insurance Coverage and Policies……....13

Section 7.08 Proof of Insurance…….……..……...13

Section 7.09 Miscellaneous …….….…...14

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions……..…….……15

Section 8.02 Protection of City Property…….…….……15

Section 8.03 Indemnification …….……..…….15

Section 8.04 Infringement Indemnification …….……15

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation.….….….15

Section 8.06 Actions By or Against Third Parties…….…….…..15

Section 8.07 Withholding of Payments……...….……..…16

Section 8.08 No Third Party Rights……..……..…16

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes…….……..…16

Section 9.02 Changes Through Fault of Contractor…….…….……..…16

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause…….…….…...16

Section 10.02 Reductions in Federal, State and/or City Funding……...……...….17

Section 10.03 Contractor Default ……..……...17

Section 10.04 Force Majeure ……..……...18

Section 10.05 Procedures for Termination……...…19

Section 10.06 Miscellaneous Provisions ……...19

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment…….…....19

Section 11.02 Electronic Funds Transfer……..……....20

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law…….…….....20

Section 12.02 Jurisdiction and Venue……..…….20

Section 12.03 Resolution of Disputes……...…..20

Section 12.04 Claims and Actions …….…23

Section 12.05 No Claim Against Officers, Agents or Employees……..…..…23

Section 12.06 General Release……...…24

Section 12.07 No Waiver……..……...…24

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules……..……..…24

Section 13.02 All Legal Provisions Deemed Included……..……..…..24

Section 13.03 Severability / Unlawful Provisions Deemed Stricken……..……..……...24

Section 13.04 Compliance With Laws……...……24

Section 13.05 Americans with Disabilities Act (ADA)……...…..…24

Section 13.06 Not Used ……..…..…25

Section 13.07 Participation in an International Boycott…….……25

Section 13.08 MacBride Principles……...….25

Section 13.09 Not Used…….……..25

Section 13.10 Not Used……..…….25

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent……...……...25

Section 14.02 Merger……...…….……..25

Section 14.03 Headings……..…….25

Section 14.04 Notice……..……..26

Section 14.05 Monies Withheld…….…26

Section 14.06 Whistleblower Expansion Act Rider…….26

AFFIRMATION……...……...28

CERTIFICATION BY BROKER……...……..…...29

APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

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

B. "Agreement" shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. "City" shall mean The City of New York.

D. "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. "Commissioner" or "Agency Head" shall mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.

F. "Comptroller" shall mean the Comptroller of the City of New York.

G. "Contractor" shall mean the entity entering into this Agreement with the Department.

H. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.

I. "Department" or "Agency" shall mean the City agency that has entered into this Agreement.

J. "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.

M. "State" shall mean the State of New York.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

D. through H. Not Used

Section 2.03 Fair Practices

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor’s Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

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

Section 2.06 Religious Activity

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

Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars ($50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars ($5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars ($5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars ($5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars ($25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

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

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

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

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

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this

Agreement a penalty of Fifty Dollars ($50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

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

Section 4.06 Non-Discrimination: Admin. Code § 6-108

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

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

D. 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 ($100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

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

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of

this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars ($100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

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

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in

interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

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

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

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

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

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

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in

Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

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

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees 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 Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section 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.

B. The Contractor shall provide notice to the Department within three (3) Days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to

maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

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

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

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

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

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish,

or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars ($1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

Section 7.03 Professional Liability Insurance

A. The Contractor is providing professional services pursuant to this Agreement. The Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement 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 assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement shall also maintain Professional Liability Insurance in the amount of at least One Million Dollars ($1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. 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 Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars ($1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.07 General Requirements for Insurance Coverage and Policies

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

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

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

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or

5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

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

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. 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 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

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

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City of a claim upon demand, the Contractor shall reimburse the City for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officers and employees with a defense or reimbursement for attorney's fees.

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

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

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

Section 8.07 Withholding of Payments

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

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

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

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

5. If the Contractor or any of its officers, directors, partners, five percent (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.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (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 Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business Days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

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

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination

date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

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

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

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

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

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required

payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

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

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at http://www.nyc.gov/dof in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars ($25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within 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 Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. Agency Head 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 Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency

Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within 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 Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 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.

4. 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 Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 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 Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of

the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within 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 Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

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

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

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

Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved

Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Not Used

Section 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

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

Section 13.08 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Not Used

Section 13.10 Not Used

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

Section 14.05 Monies Withheld

When the Commissioner shall have reasonable grounds for believing that: (1) the Contractor will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Contractor or the City arising out of the negligence of the Contractor or the Contractor's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Contractor hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Contractor, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

Section 14.06 Whistleblower Protection Expansion Act Rider

(1) In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

(a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

(b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

(c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

(i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and

(ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

(d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of $100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of $100,000.

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

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.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

_____
[Name of broker (typewritten)]

_____
[Address of broker (typewritten)]

_____
[Signature of authorized officer of broker]

_____
[Name of authorized officer (typewritten)]

_____
[Title of authorized officer (typewritten)]

_____
[Contact Phone Number for Broker (typewritten)]

_____
[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

_____

NOTARY PUBLIC