Project
PW335ES17-PW335ES18, Requirements Contract for Environmental Professional Services and Laboratory Testing Services for Various Capital Projects, Citywide

PIN
8502019PW0001P-02P

Pre-Proposal Conference
Monday, February 11, 2019

Submission Deadline
Monday, February 25, 2019
DEPARTMENT OF DESIGN AND CONSTRUCTION
REQUEST FOR PROPOSALS

REQUESTS CONTRACT FOR ENVIRONMENTAL PROFESSIONAL SERVICES AND LABORATORY TESTING SERVICES FOR VARIOUS CAPITAL PROJECTS, CITYWIDE

FMS ID: PW335ES17 and PW335ES18
EPIN: 85019P0007
PIN: 8502019PW0001P-02P

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PREFACE

The City of New York is committed to achieving excellence in the design and construction of its capital program and building on the tradition of innovation in architecture and engineering that has contributed to the City’s prestige as a global destination. As part of this effort, the Department of Design and Construction (“DDC”) is pleased to announce the following contracting opportunity.

SECTION I. TIMETABLE

A. RFP Issuance

Pre-Proposal Conference

A pre-proposal conference will be held at 10:00 am on Monday, February 11, 2019, at DDC headquarters, 30-30 Thomson Avenue, Long Island City, NY 11101, 1st Floor, Atrium. Attendance is recommended but not mandatory to propose on the contract described in this RFP; however, it is strongly encouraged.

Submission Deadline

The proposer shall deliver, on or before 4:00 PM on Monday, February 25, 2019, the Proposal in a clearly marked envelope or package. The Proposal shall consist of THREE separate, clearly marked, sealed packages containing the following:

(1) the Technical Proposal (1 original*, 4 copies)
(2) Schedule B: M/WBE Utilization Plan (1 original*), and
(3) Doing Business Data Form (1 original*)

*Original book(s) must contain original signatures.

Proposals shall be hand delivered to the specific 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 of Policy Board Rules.

Department of Design and Construction
30-30 Thomson Avenue, 1st Floor, Contracts Section
Long Island City, NY 11101

NOTE: Proposers are responsible for ensuring that the RFP response package is received at the location listed above by the submission deadline. Proposers 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.
B. Inquires

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested via email to the contact person, 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 received the RFP. All addenda will be available on DDC’s website http://ddcftp.nyc.gov/rfpweb. All inquiries must be directed to the contact person(s) listed below:

Contract Managers: Anna Zardiashvili and Hemwattie Roopnarine
Email: zardiasan@ddc.nyc.gov AND ramnarah@ddc.nyc.gov

C. Addenda

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the addendum to the Technical Proposal. In addition to the individual signed addenda, proposal submissions should also contain a signed copy of Attachment 5, Acknowledgement of Addenda. All addenda shall become a part of the requirements for this RFP.

D. RFP Schedule

DDC expects to notify Consultants that they have been selected for fee negotiations within six weeks of submission deadline.
SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. Background and Objectives of the Project

The New York City Department of Design and Construction (DDC), Division of Safety and Site Support, is seeking appropriately qualified firms to provide environmental professional services and laboratory testing services, as specified by the Commissioner on a work order basis for various projects throughout the five boroughs of the City of New York and beyond if needed. Pursuant to this RFP, up to two separate contracts will be awarded to the highest ranked proposers in the order set forth below:

Contract #1: PW335ES17, Boroughs of Brooklyn and Queens
Contract #2: PW335ES18, Boroughs of Manhattan, Bronx and Staten Island

In order to ensure that services and laboratory testing are performed in a timely manner for various projects, the subject requirements contracts will be available for use on an as-needed basis. When the need arises for such services for a specific project, the Commissioner will issue a Work Order to the consultant. The Work Order Process is described in Article 4 of the attached contract.

B. Joint Ventures and Other Consultant Relationships

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

The Joint venture must be formed as a separate legal entity prior to award. DDC does not recognize the corporate configuration whereby one company is "in association with" another. Relationships between two or more firms shall be either as joint venture partners or as 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 selected, the contract documents will show only the prime firm on the signature page, and all other firms will be listed as subconsultants in the relevant Exhibit.

Professional Engineering Services
At the time of proposal submission, joint venture firms must provide a copy of the Certificate of Authorization (COA) from the New York State Education Department authorizing the joint venture to provide professional engineering services in the State. If the JV is not already formed, then COA is required from each of the JV partners at the time of proposal submission. JV Firms who do not submit their COA at the time of submission (either as a JV or from each JV partner separately), may be found non-responsive.

Professional Geology Services
Prior to award, joint venture firms must provide a copy of the Certificate of Authorization (COA) from the New York State Education Department authorizing the joint venture to provide professional geology services in the State. JV Firms who do not submit their COA prior to award, may be found non-responsive.
C. Certificate of Authorization

**Professional Engineering Services**
Section 7210 of the New York State Education Law requires that all business entities providing professional engineering services in the State of New York obtain a “Certificate of Authorization (COA) to provide Engineering Services in New York State” from the New York State Education Department. A copy of the Certificate of Authorization must be provided **at the time of proposal submission**.

**Professional Geology Services**
Section 7210 of the New York State Education Law also requires that all business entities providing professional geology services in the State of New York obtain a “Certificate of Authorization (COA) to provide Geology Services in New York State”. A copy of the Certificate of Authorization must be provided **prior to award**.

Please note that no award will be made to any proposing firm unless the firm is authorized by the New York State Education Department to provide professional engineering and professional geology services in the State.

C. Contract Term / Cost Estimate

Each contract will have a not to exceed amount of $4,000,000 and shall remain in effect for a period of 1,095 consecutive calendar days. At the Commissioner’s sole option, the term of the contract may be renewed for an additional 730 consecutive calendar days with additional funding of $2,000,000 and then extended for an additional 365 consecutive calendar days.

D. Insurance

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

F. Payment Provisions

Payment for all required services shall be in accordance with Article 7 of the attached contract. Information regarding the Fee Proposal is set forth in Attachment 3 of this RFP.
SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Scope of Services
   The consultant shall provide, to the satisfaction of the DDC Commissioner, all environmental professional services and laboratory testing services described in this RFP and Article 6 of the attached contract.

B. Contract Provisions
   The services to be provided by the consultants and all standards of performance applicable to the required work are 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. The proposer is advised to carefully review the contract in its entirety before submitting a proposal.

C. Environmental Services and Laboratory Testing Services
   The range and type of services and laboratory testing services the Consultant may be required to provide are described in detail in Article 6 of the attached contract. As the need arises for environmental services and laboratory testing services throughout the term of the contract, the Commissioner will issue Work Order(s). The consultant services to be provided for specific projects will be specified in the respective Work Order(s). Proposers are advised to carefully review the above cited article of the attached contract, which details the environmental services and related laboratory services to be provided under this contract.

D. Work Order Process
   The Work Order process is set forth in Article 4 of the attached contract. Proposers are advised to review this article carefully to ensure understanding. Please note that the consultant(s) shall not perform any services under this contract until the Commissioner has issued a Work Order in accordance with Article 4 of the attached contract.

E. Consultant’s Personnel
   The terms and conditions regarding the consultant’s obligation to provide personnel for the performance of services specified in the Work Order(s) are set forth in Article 5 of the attached contract, as well as Attachment 4 of the RFP. Proposers are advised to carefully review these requirements for the provision of personnel to ensure their capability of complying with specified staffing requirements.

F. Guaranteed Minimum
   In the event the Consultant is not issued any Work Orders under the contract and the Consultant has, throughout the term of the Contract, the City agrees to pay, and the Consultant agrees to accept, a minimum fee of $5,000.00. The Consultant further agrees that under such circumstances, it has no action for damages or for loss of profits against the City.

G. Compliance with Iran Divestment Act of 2012:
   Pursuant to State Finance Law Section 165-a, and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment
activities in the energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, the Agency/Department will be able to award a contract to such proposer only in situations where the proposer is takings steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to Attachment 2 for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to http://www.ogs.ny.gov/About/regs/ida.asp for additional information concerning the list of entities.

A proposal shall not be considered for award nor shall any award be made where the proposer fails to submit a signed and verified proposer's certification, Attachment 2.

H. 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 6) 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 6) 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 6, if you are planning to request a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be considered.

I. Compliance with Local Law 34 of 2007

Pursuant to Local Law 34 of 2007, that amended the City's Campaign Finance Law, the City established 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 maintain the database, vendors responding to this solicitation are required to complete the attached DBDF and return it with this proposal submission, (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a DBDF.) If the City determines that a vendor has failed to submit a DBDF or has submitted a DBDF 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 DBDF 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.

New for 2018: Organizations which hold 10% or more ownership of the entity must now be reported. Beginning in January 2018, an entity must submit a DBDF that certifies whether one or more organizations own or control 10% or more of the entity. Until such a DBDF has been received by Doing Business Accountability, a DBDF submitted with a filing status of No Change will not be accepted. To determine if Doing Business Accountability has received such a certification from your entity, contact doingbusiness@mocs.nyc.gov or at 212-788-8104.

J. 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 8, the Whistleblower Protection Expansion Act Rider, carefully.

K. 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 9, the subcontractor compliance notice as it relates to competitive solicitations.

L. Compliance with HireNYC and Reporting Requirements:

The Hiring and Employment Rider shall apply to contracts valued at $1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the Hire NYC process and obligations, including reporting requirements throughout the life of the contract. The Hire NYC process requires contractors to enroll with the HireNYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC. Please read Attachment 11, the HireNYC Rider, carefully.

M. Paid Sick Leave Law Contract Rider

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Contractors of the City of New York [or of other governmental entities] may be required to provide sick time pursuant to the PSLL. Attachment 12, the Paid Sick Leave Law Rider, will be included in any contract awarded from this RFP and will incorporate the PSLL as a material term of such a contract. Please read Attachment 12 carefully.
SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

A. Proposal Subdivisions Instructions

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Protection Agency (for any changes to that standard please consult: https://www.epa.gov/smm/comprehensive-procurement-guidelines-paper-and-paper-products). 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. Proposals should be submitted in a clearly labeled, sealed package and presented as follows:

1. Technical Proposal (1 original and 4 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus separate, completed Standard Form 330 for both the Proposer and its subconsultants. SF330 is available for download online at http://www1.nyc.gov/site/ddc/contracts/work-with-ddc.page. Standard Forms 254 and 255 will not be accepted as a substitute to SF330.

2. Fee Proposal (1 original): To be submitted ONLY upon request. Fee Proposal shall include all elements requested in Subsection E below. A form for submission of the Fee Proposal is included as Attachment 3 to this RFP.

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

The Technical Proposal shall contain the information described below:

1. Cover Letter: Submit a cover letter (maximum of 3 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).

2. Experience of Firm & Subconsultant for Environmental and Laboratory Services: Section 7210 of the New York State Education Law requires that all business entities providing professional engineering services in the State of New York obtain a “Certificate of Authorization to provide Engineering Services in New York State” from the New York State Education Department. In addition, New York State Education Law requires that all business entities providing professional geology services in the State of New York obtain “Certificate of Authorization (COA) to provide Geology Services in New York State”. Please note that no award will be made to any proposing firm unless the firm is authorized by the New York State Education Department to provide professional engineering and geology services in the State.

A copy of the Certificate of Authorization to provide professional engineering services must be provided at the time of proposal submission.

A copy of the Certificate of Authorization to provide professional geology services must be provided prior to award.

Firms who do not submit their COA as requested above, may be found nonresponsive.
(a) **Environmental Services:** The proposer shall provide a description of up to (5) previous projects which demonstrate the firm’s ability to provide quality environmental professional services for projects similar in scope, duration, type (infrastructure and structures) and value to the project described in this RFP and ARTICLE 6 Scope of Services of the Requirements Contract. The proposer shall also provide information on the extent, quality, and relevance of the firm’s environmental experience with capital projects including client satisfaction information and a discussion of problems that may have arisen during delivery of services and how they were resolved. The same projects should also be included in the SF330, Part I, Section F.

The proposer shall submit documentation demonstrating that it has registered with the New York City Department of Buildings as a Special Inspection Agency for all applicable special inspection categories and classes under this contract.

(b) **Laboratory Testing Services:** The proposer shall identify the laboratory to be used for testing services. The proposer shall submit documentation demonstrating the laboratory’s compliance with the criteria set forth below:

1. NYSDOH Laboratory Accreditation Program (ELAP),
2. National Voluntary Laboratory Accreditation Program (NVLAP),
3. US EPA National Lead Laboratory Accreditation Program (NLLAP),
5. The laboratory must demonstrate participation and receive a current rating of “Proficient” in ten (10) of the twelve (12) most recent rounds of the Proficiency Analytical Testing (“PAT”) program administered by the AIHA.

In the event any federal, state or local entity establishes accreditation or certification requirements applicable to the laboratory testing services required hereunder, such laboratory will comply with such requirements.

(c) **Personnel**

For each title listed in Attachment 4 of the RFP, the proposer shall identify the individuals it will provide, throughout the term of the contract, to perform the required environmental services. The proposer may identify multiple individuals for each title; provided, however, it may only identify those individuals it has the ability to provide.

ARTICLE 5.2.1 of the Requirements Contract requires the proposer to provide a minimum quantity of qualified personnel per title employed by the Consultant: (a) One (1) Contract Executive with a valid Professional Engineer’s license issued by NYS Education Department or a Certified Industrial Hygienist issued by the American Board of Industrial Hygiene; (b) One (1) Hazardous Materials Project Manager; (c) One (1) Environmental Project Manager; (d) One (1) Certified Industrial Hygienist; (e) One (1) Certified Safety Professional; (f) One (1) Registered Design Professional; (g) Three (3) Asbestos Project Designers; (h) Six (6) Asbestos Investigators; (i) Eight (8) Asbestos Project Monitors; (j) Six (6) Environmental Technicians/ Industrial Hygienists; (k) Four (4) Lead Risk Assessors; (l) Four (4) Lead Inspectors; (m) One (1) Mold Assessor; (n) Two (2) Project Assessors; (o) Two (2) Project Scientists; (p) Four (4) Geologists; (q) Two (2) Urban Planners; (r) Two (2) Environmental Specialists; (s) One (1) Archeologist, and (t) Four (4) CADD operators.
For all individuals proposed as personnel, the proposer must submit the individual's resume (including dates of service per company listed on resume, degree earned, and name of college/university, date of initial NYS license/certification if required), and any other information detailing his/her number of years of field experience, as well as technical and professional qualifications. Degrees obtained from colleges and universities outside of United States must be evaluated for equivalency from an U.S.-recognized evaluation service. See [http://www.nyc.gov/html/dcas/downloads/pdf/misc/foreigneducation.pdf](http://www.nyc.gov/html/dcas/downloads/pdf/misc/foreigneducation.pdf) for details.

Any proposed individual must satisfy the minimum requirements per title set forth in Attachment 4 of the RFP. All individuals performing services for any project(s) assigned to the Consultant must be approved in advance by the Commissioner.

3. **Technical Approach**

The proposer shall describe in detail its technical approach and methodology (workflow) in managing the environmental field investigations, quality control and deliverables described in the ARTICLE 6 of the requirements contract. The proposer shall include the role and responsibilities of the Contract Executive, Hazardous Materials Project Manager and Environmental Project Manager. Specifically, the proposer shall identify whom will be responsible for coordination of field operations and assignments; whom will be responsible for quality control in order to deliver the highest quality deliverables in accordance federal, state and NYC Regulations and DDC standard procedures.

4. **Firm’s Capability**

The proposer shall describe the following: (1) the firm’s ability to provide the minimum quantity of personnel defined in B.3 above, for required environmental services for various projects citywide, (2) the firm’s ability to provide sufficient personnel simultaneously in the event of multiple Work Orders, (3) the firm’s current and anticipated workload for the term of the contract, including other DDC projects, (4) An organizational chart delineating the proposed staff within their labor title; the internal hierarchy and lines of communication as it relates to field and office activities, and (5) One Table indicating if the requirements in Attachment 4 have been met: the employee name, years of experience, education, certification or licensure and specific experience per title for staff who will be assigned to the contract.

C. **Statement of Understanding and Certification:**

The Statement of Understanding and Certification form included as 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.

D. **Acknowledgement of Addenda**

The Acknowledgement of Addenda form (Attachment 5) serves as the proposer’s acknowledgement of the receipt of addenda to this RFP that may have been issued by the Agency prior to the proposal due date and time. The proposer should complete this form and any individual issued addendum as instructed on the form.
E. Fee Proposal

A form for the submission of the Fee Proposal is included as Attachment 3 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 proposer must complete the Fee Proposal as per instructions on Attachment 3.

F. Proposal Package Contents (Checklist)

The Proposal Package should contain the following materials:

1. Separate sealed, labeled envelope clearly marked “Technical Proposal” (1 original and 4 copies)
   - Items listed in Section IV B of the RFP
   - Completed Forms 330 for the Prime and its Subconsultant(s)
   - Statement of Understanding and Certification (Attachment 1)
   - Completed and Notarized Proposer’s Certification of Compliance with Iran Divestment Act
   - Acknowledgement of Addenda (Attachment 5)
   - Signed Individual Addenda (if applicable)

2. Schedule B: M/WBE Utilization Plan (1 original*) (Attachment 6)
   Separate sealed envelope, clearly marked as “M/WBE Utilization Plan” (Schedule B, Part II), or Approved Waiver of Participation Goals (Schedule B, Part III)

3. Doing Business Data Form (1 original*) (Attachment 7)
   Separate sealed envelope clearly marked as “Doing Business Data Form”

*Original book(s) must contain original signatures.
SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Selection Process

This is a Quality Based Selection (QBS) project. DDC will rank proposals by technical merit, and negotiate a fair and reasonable price with the highest ranked. A DDC evaluation committee will review, evaluate and score all technical proposals in accordance with qualitative and quantitative criteria established in Subsection B below. This evaluation and scoring will determine the proposer's score. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their technical proposals, after which their scores may be reevaluated. Proposers shall be ranked in accordance with the scores. The scores will be submitted to the Agency Chief Contracting Officer (ACCO) or designee, who will certify the results and authorize fee negotiation to commence with the highest ranked firm for Contract #1. Should negotiations fail with the highest ranked firm, the ACCO or designee will authorize fee negotiation with the next highest ranked firm. Once the selection of a consultant for Contract #1 has been completed, the agency will proceed with the same process for Contract #2. The firms whose proposals are determined to be the most advantageous to the City will be awarded the contracts. DDC intends to award up to two contracts in the order set forth below.

B. Proposal Evaluation Criteria: The proposal submitted will be evaluated based on the following criteria:

a. Experience of Firm and Personnel (Weight 40%)
b. Technical Approach (Weight 30%)
c. Firm’s Capability (Weight 30%)

A. Basis of Award:

DDC shall 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 Request for Proposals and successful negotiation of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude no more than thirty days after receipt of the Fee Proposal.

B. 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/sbs/html/procurement/dls.shtml. Upon written notification, the proposer must submit the Supply and Service Employment Report within ten days of such notification.

C. PASSPort:

Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System [VENDEX] Forms or Certificate of No Change)
All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers to this Requirements Contract for Environmental Professional Services and Laboratory Testing Services for Various Capital Projects must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. **Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings.**

For more information about PASSPort, please visit [www.nyc.gov/passport](http://www.nyc.gov/passport)

D. **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(s) provided during the proposal process, may be incorporated into the final contract to be developed by the agency.
SECTION VI. GENERAL INFORMATION TO PROPOSERS

A. Complaints

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

B. Applicable Laws

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

C. Contractual Requirements

Contracts shall be subject to New York City’s general contract provisions, in substantially the form that they appear in “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 Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite Procurement and Sourcing Solutions Portal (PASSPort) online disclosure process 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.

Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in
lieu of complete online filings. For more information about PASSPort, please visit nyc.gov/passport.

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/PASSPort Fees

Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX/PASSPort 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 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. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to $1 million) (above $1 million).

M. Charter Section 312(a) Certification

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

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

☐ The contract to be awarded through this Request for Proposal is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task pursuant to such task order contract. Determination for any subsequent task orders will be made in conjunction with such subsequent task orders.

________________________________________                               ___________________
Agency Chief Contracting Officer                                               Date
ATTACHMENT 1: STATEMENT OF UNDERSTANDING AND CERTIFICATION

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

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

☐ Yes  ☐ No

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.

CERTIFICATE OF AUTHORIZATION REQUIREMENTS:

Professional Engineering Services

Section 7210 of the New York State Education Law requires that all business entities providing professional engineering services in the State of New York obtain a “Certificate of Authorization to provide Engineering Services in New York State” from the New York State Education Department. A copy of the Certificate of Authorization must be provided at the time of proposal submission.

Professional Geology Services

Section 7210 of the New York State Education Law also requires that all business entities providing professional geology services in the State of New York obtain “Certificate of Authorization to provide Geology Services in New York State” from the New York State Education Department. A copy of the Certificate of Authorization must be provided prior to award.

Please note that no award will be made to any proposing firm unless the firm is authorized by the New York State Education Department to provide professional engineering and professional geology services in the State.
ATTACHMENT 1 (continued)

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:

i. 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

ii. 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

RFP-20
**ATTACHMENT 3**

**FEE PROPOSAL**

<table>
<thead>
<tr>
<th>FMS ID:</th>
<th>PW335ES17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project:</td>
<td>Environmental Professional Services for the Boroughs of Brooklyn and Queens,</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FMS ID:</th>
<th>PW335ES18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project:</td>
<td>Environmental Professional Services for the Boroughs of Manhattan, The Bronx and Staten Island</td>
</tr>
</tbody>
</table>

**Submission:** Upon written notification by DDC, the proposer shall submit the Fee Proposal (Attachment 3) in a clearly labeled, sealed package within ten business days of such notice. The Fee Proposal shall consist of the following three parts of Attachment 3: (1) Part 1: All Inclusive Hourly Rates, (2) Part 2: Unit Prices for Testing Services, (3) Part 3: Multiplier for Overhead and Profit, and (4) Backup Material, as described below.

**PART 1: All Inclusive Hourly Rates for Environmental Services**

**All Inclusive Hourly Rates:** Required titles of personnel for environmental services are listed below. Minimum requirements per title are set forth in Attachment 4 of the RFP. For each title listed below, the proposer shall submit a Proposed All Inclusive Hourly Rate. Such All Inclusive Hourly Rates shall apply to the Three Year base term of the contract. Such All Inclusive Hourly Rates shall be subject to one increase only, at the beginning of the renewal term. Such increase shall be in accordance with Article 7 of the attached contract.

**Expenses Included:** The expenses included in the All Inclusive Hourly Rates are set forth in Article 7 of the attached contract.

**Backup Material:** The proposer shall submit Backup Material for the All Inclusive Hourly Rates. Such back up material may include the following: (1) actual direct salary rates per hour for individuals identified as personnel, (2) latest Audited Multiplier for Overhead, and (3) payroll register, (4) audited Statement of Direct Labor, (5) Fringe Benefits, and (6) General Overhead prepared in accordance with Part 31 of the Federal Acquisition Regulation.

<table>
<thead>
<tr>
<th>TITLE</th>
<th>ALL INCLUSIVE HOURLY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Executive</td>
<td>__________________________</td>
</tr>
<tr>
<td>Hazardous Material Project Manager</td>
<td>__________________________</td>
</tr>
<tr>
<td>Environmental Project Manager</td>
<td>__________________________</td>
</tr>
<tr>
<td>Certified Industrial Hygienist (CIH)</td>
<td>__________________________</td>
</tr>
<tr>
<td>Certified Safety Professional (CSP)</td>
<td>__________________________</td>
</tr>
<tr>
<td>Registered Design Professional</td>
<td>__________________________</td>
</tr>
<tr>
<td>Asbestos Project Designer</td>
<td>__________________________</td>
</tr>
<tr>
<td>Asbestos Investigator</td>
<td>__________________________</td>
</tr>
</tbody>
</table>

RFP-21
<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos Project Monitor</td>
<td></td>
</tr>
<tr>
<td>Environmental Technician /</td>
<td></td>
</tr>
<tr>
<td>Industrial Hygienist</td>
<td></td>
</tr>
<tr>
<td>Lead Risk Assessor</td>
<td></td>
</tr>
<tr>
<td>Lead Inspector</td>
<td></td>
</tr>
<tr>
<td>Mold Assessor</td>
<td></td>
</tr>
<tr>
<td>Project Engineer</td>
<td></td>
</tr>
<tr>
<td>Project Scientist</td>
<td></td>
</tr>
<tr>
<td>Geologist</td>
<td></td>
</tr>
<tr>
<td>Urban Planner</td>
<td></td>
</tr>
<tr>
<td>Environmental Specialist</td>
<td></td>
</tr>
<tr>
<td>Archeologist</td>
<td></td>
</tr>
<tr>
<td>CADD Operator</td>
<td></td>
</tr>
</tbody>
</table>
ATTACHMENT 3 (Continued)

PART 2: Unit Prices for Testing Services

Unit Prices for Testing Services: Required laboratory testing services are set forth below. For each type of test listed below, the proposer shall submit a Proposed Unit Price. Such Unit Prices shall apply to the Three Year base term of the contract. Such Unit Prices shall be subject to one increase only, at the beginning of the renewal term. Such increase shall be in accordance with Article 7 of the attached contract. The Consultant shall not be entitled to any mark-up on unit prices for testing services.

Testing Methods: Testing methods shall be in accordance with one of the following standards: ASTM, NYCDEP, USEPA, NYSDEC, or the most current and accepted method in place at the time the analysis is required. The Consultant shall not be entitled to any increase in the unit prices for testing services due to method revisions.

Expenses Included: The expenses included in the Unit Prices for Testing Services are set forth in Exhibit D to the attached contract.

<table>
<thead>
<tr>
<th>TESTING SERVICES</th>
<th>TEST METHOD</th>
<th>TURN AROUND TIME (TAT)</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLM Analysis – Friable ACM</td>
<td>Bulk</td>
<td>1-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PLM Analysis – Friable ACM</td>
<td>Bulk</td>
<td>4-hour</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PLM Analysis – NOB ACM</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PLM Analysis - Vermiculite</td>
<td>Bulk</td>
<td>2 day</td>
<td>Per test</td>
<td>__________</td>
</tr>
<tr>
<td>TEM Analysis – Friable ACM</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>TEM Analysis – NOB ACM</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PCM Analysis – ACM</td>
<td>Air</td>
<td>1-day</td>
<td>per test</td>
<td>__________</td>
</tr>
</tbody>
</table>
### TESTING SERVICES

<table>
<thead>
<tr>
<th>TEST</th>
<th>METHOD</th>
<th>TURN AROUND TIME (TAT)</th>
<th>UNIT</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCM Analysis – ACM</td>
<td>Air</td>
<td>4-hour</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>TEM Analysis – ACM</td>
<td>Air</td>
<td>1-day</td>
<td>per test</td>
<td>_________</td>
</tr>
</tbody>
</table>

### LEAD PAINT & DUST & WATER

<table>
<thead>
<tr>
<th>TEST</th>
<th>METHOD</th>
<th>TURN AROUND TIME (TAT)</th>
<th>UNIT</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead Paint Analysis</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Lead Paint Analysis</td>
<td>Wipe</td>
<td>2-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Lead in Air Sample Analysis</td>
<td>Air</td>
<td>2-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Lead in Soil Sample Analysis</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Lead in Water Sample Analysis</td>
<td>Water</td>
<td>2-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>XRF Test Apparatus – Lead</td>
<td>Surface</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
</tbody>
</table>

### INDOOR AIR QUALITY (IAQ)

<table>
<thead>
<tr>
<th>TEST</th>
<th>METHOD</th>
<th>TURN AROUND TIME (TAT)</th>
<th>UNIT</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total &amp; Respirable Dust</td>
<td>Air</td>
<td>2-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Silica</td>
<td>Air</td>
<td>2-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Microbial Analysis</td>
<td>Air</td>
<td>10-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Microbial Analysis</td>
<td>Wipe</td>
<td>10-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>TEST</td>
<td>TEST METHOD</td>
<td>TURN AROUND TIME (TAT)</td>
<td>UNIT</td>
<td>UNIT PRICE</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td>-------------</td>
<td>------------------------</td>
<td>------------</td>
<td>------------</td>
</tr>
<tr>
<td>Real Time Analyzer (Temp., RH, CO, CO₂)</td>
<td>Air</td>
<td>N/A</td>
<td>per diem</td>
<td></td>
</tr>
<tr>
<td>Colorimetric chemical detector tubes including pump</td>
<td>Air</td>
<td>N/A</td>
<td>per 10 tests</td>
<td></td>
</tr>
</tbody>
</table>

**SOIL/WATER**

<table>
<thead>
<tr>
<th>TEST</th>
<th>TEST METHOD</th>
<th>TURN AROUND TIME (TAT)</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Target Compound List Volatile Organic Compounds +MTBE, TBA, Xylenes (TCL VOC)</td>
<td>EPA 8260C</td>
<td>2-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Target Compound List Base Neutral /Acid Extractables</td>
<td>EPA 8270D</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Semi-Volatile Organic Compounds (TCL-BNAE SVOC)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York STARS List Volatile Organic Compounds (STARS-VOC)</td>
<td>EPA 8260C</td>
<td>2-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>New York STARS List Base Neutrals Semi-Volatile Organic Compounds (STARS-SVOC)</td>
<td>EPA 8270D</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Polynuclear Aromatic Hydrocarbons</td>
<td>EPA 8270C</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Total Petroleum Hydrocarbons</td>
<td>EPA 8015B</td>
<td>3-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Diesel Range Organics Gasoline Range Organics (TPHC-DRO/GRO)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Target Analyte List Metals (TAL-Metals)</td>
<td>EPA 6020/7000 Series</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Polychlorinated Biphenyls (PCB)</td>
<td>EPA 8082A/608</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Target Compound List Pesticides (TCL-Pest)</td>
<td>EPA 8081A/608</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Target Compound List Herbicides (TCL-Herb)</td>
<td>EPA 8151A</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Test</td>
<td>Test Method</td>
<td>Turn Around Time (TAT)</td>
<td>Unit</td>
<td>Unit Price</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>-----------------------</td>
<td>------</td>
<td>------------</td>
</tr>
<tr>
<td>Priority Pollutant Metals (PP-Metals)</td>
<td>EPA 6010/7000 Series</td>
<td>3-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>TCL/TAL Suite (Includes: TCL-VOC, TCL-BNAE, TAL Metals, PCB, TCL Pest, and TCL Herb)</td>
<td>EPA 8260C, 8270D, 6020/7000 Series, 8082A, 8081B, 8151A</td>
<td>5-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>TCLP Metals (RCRA 8)</td>
<td>EPA 1311/6010B</td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>Toxicity Characteristic Leaching Procedure for Lead only (TCLP Lead)</td>
<td>EPA 1311 6000 Series</td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>Full Toxicity Characteristic Leaching Procedure (Full TCLP) (Includes: TCLP VOCs, TCLP BNAE SVOCs, TCLP Metals, TCLP Pests, TCLP Herbs, and TCLP Extractions)</td>
<td>EPA 1311 8260C, 8270D, 6000 Series, 8081B, 8151A</td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>TCLP Waste Class (Includes: Full TCLP, PCB, TPHC-DRO/GRO, and RCRA Characteristics)</td>
<td>As above</td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>RCRA Characteristics (Includes: Reactivity, Ignitability, Corrosivity, and Paint Filter Test)</td>
<td>EPA 9012B/9034, 1030/1010A, 9045C, 9095B</td>
<td>3-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>NYCDEP Effluent (Includes: Non-polar Material, pH, Field Temperature, Flash Point, Cadmium, Chromium VI, Copper, Lead, Mercury, Nickel, Zinc, Benzene, Carbontetrachloride, Chloroform, 1,4 Dichlorobenzene, Ethylbenzene, MTBE, Naphthalene, Phenol, Tetrachloroethylene, Toluene, 1,2,4 Trichlorobenzene, 1,1,1 Trichloroethane, Total Xylenes, &lt; 65 Parts Per Trillion MDL PCBs, Total Suspended Solids, Carbonaceous Oxygen Demand, Chloride, Total Nitrogen, Total Solids)</td>
<td>Non polar Material by 1664 PCBs by 608 with MDL &lt; 65 ppt All others as above</td>
<td>5-day</td>
<td>per test</td>
<td>________</td>
</tr>
<tr>
<td>TEST</td>
<td>TEST METHOD</td>
<td>TURN AROUND TIME (TAT)</td>
<td>UNIT</td>
<td>UNIT PRICE</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>------------------------------------</td>
<td>------------------------</td>
<td>----------</td>
<td>------------</td>
</tr>
<tr>
<td>Soil Gas VOC Analysis</td>
<td>TO-15 (SUMMA Canister)</td>
<td>5-day</td>
<td>per test</td>
<td>_________</td>
</tr>
<tr>
<td>Flame Ionization Detector (FID)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Photo Ionization Detector (PID)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Multiple Gas Monitor</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>(% LEL, % O₂, H₂S, CO)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Mercury Vapor Analyzer</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Landfill Gas Monitor</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>(Methane, %LEL, Carbon Dioxide)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Multiple Water Analyzer (pH, Conductivity, Temp., Dissolved Oxygen, Salinity, Turbidity)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Oil-Water Interface Probe</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Radiation Meter</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>(Alpha, Beta, Gamma)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Global Positioning System</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
</tbody>
</table>
PART 3: Multiplier for Overhead and Profit

Multiplier for Overhead and Profit: In the space provided below, the proposer shall indicate a Proposed Multiplier for Overhead and Profit. Such Multiplier is subject to negotiation. Such Multiplier for Overhead and Profit shall only be used to calculate an All Inclusive Hourly Rate for any additional title(s) of personnel that may be required for a specific project, as set forth in Article 7 of the attached contract.

Proposed Multiplier for Overhead and Profit: ______________

Back up Material: If requested in writing by DDC, the proposer shall submit Backup Material for the Multiplier for Overhead and Profit. Such back up material shall consist of one of the following: (1) Audited Multiplier for Overhead, or (2) Audited Financial Statements, as described below.

(1) Audited Multiplier for Overhead: If the proposer has an “Audited Multiplier for Overhead” that has been accepted by a governmental agency, it shall submit its Audited Multiplier for Overhead, as well as a letter from a governmental agency that engages in capital construction work (city, state or federal) approving or accepting such Audited Multiplier for Overhead.

(2) Audited Financial Statements: If the proposer does not have audited financial statements, it must submit an affidavit attesting to the fact that the proposer does not have such statements. In addition, proposer must submit either reviewed or compiled financial statements for the last three (3) years, which statements must be accompanied by either an “Independent Accountant’s Review Report” signed by a CPA or an “Independent’s Accountant’s Compilation Report” signed by a CPA.

(3) Additional Information: DDC reserves the right to require the proposer to submit any records, documentation or accounting data in connection with its Multiplier. Such records may include, without limitation, the “CONR 385 Package”. For a description of the “CONR 385 Package”, the proposer is directed to the following website: https://www.dot.ny.gov/main/business-center/audit/conr-385-388

Note: The proposer shall not leave any blanks nor qualify the prices submitted in any way. Do not retype this form. Provide prices only on this form.

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

________________________________________
Name of Proposer

By:

________________________________________
Signature of Partner or Corporate Officer

________________________________________
Date

________________________________________
Print Name

________________________________________
Title

________________________________________
Telephone #

________________________________________
EIN #

________________________________________
Address

________________________________________
E-Mail Address
ATTACHMENT 4

MINIMUM REQUIREMENTS PER TITLE

Any personnel provided by the Consultant must satisfy the minimum qualification requirements for the specific title in which he/she is performing services. The minimum qualification requirements per title are set forth below.

<table>
<thead>
<tr>
<th>TITLE</th>
<th>YEARS OF EXPERIENCE</th>
<th>EDUCATION</th>
<th>LICENSE/ CERTIFICATION</th>
<th>SPECIFIC EXPERIENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Executive</td>
<td>15 years in field of expertise; 10 years in Environmental Engineering or Management</td>
<td>BS in Engineering, or Science Or (Advanced degree may be substituted for 2 years of experience)</td>
<td>PE in New York; or a CIH With a minimum of 10 year certification</td>
<td>10 years Environmental Management in NYC</td>
</tr>
<tr>
<td>Hazardous Material Project Manager</td>
<td>15 years of field experience in asbestos and lead investigation &amp; abatement management.</td>
<td>Bachelors Degree; Or an Associate’s Degree with a minimum of 15 years NYSDOL &amp; NYCDEP Asbestos Certification</td>
<td>10 years Certification as (1) NYSDOL Asbestos Project Monitor; Inspector &amp; Designer; (2) NYCDEP Asbestos Investigator; and (3) USEPA Lead Risk Assessor</td>
<td>10 years of asbestos &amp; lead investigation &amp; abatement experience in NYC.</td>
</tr>
<tr>
<td>Environmental Project Manager</td>
<td>15 years of field experience in environmental investigation, management, and remediation of which 8 years of experience is within NYC.</td>
<td>BS in Engineering, Science, or Geology; (CHMM or NYS PG may be substituted for 3 years of experience)</td>
<td>OSHA 40 hour HAZWOPER certificate.</td>
<td>8 years of environmental management in NYC.</td>
</tr>
<tr>
<td>Certified Industrial Hygienist</td>
<td>10 years of industrial hygiene</td>
<td>Bachelors Degree</td>
<td>CIH – American Board of Industrial Hygiene (5 years)</td>
<td>5 years IAQ, mold, asbestos, silica, and lead assessment and remediation.</td>
</tr>
<tr>
<td>Certified Safety Professional</td>
<td>10 years of construction safety field experience</td>
<td>Bachelors Degree</td>
<td>CSP - Board of Certified Safety Professionals (5 years)</td>
<td>5 years Construction safety in NYC. Thorough knowledge of NYCDOB construction safety regulations</td>
</tr>
<tr>
<td>Asbestos Project Designer</td>
<td>5 years in asbestos abatement design specification</td>
<td>Bachelors Degree; Or an Associate’s degree plus 10 years certification as an NYSDOL Asbestos Project Designer</td>
<td>5 years certification NYS DOL – Asbestos Project Designer</td>
<td>5 years NYC DEP Asbestos Regulations; Interpret construction drawings and specifications</td>
</tr>
<tr>
<td>TITLE</td>
<td>YEARS OF EXPERIENCE</td>
<td>EDUCATION</td>
<td>LICENSE/CERTIFICATION</td>
<td>SPECIFIC EXPERIENCE</td>
</tr>
<tr>
<td>--------------------------------------------</td>
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<td>-----------------------------------------------</td>
<td>-----------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Asbestos Investigator</td>
<td>6 years in asbestos assessments/investigations in NYC.</td>
<td>2 years of college-level education</td>
<td>4 years NYSDOL Inspector &amp; NYC DEP Investigator certification; 4 hour supported scaffolding; suspended scaffolding certificate; and confined space certificate</td>
<td>Ability to review drawings and construction documents, and enter confined spaces and climb scaffolding</td>
</tr>
<tr>
<td>Asbestos Project Monitor</td>
<td>4 years asbestos abatement project monitoring in NYC</td>
<td>High School Diploma (1 year college level education may be substituted for 1 year experience)</td>
<td>3 years NYSDOL Project Monitor certification</td>
<td>3 years asbestos abatement project monitoring in NYC</td>
</tr>
<tr>
<td>Environmental Technician / Industrial Hygienist</td>
<td>2 years environmental monitoring and/or industrial hygiene sampling</td>
<td>2 years of college-level education</td>
<td>Certifications for the specific hazard of the project. eg. CIAQM/AST/</td>
<td>Environmental air sampling &amp;/or remediation oversight monitoring</td>
</tr>
<tr>
<td>Lead Risk Assessor</td>
<td>4 years in environmental risk assessments involving lead based paint lead in buildings</td>
<td>2 years of college level education</td>
<td>USEPA Lead Risk Assessor (minimum 3 years continuous certification)</td>
<td>Interpret construction drawings and specifications; Knowledge of HUD LBP inspection and clearance protocols &amp; standards</td>
</tr>
<tr>
<td>Lead Inspector</td>
<td>4 years in environmental risk assessments involving lead based paint lead in buildings</td>
<td>High School Diploma (1 year college level education may be substituted for 1 year experience)</td>
<td>3 years USEPA Lead Inspector &amp; XRF Certification</td>
<td>2 years Lead based paint inspection &amp; assessments in NYC. Knowledge of HUD LBP inspection protocols</td>
</tr>
<tr>
<td>Mold Assessor</td>
<td>3 years in mold assessment and remediation design</td>
<td>Associates degree</td>
<td>NYSDOL Mold Assessor license</td>
<td>Interpret construction drawings and specifications, plus 3 years experience in the identification and evaluation of water damaged building components.</td>
</tr>
<tr>
<td>Registered Design Professional</td>
<td>5 years with NYC DEP asbestos regulations and DOB/FDNY regulations</td>
<td>Bachelor in Engineering, Science or Architecture</td>
<td>PE or RA in New York State and NYCDEP account</td>
<td>3 years of preparing Work Place Safety Plans required for asbestos abatement permit experience</td>
</tr>
<tr>
<td>Project Engineer / Scientist</td>
<td>5 years environmental field investigation, mitigation/ remediation design and /or monitoring</td>
<td>Bachelor in Engineering, or Science, (A CHMM, CPESC certification or NYS PG license may be substituted for 2 years of experience)</td>
<td>OSHA 40 hour HAZWOPER certificate</td>
<td>Interpret construction drawings and specifications and thorough knowledge of NYSDEC regulations.</td>
</tr>
<tr>
<td>TITLE</td>
<td>YEARS OF EXPERIENCE</td>
<td>EDUCATION</td>
<td>LICENSE/CERTIFICATION</td>
<td>SPECIFIC EXPERIENCE</td>
</tr>
<tr>
<td>----------------------</td>
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<td>----------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Geologist</td>
<td>6 years</td>
<td>Bachelor's degree</td>
<td>NYS Professional Geologist and OSHA 40 hour HAZWOPER certification</td>
<td>4 years subsurface investigation in NYC</td>
</tr>
<tr>
<td></td>
<td>environmental</td>
<td>Geology/Hydrology</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>subsurface</td>
<td>investigation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Archeologist</td>
<td>8 years</td>
<td>Bachelors degree</td>
<td></td>
<td>5 years of archeology experience in NYC</td>
</tr>
<tr>
<td></td>
<td>experience in</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>archeological</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>study</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urban Planner</td>
<td>8 years</td>
<td>Bachelors degree</td>
<td>American Institute of Certified Planners (AICP)</td>
<td>5 years of SEQRA/CEQR/ULURP experience in NYC</td>
</tr>
<tr>
<td></td>
<td>experience in</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>environmental</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>planning in NYC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental</td>
<td>8 years</td>
<td>Bachelors degree</td>
<td>Certified Professional Wetland Specialist (PWS)</td>
<td>5 years wetland delineation/mitigation and environmental</td>
</tr>
<tr>
<td>Specialist</td>
<td>experience in</td>
<td></td>
<td></td>
<td>permitting in NYC</td>
</tr>
<tr>
<td></td>
<td>environmental</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>permitting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CADD Operator</td>
<td>3 years</td>
<td>2 years of college-level education</td>
<td>Development of environmental remediation drawings, sketches, and details; must be</td>
<td></td>
</tr>
<tr>
<td></td>
<td>construction design</td>
<td></td>
<td>proficient in latest version of CADD</td>
<td></td>
</tr>
<tr>
<td></td>
<td>drawing utilizing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Autocad</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** ALL TITLES (EXCEPT CADD OPERATOR) MUST HOLD A VALID OSHA 30 HOUR CONSTRUCTION SAFETY & HEALTH CARD
# ACKNOWLEDGEMENT OF ADDENDA

**TITLE OF THE REQUEST FOR PROPOSALS:**
Requirements Contract for Professional Environmental Services and Laboratory Testing Services for Various Capital Projects, Citywide

**PIN #:** 8502019PW0001P-02P

**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.

<table>
<thead>
<tr>
<th>Addendum #</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td># 1</td>
<td>_____________________</td>
</tr>
<tr>
<td># 2</td>
<td>_____________________</td>
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<tr>
<td># 3</td>
<td>_____________________</td>
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<td># 4</td>
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<td># 8</td>
<td>_____________________</td>
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<tr>
<td># 9</td>
<td>_____________________</td>
</tr>
<tr>
<td># 10</td>
<td>_____________________</td>
</tr>
</tbody>
</table>

*All Addenda issued must also be signed and included in the Technical Proposal*

### Part II

No Addendum was received in connection with this RFP.

---

**Proposer Name** ____________________________

**Proposer's Authorized Representative:**

- **Name:** ____________________________
- **Title:** ____________________________
- **Signature:** ____________________________
- **Date:** ____________________________
**ATTACHMENT 6**

**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 nonresponsive, 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.

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 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 the Contractor 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) 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.

(c) 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, 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 Contract of the determination.

(a) 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.
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 PASSPort as caution data.
**SCHEDULE B – M/WBE Utilization Plan**

**Part I: M/WBE Participation Goals**

Part I to be completed by contracting agency

### Contract Overview

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</tr>
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<td>PIN #</td>
<td>PW335ES17-18</td>
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**Bid/Proposal Response Date:**

4:00 P.M., Monday, February 25th, 2019

### Contracting Agency

**Agency Address:**

30-30 Thomson Ave, City Long Island City, State NY, Zip Code 11101

**Contact Person:**

Yamina Youb

**Telephone #**:

718-391-1607

**Email**:

Youbya@ddc.nyc.gov

### Project Description

(attach additional pages if necessary)

PW335ES17 / PW335ES18

Requirements Contract for Environmental Professional Services and Laboratory Testing Services for Various Capital Projects, Citywide

### 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.

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<tr>
<th>Group</th>
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<td><strong>Unspecified</strong></td>
<td>25%</td>
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<td><strong>or</strong></td>
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<td>Black American</td>
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<td>Hispanic American</td>
<td>Unspecified %</td>
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<tr>
<td>Asian American</td>
<td>No Goal %</td>
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<tr>
<td>Women</td>
<td>Unspecified %</td>
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**Total Participation Goals**

25% Line 1
**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

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<th>Tax ID #</th>
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### 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.**

  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.

  Total Bid/Proposal Value

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#### 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.**

  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.

  Total Bid/Proposal Value

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### Section III: M/WBE Utilization Plan: How Proposer/Bidder Will Fulfill M/WBE Participation Goals.

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.

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17._________________________________________________________
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  ___________________________
### Contract Overview

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

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<th>%</th>
<th>Agency M/WBE Participation Goal</th>
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### Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver

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<th>%</th>
<th>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.</th>
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**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.

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<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>AGENCY</th>
<th>DATE COMPLETED</th>
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<tr>
<th>Total Contract Amount $</th>
<th>Total Amount Subcontracted $</th>
<th>Item of Work</th>
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</table>

Page 5 of 6 (June 2013)
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.)

<table>
<thead>
<tr>
<th>TYPE OF Contract</th>
<th>ENTITY</th>
<th>DATE COMPLETED</th>
</tr>
</thead>
</table>

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

Total Contract Amount $ ____________________________

Total Amount $ ____________________________

Type of Work

Subcontracted

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

Total Contract Amount $ ____________________________

Total Amount $ ____________________________

Type of Work

Subcontracted

Value of subcontract

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

Total Contract Amount $ ____________________________

Total Amount $ ____________________________

Type of Work

Subcontracted

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
ATTACHMENT 7

DOING BUSINESS DATA FORM

Questions and Answers About the Doing Business Data Form

What is the purpose of the Doing Business Data Form (DBDF)?

To collect accurate, up-to-date identification information about organizations that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), a campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of entities doing business with the City and mandates the creation of a Doing Business Database to allow the City to enforce the law. The information requested in this DBDF must be provided, regardless of whether the organization 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 DBDF?

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 DBDF is completed. Most transactions valued at more than $5,000 are considered business dealings and require completion of the Doing Business Data Form. Exceptions include transactions awarded on an emergency basis or by "conventional" competitive sealed bid (i.e. bids that do not use a prequalified list or "Best Value" selection criteria.) Other types of transactions that are considered business dealings include real property and land use actions with the City.

What individuals will be included in the Doing Business Database?

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

- Principal Officers are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer, or their functional equivalents. See the DBDF for examples of titles that apply.
- Principal Owners are individuals who own or control 10% of more of the organization. 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 on the Data Form or this Data Form will be considered incomplete.

NEW FOR 2018: As of January 2018, the DBDF must report organizations, as well as individuals, that own 10% or more of the entity. A DBDF with such a certification, filed as a full (never filed before) or as a change form, must be submitted before an entity can then file a DBDF that indicates no changes since the previous form. Contact DBA at 212-788-8104 or at doingbusiness@mocs.nyc.gov to inquire if DBA has received such a form.

I have already completed a Doing Business Data Form, do I have to submit another one?

Yes. An organization is required to submit a DBDF each time it enters into a transaction considered a business dealing with the City, including contract, concession and franchise proposals. However, the DBDF has both a Change option, which requires only information that has changed since the last DBDF was filed, and a No Change option. No organization should have to fill out the entire DBDF more than once.

If you have already submitted a DBDF for one transaction type (such as a contract), and this is the first time you are completing a DBDF for a different transaction type (such as a grant), please select the Change option and complete Section 4 (Senior Managers) for the new transaction type.

Will the personal information on the DBDF be available to the public?

No. The names and titles of the officers, owners and senior managers reported on the DBDF will be made available to the public, as will information about the organization itself. However, personal identifying information, such as home address and date of birth, will not be disclosed to the public, and home address will not be used for communication purposes.

RFP-34
I provided some of this information in PASSPort; do I have to provide it again?
Yes. Although a Doing Business Data Form and PASSPort request some of the same information, they serve entirely different purposes. In addition, the DBDF requests information concerning senior managers, which is not in PASSPort.

What organizations will be included in the Doing Business Database?
Organizations that hold $100,000 or more in grants, contracts for goods or services, franchises or concessions ($500,000 for construction contracts), or that hold any economic development agreement or pension fund investment contract, are considered to be doing business with the City for the purposes of LL 34. Because all of the business that an organization does or proposes to do with the City will be added together, the DBDF must be completed for all transactions valued at more than $5,000 even if the organization doesn’t currently do enough business with the City to be listed in the Database.

No one in my organization plans to contribute to a candidate; do I have to fill out this DBDF?
Yes. All organizations are required to return this DBDF 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 Data Form must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

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 a DBDF for 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.

How long will an organization 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.

How does a person remove him/herself from the Doing Business Database?
When an organization stops doing business with the City, the people associated with it are removed from the Database automatically. However, any person who believes that s/he should not be listed may apply for removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the organization. Organizations may also update their database information by submitting an update form. Removal Request and Update forms are available online https://www1.nyc.gov/site/mocs/resources/forms.page or by calling 212-788-8104.

What are the 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 DBDF is to be returned to the City office that issued it.

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

To be completed by the City agency prior to distribution

Check One
☑ Proposal ☐ Award
☐ Concession ☐ Economic Development Agreement ☐ Franchise ☐ Grant ☐ Pension Investment Contract ☐ Contract

Transaction Type (check one)

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, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. This Data Form is not related to the City’s PASSPort registration or VENDEX requirements.

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

Entity Information

Entity EIN/TIN: ___________________________ Entity Name: ___________________________

Filing Status (Select One)

NEW: Data Forms submitted now must include the listing of organizations, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, no change form will be accepted.

☐ 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: ___________________________ E-mail: ___________________________

Provide your e-mail address in order to receive notices regarding this form by e-mail.

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

☐ This position does not exist

First Name: ___________________________ MI: ___________________________ Last: ___________________________ Birth Date (mm/dd/yyyy): ___________________________

Office Title: ___________________________ Employer (if not employed by entity): ___________________________

Home Address: ___________________________

☐ This person replaced former CEO ___________________________ on date ___________________________

Chief Financial Officer (CFO) or equivalent officer
The highest ranking financial officer such as the Treasurer, Comptroller, Financial Director or VP for Finance.

☐ This position does not exist

First Name: ___________________________ MI: ___________________________ Last: ___________________________ Birth Date (mm/dd/yyyy): ___________________________

Office Title: ___________________________ Employer (if not employed by entity): ___________________________

Home Address: ___________________________

☐ This person replaced former CFO ___________________________ on date ___________________________

Chief Operating Officer (COO) or equivalent officer
The highest ranking operational officer such as the Chief Operating Officer, Director of Operations or VP for Operations.

☐ This position does not exist

First Name: ___________________________ MI: ___________________________ Last: ___________________________ Birth Date (mm/dd/yyyy): ___________________________

Office Title: ___________________________ Employer (if not employed by entity): ___________________________

Home Address: ___________________________

☐ This person replaced former COO ___________________________ on date ___________________________

1/2018

For information or assistance, please contact the Doing Business Accountability Project at DoingBusiness@cscs.nyc.gov or 212-788-8104.

RFP- 36
Principal Owners
Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, own or control 10% or more of the entity. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the Senior Managers section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filling a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. 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
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain)

Individual Owners (who own or control 10% or more of the entity)
First Name_________________ MI_________ Last_________________ Birth Date (mm/dd/yy)_________________
Office Title_________________ Employer (if not employed by entity)_________________
Home Address_________________

First Name_________________ MI_________ Last_________________ Birth Date (mm/dd/yy)_________________
Office Title_________________ Employer (if not employed by entity)_________________
Home Address_________________

Organization Owners (that own or control 10% or more of the entity)
Organization Name_________________

Organization Name_________________

Organization Name_________________

Remove the following previously-reported Principal Owners
Name_________________ Removal Date_________________
Name_________________ Removal Date_________________
Name_________________ Removal Date_________________

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 filling 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_________________ Birth Date (mm/dd/yy)_________________
Office Title_________________ Employer (if not employed by entity)_________________
Home Address_________________

First Name_________________ MI_________ Last_________________ Birth Date (mm/dd/yy)_________________
Office Title_________________ Employer (if not employed by entity)_________________
Home Address_________________

First Name_________________ MI_________ Last_________________ Birth Date (mm/dd/yy)_________________
Office Title_________________ Employer (if not employed by entity)_________________
Home Address_________________

Remove the following previously-reported Senior Managers
Name_________________ removal date
Name_________________ removal date

Certification
I certify that the information submitted on these two 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_________________ Title_________________
Entity Name_________________ Work Phone 
Signature_________________ Date_________________

Please return this form to the City agency that supplied it to you, not to the Doing Business Accountability Project.
ATTACHMENT 8

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

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,

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.

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.

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:

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

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.

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.

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.

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.
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 9

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 10
DISPLACEMENT DETERMINATION FORM- PURSUANT TO CITY CHARTER §312A

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 APTL63@cityhall.nyc.gov or (212) 788-0010.

Procurement Description:

APT EPIN: 85019P0007
Agency: DDC
Your Name: Melanie Sanchez
Phone: 718-391-3430
Email: SanchezM@ddc.nyc.gov

Please specifically identify the service(s) being procured.


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 X No __
If so, list the names of such titles and the extent to which Agency employees within such titles currently perform such services.

| Administrative Construction Project Manager, Assistant Architect, Administrative Architect, Administrative Architect Non-Manager (NM), Administrative Engineer Non-Manager (NM), Administrative Landscape Architect, Administrative Landscape Architect Non-Manager (NM), Administrative Project Manager, Administrative Project Manager Non-Manager (NM), Architect, Administrative Landmarks Preservationist, Administrative Construction Project Manager Non-Manager (NM), Assistant Civil Engineer, Associate Urban Designer, City Planner, Project Manager, Administrative Engineer, Civil Engineer, Civil Engineer Intern, Electrical Engineer, Assistant Electrical Engineer, Landscape Architect, Assistant Landscape Architect, Mechanical Engineer, Assistant Mechanical Engineer, Highways and Sewers Inspector. DDC employees in the above civil service titles currently perform similar work up to approximately 30% of the entire portfolio projects. |

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 the proposed contracts expand existing capacity and secure environmental services and laboratory testing services. The role of DDC staff in the Division of Safety and Site Support is predominantly to supervise and manage the performance of the contractor and act as liaisons between the client agencies and the contractors. |

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 a personnel service budget coupled with fluctuations in our capital construction portfolio has prevented the agency from hiring additional professional staff to meet design services 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.
There are 2 Administrative Construction Project Managers, 6 Assistant Architects, 15 Administrative Architects, 26 Administrative Architect Non-Managers (NM), 20 Administrative Engineer Non-Managers (NM), 3 Administrative Landscape Architects, 1 Administrative Landscape Architect Non-Manager (NM), 36 Administrative Project Managers, 88 Administrative Project Manager Non-Managers (NM), 18 Architects, 1 Administrative Landmarks Preservationist, 13 Administrative Construction Project Manager Non-Managers (NM), 128 Assistant Civil Engineers, 22 Associate Urban Designers, 2 City Planners, 22 Project Managers, 38 Administrative Engineers, 55 Civil Engineers, 44 Civil Engineer Interns, 2 Electrical Engineers, 4 Assistant Electrical Engineers, 6 Landscape Architects, 4 Assistant Landscape Architects, 9 Mechanical Engineers, 9 Assistant Mechanical Engineers, 2 Highways and Sewers Inspectors. Total of 576 employees.

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.

The Agency does not have enough staff to perform the scope of work outlined in this contract. As such, the procurement does not result in the displacement of the Agency's employees. The staff will supervise and manage the performance of the contractors and act as a liaison between the client agencies and the contractors.

Part 2: Certification of Displacement

The agency has determined that displacement, as defined by Charter § 312(a), has or will occur as a result of this contracting action. The agency has performed the required cost-benefit analysis, as described in Charter § 312(a).
ATTACHMENT 11

HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars ($1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York ("the City") found within the Department of Small Business Services's ("SBS") website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of https://labor.ny.gov/stats/2012-2022-NYS-Employment-Propects.xls). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take
place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor’s ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars ($2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars ($500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.
Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

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

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

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.
ATTACHMENT 12

PAID SICK LEAVE LAW CONTRACT RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. * Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

* 1 Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.
An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

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

• such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;

• such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

• closure of such employee’s place of business by order of a public official due to a public health emergency; or

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

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

**Exemptions and Exceptions**

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

• an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law
ATTACHMENT 12 (Continued)

• an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;

• an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

• an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;

• an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

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

• an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

• a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA’s website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

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

Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.
ATTACHMENT 12 (Continued)

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500 for a first violation, $750 for a second violation within two years of the first violation, and $1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.
THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF SAFETY AND SITE SUPPORT
30-30 THOMSON AVENUE
LONG ISLAND CITY, NEW YORK 11101

REQUIREMENTS CONTRACT
ENVIRONMENTAL SERVICES FOR VARIOUS PROJECTS

FMS NUMBER: PW335ES17
PW335ES18

REGISTRATION NUMBER: ________________________

PIN NUMBER: 8502019PW0001P
8502019PW0002P

E-PIN: 85019P0007

CONSULTANT: ______________________________
____________________________
____________________________

Telephone: _________________
Email: _________________

Standard Professional Services Requirements Contract
September 2018
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 “Consultant”), located at ____________________.

WITNESSETH:

WHEREAS, the City desires to have the services set forth in Exhibit A performed on a requirements basis for various Projects, as specified by the Commissioner on a Work Order basis, and

WHEREAS, the Consultant 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 Consultant and the City, including (1) the Request for Proposals for the Contract (“RFP”); (2) the Proposal submitted by the Consultant, (3) Work Orders issued by the Commissioner; and (4) the Exhibits set forth below.

Exhibit A: Contract Information
Exhibit B: Staffing Requirements: Titles and All Inclusive Hourly Rates
Exhibit C: Minimum Requirements Per Title
Exhibit D: Testing Services and Unit Prices
Exhibit E: Schedule B: M/WBE Utilization Plan
Exhibit F: Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services
Exhibit G: Hiring and Employment Rider: HireNYC and Reporting Requirements

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 "City" shall mean the City of New York.

1.5 “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.

1.6 “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.

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

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

1.9 “Consultant” or “Contractor” shall mean the entity entering into this Agreement with the Department.

1.10 "Contract" or "Contract Documents" shall mean the Agreement referred to in Paragraph 1.1 of this Article.
1.11 “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

1.12 "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.

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

1.14 "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.

1.15 “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.

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

1.17 "Modification" shall mean any written amendment of this Agreement signed by both the Department and the Consultant.

1.18 “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.

1.19 “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.

1.20 “Project” shall mean the Project for which the services set forth in Exhibit A are required, as specified by the Commissioner on a Work Order basis.

1.21 "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).

1.22 "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.

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

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

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

1.26 "Subconsultant" or “Subcontractor” shall mean any person, firm, or corporation, other than employees of the Consultant, who or which contracts with the Consultant or his subconsultants to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All Subconsultants and/or subcontractors are subject to the prior written approval of the Commissioner.

1.27 “Work Order” or “Work Order Letter” shall mean an order issued pursuant to this Contract to the Consultant by DDC with a "not to exceed" amount and a specified scope of work to be completed within a definite time period.
ARTICLE 2 – General Provisions

2.1 General Provisions governing the Contract, including insurance coverage the Consultant 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 Consultant to perform the services hereinafter described, on the terms and conditions set forth herein, and the Consultant agrees to so serve and to commence work on the date specified in the written Notice to Proceed Letter and shall remain in effect for the period set forth in EXHIBIT A. The Consultant agrees to provide, to the satisfaction of the Commissioner, the services set forth in this Contract for various Projects, as specified by the Commissioner on a Work Order basis. The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its obligations under this Contract competently and efficiently.

ARTICLE 4 – Work Order Process

4.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, environmental services and laboratory testing services for various projects, in accordance with the Work Order process set forth below. The Consultant’s services shall be provided with respect to the Project(s) specified in the Work Order. The Consultant shall not perform services hereunder until the Commissioner has issued a Work Order, as set forth below. The requirement for a finalized written Work Order shall not apply in the event the Consultant is directed to provide services to address an urgent condition, as described in Article 4.8 (“Commissioner Designated Priority”).

4.2 Issuance of Work Orders by Commissioner: Throughout the term of the Contract, as the need arises for services, the Commissioner shall issue a Work Order to the Consultant. Each Work Order issued hereunder shall specify the items set forth below:

   4.2.1 Project(s) for which services are required
   4.2.2 Services to be performed by the Consultant
   4.2.3 Time frame for completion of the required services
   4.2.4 Overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed Amount shall be broken down into various allowances, depending on the required services. Such allowances may include the following: (1) Allowance for Environmental Services, (2) Allowance for Laboratory Testing Services, and, if applicable, (3) Allowance for Reimbursable Services.

4.3 Maximum Price: The amount of the Allowance for Environmental Services and the amount of the Allowance for Laboratory Testing Services set forth in the Work Order shall constitute the maximum price to be paid to the Consultant for providing the services specified therein. The Consultant shall not be entitled to payment in excess of such allowance amounts, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

4.4 Supplementary Work Orders: In the event of any changes to the Work Order, the Commissioner shall issue a Supplementary Work Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Work Order issued by the Commissioner. Notwithstanding the specific amounts allocated for allowances, as set forth in Work Orders issued hereunder, the Commissioner may, by issuance of a Supplementary Work Order to the Consultant, reallocate such specific allowance amounts.

4.5 Conflicts: In the event of any conflict between a Work Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Work Order shall take precedence over the Contract.

4.6 No Right to Reject a Work Order: The Consultant shall have no right to reject or decline to perform any Work Order issued under the Contract. Accordingly, any rejection of a Work Order by the Consultant, either expressly made or implied by conduct, shall constitute a material breach of this Contract.

4.7 Work by Others: In the event there is a need for services, the Commissioner reserves the right not to utilize this
requirements contract and to proceed with a new solicitation for the required services, or to have the services performed by another consultant(s), or by City employees, if the Commissioner, in his/her sole opinion, determines that it would be in the best interest of the City to do so.

4.8 Commissioner Designated Priority: The Consultant may be required to provide services to address an urgent condition in any of the five boroughs within the City of New York. A Work Order involving an urgent condition shall be identified as a “Commissioner Designated Priority”. In such case, the Consultant shall be required to commence services at the site within two (2) hours of notification by email. The email notification shall specify the required titles and estimated hours per title. The Work Order to address the urgent condition shall be finalized within seventy-two (72) hours of the initial notification by email or as soon as practical thereafter, if the urgent condition continues.

ARTICLE 5 – The Consultant’s Personnel

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

5.1.1 Consultant: The Consultant, in its Proposal for the Contract, demonstrated that it has been licensed as an Asbestos Handling Contractor by the New York State Department of Labor (NYSDOL). The Consultant shall maintain such license for the duration of the contract.

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

(a) Such laboratory has been accredited by the following: (1) NYS Environmental Laboratory Accreditation Program (ELAP), (2) National Voluntary Laboratory Accreditation Program (NVLAP), (3) US EPA National Lead Laboratory Accreditation Program (NLLAP), and (4) American Industrial Hygiene Association (“AIHA”).

(b) Such laboratory has participated in and received a current rating of “Proficient” in ten (10) of the twelve (12) most recent rounds of the Proficiency Analytical Testing (“PAT”) program administered by the AIHA.

(c) In the event any federal, state or local entity establishes accreditation or certification requirements applicable to the laboratory testing services required hereunder, such laboratory will comply with such requirements.

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

5.2 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide all personnel necessary and required for performance of environmental services and laboratory testing services for various Projects, in accordance with Work Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Subconsultants, as set forth in Exhibit A, unless otherwise approved by the Commissioner. The Consultant agrees that its employees, agents, and Sub-consultants shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform.

5.2.1 Contract Staffing Requirements: Staffing requirements for personnel for the performance of environmental services have been established by the Commissioner and are set forth in Exhibit B. Such staffing requirements specify the titles of personnel which the Consultant will be required to provide through its own employees. The Consultant proposer shall provide a minimum quantity of personnel per title employed by the Consultant: (a) One (1) Contract Executive with a valid Professional Engineer’s license issued by NYS Education Department or a Certified Industrial Hygienist issued by the American Board of Industrial Hygiene; (b) One (1) Hazardous Materials Project Manager; (c) One (1) Environmental Project Manager; (d) One (1) Certified Industrial Hygienist; (e) One (1) Certified Safety Professional; (f) One (1) Registered Design Professional; (g) Three (3) Asbestos Project Designers; (h) Six (6) Asbestos Investigators; (i) Eight (8) Asbestos Project Monitors; (j) Six (6) Environmental Technicians/Industrial Hygienists; (k) Four (4) Lead Risk Assessors; (l) Four (4) Lead Inspectors; (m) One (1) Mold Assessor; (n) Two (2) Project Engineers; (o) Two (2) Project Scientists; (p) Four (4) Geologists; (q) Two (2) Urban Planners; (r) Two (2) Environmental Specialists; (s) One (1) Archeologist, and (t) Four (4) CADD operators.

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

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

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

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

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

5.4.2 Proposed Contract Staffing Plan: Within three (3) business days of a written request from the Commissioner, the Consultant shall submit a proposed Staffing Plan for the Contract. Such proposed Staffing Plan shall include an organizational chart delineating the role of each individual per labor title. With respect to each proposed individual, the Consultant shall provide: (1) the individual’s resume with dates of service per project identified in the resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications, and (2) the title for which the individual meets the minimum requirements, as set forth in Exhibit C.

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

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

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

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

5.4.7 Revisions to Staffing Plan: The Commissioner may, at any time, direct revisions to the Staffing Plan, including without limitation, increasing or decreasing the specified personnel, based upon the scope of required services. The Consultant shall increase or decrease the specified personnel, as directed by the Commissioner. During the term of the contract the Consultant may submit a revised staffing plan for approval no more than once per month

5.5 Proposed Work Order Staffing Plan: A Staffing Plan shall be established on a Work Order basis for the Project(s) specified therein. Such Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant’s services pursuant to the Work Order. Within five (5) business days of a written request from the Commissioner, the Consultant shall submit a proposed Work Order Staffing Plan for the Project. Such proposed Staffing Plan shall include the items set forth below:

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

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

5.5.2 Review and Approval of Work Order Staffing Plan: The Commissioner shall review the Consultant’s proposed Work Order Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of such review, the Commissioner shall determine: (1) whether each proposed labor title meets the minimum requirements for the applicable work order task assignment, and (2) whether the All Inclusive Hourly Rate for each proposed individual is in accordance with the rate for the title for which the individual meets the minimum requirements and (3) whether the type and quantity of laboratory testing meets the minimum requirement for the task. The Consultant shall revise the proposed Work Order Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.6 Subconsultants: Subcontracting is only permitted as set forth in Exhibit A. If Exhibit A permits the Consultant to subcontract certain services, the provision set forth below shall apply. Notwithstanding anything to the contrary set forth in Appendix A, all Subconsultants, regardless of the value of their subcontract(s), are subject to the approval of the Office of Environmental and Geotechnical Services (OEGS). Subconsultants must be approved by OEGS prior to performing any work. All Subconsultants will be required to provide documentation to verify integrity to perform the specific type of work being assigned. If subcontracting is prohibited by Exhibit A, the provisions set forth below shall have no application.

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

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

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

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

ARTICLE 6 - Scope of Services

6.1 General: The Consultant shall provide comprehensive environmental services and laboratory testing services for various capital projects, as specified by the Commissioner on a Work Order basis. The Consultant’s services shall be provided in accordance with all terms and conditions set forth in this Contract. As further described below, the Consultant shall determine whether any environmental contaminants are present and shall identify what actions are necessary to remediate, abate, enclose, encapsulate, remove or otherwise control such contaminants in accordance with the following: (1) the requirements of Federal, State and Local laws, rules and regulations, and (2) DDC standards and procedures.

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

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

6.1.3 Performance of Services: The Consultant agrees to provide all required personnel for the performance of services hereunder, as set forth in Article 5.

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

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

- American Industrial Hygiene Association (AIHA)
- American Society of Testing Materials (ASTM)
- Army Corp of Engineers (ACOE)
- City Environmental Quality Review (CEQR)
- Certified Industrial Hygienist (CIH)
- Certified Hazardous Materials Manager (CHMM)
- Certified Safety Professional (CSP)
- Environmental Laboratory Accreditation Program (ELAP)
- Federal Highway Administration (FHWA)
- Fire Department of New York (FDNY)
- National Lead Laboratory Accreditation Program (NLLAP)
- National Voluntary Laboratory Accreditation Program (NVLAP)
- New York City Department of Buildings (DOB)
6.3 Environmental Investigation and Assessment Services

6.3.1 General: The Consultant shall provide all environmental and/or industrial hygiene services necessary to study, identify, locate and quantify environmental contaminants that may be disturbed or released during construction activities involving buildings, temporary structures or other project locations and provide cost estimate for abatement/remediation of such contaminants.

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

6.3.3 Final Environmental Survey Report: The Consultant shall prepare the Final survey utilizing the template provided by DDC, unless otherwise directed, and be executed by the federal, state of NYC certified professional in accordance with regulatory requirements.

6.4 Environmental Abatement Design Specification Services

6.4.1 General: The Consultant shall, provide all design services necessary for the abatement of environmental contaminants in locations specified by the Commissioner on a Work Order basis. Design services shall include the preparation of design documents (drawings and specifications) and cost estimates for the required work. All work shall be properly coordinated so as to prevent, as much as possible, changes, adjustments, or extra work orders during construction.

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

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

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

(a) The Consultant shall review shop drawings submitted by architects or contractors, perform a walkthrough of the proposed work areas to verify quantities, obtain additional suspect material samples when required, and prepare all abatement specification drawings in accordance with the template provided by DDC that may be necessary for the preparation of bid documents.
(b) All Asbestos abatement drawings shall bear the signature, NYSDOL Certificate number of the Asbestos Project Designer, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.

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

(a) The Consultant must furnish CADD Drawing files on USB, in addition to the printed drawings required, when submitting documents for review and for the final record. CADD files shall be readable and compatible with the Agency current version of Auto-CADD®.

(b) The Consultant may be directed to update all of the Consultant’s CADD drawings after receiving the contractor’s record of “As Built” drawings from NYC-DDC.

6.5 Construction Environmental Services

6.5.1 General: The Consultant shall provide construction related services, including project monitoring and/or construction oversight for remediation and/or abatement projects at various locations. Such services may include the following:

(a) Review and evaluate construction shop drawings, abatement specification drawings, proposed work schedules, field records, submittals, filings, variances, work plans and procedures etc.,
(b) Attend walkthrough inspections of proposed project site/work areas with DDC,
(c) Confirm location and quantities of materials to be abated,
(d) Perform inspection, bulk and air sampling and project monitoring throughout the project to ensure regulatory compliance and overall quality of work,
(d) Monitor and document the progress of a contractor or other consultant(s) to DDC on a daily basis,
(e) Provide interpretation and/or clarification of design documents, regulations, standards, etc,
(f) Evaluate laboratory clearance results, prepare Re-Occupancy letters and transmit as directed by DDC,
(g) Review and evaluate change orders, claims, cost estimates and requests for extra work by contractors,
(h) Conduct additional environmental testing and analysis as directed by the Commissioner,
(i) Provide project supervision and/or management services, including acting as the on-site representative and/or the Resident Engineer for the Commissioner.

6.5.2 Work Place Safety Plan – Tenant Protection Plan: The Consultant shall provide a Registered Design Professional, as defined in Title 15, Chapter I of RCNY, to prepare a Work Place Safety Plan and Tenant Protection Plan required for an asbestos abatement work permit prior to construction. The Registered Design Professional shall submit signed and sealed documents as required by the NYCDEP for review and final approval.

6.5.3 Special Inspections: All inspections required pursuant to Title 28 of the RCNY including, but not limited to special inspections required by Chapter 17 of the Building Code, shall be performed by the Registered Design Professional. A final inspection shall be performed by the Registered Design Professional after all work authorized by the Asbestos Abatement Work Permit is completed. The Registered Design Professional shall file the signed and sealed inspection report with the NYCDEP on the ATR1 form in accordance with Title 15, Chapter 1 of the RCNY.

6.5.4 Evaluation of Noise and Dust Hazards and Mitigation Plans: The Consultant shall provide inspection, evaluation, and assessment services to ascertain the presence of noise hazards created by the means and methods of construction activities and stationary sources. The Consultant shall also assess the level of compliance and design noise mitigation plans in accordance with applicable noise standards and regulations, including, but not limited to, the New York City Department of Environmental Protection, Title 15 RCNY, NYSDEC, OSHA and FHWA.

6.5.5 Industrial Hygiene Services: The Consultant shall provide inspection, testing, evaluation and assessment services to ascertain the potential for or the presence of chemical or physical hazards created by the means and methods of construction activities and existing stationary sources. The Consultant shall also assess the level of compliance with applicable federal, state and NYC standards and regulations, and provide recommendations for mitigation or abatement of the hazards identified.
6.5.6 **Evaluation of Construction Hazards:** The Consultant shall provide inspection and assessment services to ascertain the presence of hazards created by the means and methods of construction. The Consultant shall also assess the level of compliance with applicable construction safety standards, including, but not limited to, OSHA and New York City Department of Buildings Subchapter 19[C26-1900 to C26-1903] and Reference Standard 19.

6.6 **Services for the Investigation and Assessment of Subsurface Conditions**

6.6.1 **General:** The Consultant shall provide all environmental services necessary to study, identify, characterize and quantify environmental contaminants that may be disturbed or released during subsurface construction activities, such as, but not limited to:

(a) Phase I Environmental Site Assessment Report and/or Corridor Assessment Report consistent with DDC OEGS protocol and the most recent version of ASTM standard.
(b) Phase II Environmental Subsurface Investigation and/or Subsurface Corridor Investigation in accordance with DDC OEGS protocols and guidelines.
(c) Spill response and closure consistent with the NYSDEC regulations.
(d) Stockpile sampling consistent with the NYSDEC regulations.
(e) Community air monitoring consistent with the NYSDEC regulations, as well as DOHMH and DDC protocols.
(f) environmental sampling customized to the need of the project.

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

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

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

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

6.6.5 The Consultant’s services for supervision of subsurface testing shall include, without limitation, the responsibilities set forth below.

(a) Prior to the initial site visit, the Consultant shall review all utility maps, DEP Field Cards and any other project documentation which has been provided. The Consultant will also visit each site with representatives from DDC and the drilling contractor before drilling operations begin, for the purposes of assessing all locations for borings and observation wells, avoiding obstacle and/or utilities and informing nearby residents of the impending drilling operations. After the initial site walkthrough, the Consultant will prepare a proposed Boring Location Plan based on the results from the walkthrough. Whenever possible the Consultant and drilling contractor will verify the utility service lines from the house/structure...
to avoid interference with boring locations. Borings will be located to exact GPS coordinates or building lines, curb lines, or other permanent features identified in the plans when directed by the DDC project manager. If the boring location is changed, its new location shall be resurveyed. Each boring shall have a surface elevation, which shall be referenced to the appropriate datum.

(b) The Consultant shall oversee the clearance of utilities and drilling operations conducted by the driller to ensure compliance with DDC standard operating procedures. At a minimum the Consultant shall ensure compliance with the following DDC Field Subsurface Procedures:

1. Daily maintenance and protection of traffic (MPT) is in place prior to the start of work and maintained throughout the duration of field work.
2. Confirm that visible mark-outs are present for each boring location and one-call tickets are valid throughout the duration of field work.
3. Ensure that full-sized scale drawings are present onsite.
4. Confirm clearance of utilities utilizing a vacuum excavator to 6’ in depth and at least 12” diameter, via a photograph depicting depth.
5. Inspect to ensure valid regulatory permits, valid one-call ticket, job hazard analysis, and other required documents are available onsite.
6. Oversee the advancement of each boring as work is being performed.
7. Report accidents/incidents immediately to the Director of the DDC Office of Environmental and Geotechnical Services and execute the accident report procedures within 24 hours, as set forth in paragraph (g) below.

(c) The Consultant shall supervise a maximum of two (2) drilling rigs unless otherwise approved and/or directed by DDC. The Consultant is responsible for maintaining close proximity of two (2) drill rigs so simultaneous inspection is feasible. When two rigs cannot remain in close proximity to one another, the Inspector must inform DDC to request additional Inspectors.

(d) Make modifications to the location and number of borings/observation wells as necessary, if the actual subsurface conditions are different from those anticipated. DDC is to be notified immediately of such changes by the Consultant's Inspector.

(e) The Consultant shall prepare and complete a daily report of the activities of each drilling rig, a log of each boring, the DDC Field Audit Checklist and the DDC Inspector's Daily Report and submit to the DDC Project Manager on a weekly basis and at the end of each project in the field. A copy of this information is required to be submitted to DDC for the purpose of processing payment to the separate drilling contractor.

(f) The Consultant shall complete the progress summary sheet that includes all pertinent information for the subsurface investigation program. The progress summary sheet is to be prepared in excel and is to be submitted to the DDC Project Manager every Monday by noon for the work that was completed the previous week.

(g) In the event of an accident or utility interface incident, the Consultant shall verbally notify their office, the DDC Project Manager and Section Chief of the incident immediately and follow the Subsurface Emergency Response Protocol. The Contract Executive shall be notified immediately. The Contract Executive or the Consultant’s Environmental Project Manager must report to the accident site to assist DDC. The Contract Executive shall, at a minimum, perform the following tasks:

1. Identify the responsible parties
2. Clearly articulate what occurred and what parties are affected
3. Clarify the events which led up to the incident
4. Chronologically document the incident and ongoing corrective action
5. Retain an emergency plumber to perform repairs and restore service as directed by DDC
6. Remain onsite until repairs are completed
7. Prepare and submit the DDC Accident/Incident report to the DDC Project Manager within 12 hours of the time of occurrence and to the DDC Director of Quality Assurance and Construction Safety within 24 hours of the time of occurrence.
(h) The Consultant shall attend contract and technical meetings related to the project as required.

6.7 Bulk Material and Air Sampling Services / Laboratory Testing Services

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

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

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

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

(c) The Consultant must follow safe work practices and protocols applicable to the work.

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

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

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

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

6.8.1 Test Reports: For each test performed by the laboratory, the Consultant shall provide a Test Report that addresses all of the items set forth below, as well as any other relevant information. The Test Report shall be sent to the City by email within 24 hours of the test date or within the turn-around-time (TAT) requested by DDC.

(a) Test type, identity of material subject to test, name of person operating test equipment, description of test equipment, including manufacturer, model number & serial number

(b) Copy of the test data, along with the interpretations of these data

(c) Brief statement describing the means and methods of the performance of the test

(d) Procedures for and frequency of calibration of the equipment used in the test
Photographic documentation substantiating the inspector’s interpretations of the test results, where appropriate.

(f) Signature sheet certifying test results signed by operator of test equipment, Consultant’s representative and other witnesses.

6.9 Consulting Services for Environmental Assessment Statement (EAS) and Environmental Permitting

6.9.1 General: The Consultant shall provide consulting services as directed by the Commissioner. Such consulting services may include the items set forth below, in which a work order letter will be issued based upon the required milestone(s) for the specific project.

6.9.2 Environmental Assessment and Environmental Permitting: The Consultant shall provide various services for the preparation of EAS of various projects, including without limitation the following:

(a) Structured environmental analysis in accordance with the most recent City Environmental Quality Review (CEQR) Technical Manual.
(b) Environmental Assessment Statements (EAS), Scoping Reports and/or Environmental Impact Statements (EIS), either in full or in conjunction with other City resources.
(c) Preparation and submittal of wetland permit applications in accordance with NYSDEC and ACOE requirements.

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

6.10 Deliverables: Reports shall be prepared in accordance with the template provided by DDC, unless otherwise directed. The Commissioner may request the Consultant to prepare reports and/or standardized forms without a template being provided by DDC.

6.10.1 General: The Consultant shall prepare all deliverables in a format and quantity that complies with requirements set forth in Article 6.16.

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

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

(b) In general, the FINAL reports shall be delivered within thirty (30) consecutive calendar days (ccds) after the issuance of the Work Order. When the field work exceeds the thirty (30) ccds after the issuance of the Work Order the FINAL report shall be submitted within fourteen (14) ccds of the completion of field activities.

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

(a) The Consultant shall also upload any and all project correspondence, photographs, and any other written material onto the online data storage site in a format compatible with DDC word processing, spreadsheet, CADD, or graphics software or in portable document format (PDF). One pdf file of the entire deliverable, and its associated word and excel files shall be submitted to DDC for all deliverables.

6.10.4 Deliverables for Environmental/Industrial Hygiene Survey Reports: Environmental Survey Reports must be prepared in accordance with the template provided by DDC, unless otherwise directed. At a minimum, all reports shall include the following:
(1) Cover / Title Page indicating Project name, address and borough of the facility or location, project number, Work Order number, Contract Registration Number and date. The version of the report (DRAFT or FINAL) must be clearly shown on the cover.

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

(3) Appendices as needed for Bulk Sample Field Data sheets with Chain of Custody and Laboratory results forms (e.g., DEP, NYSDOL, FDNY, USEPA, etc.), photographs, sketches and drawings showing sampling / test locations, etc., and any other documentation required by law or standard practice.

(5) Photographs detailing existing conditions that will be impacted by the proposed scope of work (e.g. above suspended ceilings, kitchens, roofs, etc.) should be saved on a USB drive for all assigned projects.

(6) Certification Sheet with original signatures of Investigator / Inspector, Laboratory Analyst or Director and Senior Project Manager and Project Manager, listing certificates and license numbers applicable to the report.

6.10.5 Deliverables for Environmental Abatement Design Specifications: Environmental Abatement Specifications are to be prepared in accordance with the template provided by DDC for Bid packaging.

6.10.6 Deliverables for Abatement Project Oversight with Regulatory Filings: The Consultant shall prepare, submit and /or review any and all regulatory filings, when directed by the Commissioner, including, without limitation, the following:

(a) DEP ACP forms 5, 7, 8, 9 13, 15, V2, V3 and V5.
(b) Work Place Safety Plan
(c) Tenant Protection Plan
(d) Final Inspection and ATR1 form
(e) NYSDOL Notifications
(f) USEPA Notifications

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

6.11 Deliverables or the Investigation and Assessment of Subsurface Conditions: Reports shall be prepared in accordance with the template provided by DDC.

6.11.1 Phase I Environmental Site Assessment Report/Corridor Assessment Report

(1) Main report in accordance with the most recent ASTM standards including the following: Background, Scope of Work, Site Description and Adjoining Properties, Physical Setting, Summary of Prior Reports, Historical Research, Regulatory Agency Records Review, Site Reconnaissance and Interviews, Findings, Conclusions and Recommendations, and signature page. In addition to the most recent requirements of ASTM, the Phase I reports should address the following concerns: wetlands determination, NYCDOB “E” designation, FEMA flood maps, asbestos containing material, lead based paint, polychlorinated biphenyls, mold and water intrusion, radon and any additional information that the Commissioner may request.
(2) Appendices including the following where applicable: Figure(s) depicting the site location on a topographic map, figure(s) depicting the site plan, photographs, historical aerials, historical topographic maps, city directories, environmental liens searches, copies of requests for information, regulatory agency records, regulatory agency database, prior reports, qualifications of environmental professionals, and any other relevant documentation.

6.11.2 Phase II Environmental Site Investigation/Subsurface Corridor Investigation

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

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

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

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

f) The FINAL report shall be uploaded to the Consultant’s file sharing site and delivered to DDC on a USB drive.

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

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

6.12 Disposal of Contaminated Soil and Water: In the event that contamination is detected in soil cuttings and/or in groundwater, the Consultant shall be responsible for the immediate removal, testing, and disposal of contaminated soil and groundwater in approved dumpsites for contaminated material in accordance with all Federal, State and local requirements.

6.12.1 The Consultant shall sign any waste manifest and waste profile forms as “DDC Contractor” or as required by Federal, State and Local regulations.

6.12.2 After proper disposal, the Consultant shall submit to the DDC Project Manager a copy of the waste manifest documents, when submitting invoices for work performed.

6.12.3 The Consultant shall be directed to provide services for the removal, testing and disposal of contaminated soil and groundwater as Reimbursable Services, provided, however, payment for any tests set forth in Exhibit D shall be in accordance with the unit prices set forth therein.

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

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

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

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

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

(a) Long Distance Travel: In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long-distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant’s home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.

(b) Testing services, other than the testing services set forth in Exhibit D.

(c) Printing of documents, deliverables and/or reports in excess of the requirements set forth in this Article

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

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

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

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

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

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

(a) Communications equipment and service, including without limitation cellular smartphones capable of taking, sending and receiving photographs in real time. The telephone numbers of all such personnel shall be submitted to the Commissioner with the approved staffing plan.

(b) Hand tools, sample media, containers and other supplies for collecting samples of environmental contaminants.

(c) Digital camera capable of recording images in indoor/outdoor applications.

(d) Measuring and detection instruments, including without limitation, 100-foot tape measure, engineers scale, 6’ folding ruler, water level indicator for borings, drafting triangle

(e) Safety and/or personal protective equipment as required by City, State and/or Federal requirements.

(f) Health and Safety plans or other documents required under City, State and/or Federal law for the Consultant’s performance of environmental investigations.

(g) Fees for any and all permit or licenses required by Federal, State, and/or local regulatory agencies.

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

6.14.5 Quality Assurance Protocol: The Consultant shall provide all services in connection with its Quality
Assurance Protocol, as described in Article 6.13.

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

   6.15.1 The Consultant’s QAP shall establish document control and routine monitoring procedures that address the following:

   (a) Field sampling procedures
   (b) Documentation of field sampling activities
   (c) Recording data
   (d) Chain-of-custody process
   (e) Sample labeling
   (f) Sample handling
   (g) Sampling quality control requirements (e.g., field equipment and trip blanks and field duplicates)
   (h) Analytical methods requirements
   (i) Instruments/equipment testing, inspection and maintenance requirements
   (j) Instrument calibration and frequency
   (k) Data review, verification, and validation
   (l) Corrective action process

6.15.2 **Subconsultants**: The Consultant shall ensure that all subconsultants, subcontractors, and laboratories performing services hereunder adhere to a QAP which is substantially similar to the Consultant’s QAP.

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

   (a) Field notebooks or field data sheets
   (b) Field equipment calibration / maintenance logs
   (c) Chain-of-custody records
   (d) Field Standard Operating Procedures (SOPs)
   (e) Laboratory QA manuals
   (f) Laboratory SOPs
   (g) Laboratory procedures
   (h) Laboratory data reports
   (i) Instrument printouts
   (j) Laboratory equipment maintenance logs
   (k) Laboratory calibration records
   (l) Results of inspections conducted by regulatory agencies
   (m) Corrective action documentation

6.16  **Requirements for Deliverables and Submissions**

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

   (a) Consultant Name & Project Manager
   (b) DDC Project Name & FMS ID Number
   (c) OEGS Project Manager & Work Order Letter / Task Number
   (d) Nature / Type of Submission, Phase
   (e) Date of Submission – Transmittal
6.16.2 Submission Requirements: The Consultant shall comply with the submission requirements set forth below.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Draft Submission</th>
<th>Final Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental /IH Investigation Report</td>
<td>Original and/or Electronic media</td>
<td>Original spiral bound with one USB drive and Electronic Upload</td>
</tr>
<tr>
<td>Laboratory Reports</td>
<td>Electronic Upload</td>
<td>Electronic Upload</td>
</tr>
<tr>
<td>Abatement Specifications</td>
<td>Original and/or Electronic media</td>
<td>Original spiral bound with one USB drive and Electronic Upload</td>
</tr>
<tr>
<td>Abatement Close Out Report</td>
<td>Original and/or Electronic media</td>
<td>Original spiral bound with one USB drive and Electronic Upload</td>
</tr>
<tr>
<td>Construction Services / Spill Closeout Report</td>
<td>Original and/or Electronic media</td>
<td>Original spiral bound with one USB drive and Electronic Upload</td>
</tr>
<tr>
<td>Draft EAS Submittal</td>
<td>Original</td>
<td>Electronic upload</td>
</tr>
<tr>
<td>Final EAS Submittal</td>
<td>Original</td>
<td>Electronic upload</td>
</tr>
<tr>
<td>Environmental Permits</td>
<td>Original</td>
<td>Electronic upload</td>
</tr>
<tr>
<td>Regulatory Forms</td>
<td>Original</td>
<td>Electronic upload</td>
</tr>
</tbody>
</table>

“Electronic FTP Upload” means transfer through the Internet of PC-compatible documents in compressed format from the Consultant managed FTP-CDE web site.

“Electronic Media” means a USB flash drive.

6.16.3 Electronic submissions must include all documents in compatible formats, in the most recent version or as specified by the commissioner, for example:

<table>
<thead>
<tr>
<th>Submission</th>
<th>Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>Text Reports</td>
<td>.doc - MS-Word</td>
</tr>
<tr>
<td>Tables / Spreadsheets</td>
<td>.xls - MS-Excel</td>
</tr>
<tr>
<td>Presentations</td>
<td>.pp - MS-PowerPoint</td>
</tr>
<tr>
<td>Drawings, sketches</td>
<td>.dwg - Auto-CAD</td>
</tr>
<tr>
<td>Digital Photos</td>
<td>.jpg - eg</td>
</tr>
<tr>
<td>Other components</td>
<td>.pdf - df</td>
</tr>
</tbody>
</table>

6.16.4 Packaging Requirements

(a) Drawings must be rolled into a convenient size, packaged in white or brown wrapping paper and clearly labeled on the exterior surface with the Consultant’s Name, DDC Project Name & FMS-ID Number and the Type & Date of Submission. Mylar prints and reports shall be mailed in secure shipping boxes. Electronic Media must be delivered in plastic cases, clearly labeled on both the case and the disk or drive with the Consultant’s Name, DDC Project Name & FMS-ID Number and the Type & Date of Submission.

(b) Electronic media (USB) must be delivered in compatible envelope attached to the back page of the original document, clearly labeled on both the envelope and the USB drive with the Consultant’s Name, DDC Project Name & FMS-ID Number and the Type & Date of Submission.
6.17 **Ownership of Documents:** As set forth in the General Provisions (Appendix A), any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

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

**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 Contract shall not exceed the amount set forth in Exhibit A. The Consultant shall only be entitled to payment for services authorized by Work Order and actually performed.

7.1.2 **Guaranteed Minimum:** In the event the Consultant is not issued any Work Orders hereunder, the City agrees to pay, and the Consultant agrees to accept, a minimum fee of $5,000.00. The Consultant further agrees that under such circumstances, it has no action for damages or for loss of profits against the City.

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

7.2 **Work Orders:** Work Orders shall specify an overall Not to Exceed amount for the services to be performed.

7.2.1 **Not to Exceed Amount:** The overall Not to Exceed Amount shall be broken down into various allowances, depending on the required services. Such allowances may include the following: (1) Allowance for Environmental Services, (2) Allowance for Laboratory Testing Services, and, if applicable, (3) Allowance for Reimbursable Services.

7.2.2 **Maximum Price:** The amount of the Allowance for Environmental Services and the amount of the Allowance for Laboratory Testing Services set forth in the Work Order shall constitute the maximum price to be paid to the Consultant for providing the services specified therein. The Consultant shall not be entitled to payment in excess of such allowance amounts, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

7.2.3 **Allowance Amounts:** In the event the allowance amounts set forth in the Work Order are not sufficient, as determined by the Commissioner, to cover the cost of required services for which allowance amounts are specified, the Commissioner will increase the amounts of such allowances. Notwithstanding the specific amounts allocated for allowances, as set forth in Work Orders issued hereunder, the Commissioner may, by issuance of a “Supplementary Work Order” to the Consultant, reallocate such specific allowance amounts.

7.2.4 **Supplemental Work Order Requests:** When the amount of the original Work Order Letter is expected to be, or is actually, exceeded due to unexpected field conditions or scope of work changes, the Consultant shall immediately notify OEGS in writing by submitting a fee proposal for the approval and issuance of a Supplemental Work Order Letter no later than ten (10) Days after the completion of field work. Supplemental Work Order Letter requests will not be accepted more than ten (10) Days after completion of field work.
7.3 **Payment for Environmental Services:** Each Work Order issued hereunder shall specify an Allowance for Environmental Services performed by the Consultant. The Consultant shall be entitled to payment for those individuals who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner. The Consultant shall not be entitled to payment for the services of: (1) any individual not assigned to the Project and not included in the approved Staffing Plan, or (2) any principal(s), except for the Contract Executive identified in Exhibit A, unless such principal meets the criteria set forth below.

7.3.1 **Staffing Plan:** A Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant’s services. Such Staffing Plan must specify the specific individuals for the performance of services and an All Inclusive Hourly Rate for each specified individual. The specific individuals set forth in the Staffing Plan shall be considered Assigned Personnel for the purpose of payment hereunder.

7.3.2 **All Inclusive Hourly Rates:** An All Inclusive Hourly Rate for each Assigned Personnel is set forth in the Staffing Plan. Such All Inclusive Hourly Rate shall be the rate set forth in Exhibit B for the title for which the Commissioner determines the Assigned Personnel meets the minimum requirements. Such All Inclusive Hourly Rate shall apply to all hours during which an Assigned Personnel performs services for the Project, including non-regular business hours. No increase in such rate shall be provided for services performed during non-regular business hours. Such All Inclusive Hourly Rates shall be deemed to include the items set forth below.

(a) All expenses incurred by the Consultant in the performance of all required services for the Project
(b) All expenses related to management, oversight and quality control procedures, including, without limitation, any time spent by principals performing such duties
(c) All expenses related to overhead and any anticipated profit
(d) All expenses in connection with non-reimbursable services, as set forth in Article 6.

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

7.3.4 **Amount of Payment:** For any week during which an Assigned Personnel performs services, payment to the Consultant for such employee’s services for that week shall be calculated as follows: Multiply the amount set forth in subparagraph (a) by the number set forth in subparagraph (b).

(a) Assigned Personnel’s All Inclusive Hourly Rate. The All Inclusive Hourly Rate for an Assigned Personnel shall be the rate set forth in Exhibit B for the title for which the Commissioner determines the employee meets the minimum requirements.
(b) Total number of hours set forth on time sheets completed by the Assigned Personnel for the week(s) in question during which the Assigned Personnel actually performed services hereunder. This total number of hours shall NOT include the following: (1) any hours the Assigned Personnel spent commuting and/or traveling; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Personnel performed services for any other project, (4) any hours the Assigned Personnel spent performing services for the Project for which the Consultant is not entitled to compensation, and (5) any hours other than regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
(c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Personnel which have been allocated to any category or function other than services performed hereunder. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

7.3.5 **Non-Payment:** The Consultant shall not be entitled to payment for any time spent providing the services set forth below. In the event the Consultant submits a requisition that includes time spent providing the services set forth below, an appropriate deduction will be made.
(a) **Corrections:** The Consultant shall not be entitled to payment for any time spent making required corrections to any deliverable and/or report. The Consultant shall be responsible for correcting any deliverable and/or report that does not comply with the requirements of this Contract. Such corrections shall be made in a timely manner. This obligation to correct any deliverable and/or report includes corrections discovered by the City after written acceptance of the deliverable and/or report and payment for the same. The Consultant shall be responsible for all costs in connection with any required corrections to the deliverable and/or report, including the cost of furnishing and delivering new USB and hard copies. The obligation to correct any deliverable and/or report shall not apply to cases where project conditions have changed after completion of the deliverable and/or report by the Consultant.

(b) **Quality Assurance Protocol:** The Consultant shall not be entitled to payment for any time spent in connection with its Quality Assurance Protocol.

7.3.6 **Payment for Environmental Services for Testing:** The Consultant shall be entitled to payment for environmental services in connection with the provision of tests set forth in Exhibit D, including collecting samples and providing Test Reports. Payment for such environmental services shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit B.

7.3.7 **Non-Regular Business Hours:** The Commissioner may authorize the Consultant in advance in writing to have an Assigned Personnel(s) perform services during non-regular business hours. Non-regular business hours shall be defined as any hours in excess of eight (8) hours per day, Monday through Friday (i.e., evenings, weekends and holidays). Payment for services performed during non-regular business hours shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit B. The Consultant shall not be entitled to any increase in such rates for services performed during non-regular business hours.

7.3.8 **Increase in All Inclusive Hourly Rates:** The All Inclusive Hourly Rates set forth in Exhibit B shall apply to the three year base term of the Contract. Such All Inclusive Hourly Rates shall be subject to one increase only, at the beginning of the renewal term. Any increase in the All Inclusive Hourly Rates shall be subject to the limitations set forth below.

(a) Any increase in the All Inclusive Hourly Rates shall be based on an increase in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the “Index”), as determined by the Engineering Audit Office (“EAO”).

(b) Any increase in the All Inclusive Hourly Rates shall be based on whatever increase may have occurred in the Index for the PRIOR YEAR ONLY, as determined by EAO. If, for the prior year, the Index showed an increase, the All Inclusive Hourly Rates shall be increased. If, for the prior year, the Index declined or showed no increase, the All Inclusive Hourly Rates shall remain unchanged.

(c) Any increase in the All Inclusive Hourly Rates shall be applied on a prospective basis only and shall have no impact on rates paid to date.

(d) Any increase in the All Inclusive Hourly Rates shall only apply to the portion of the work which the Consultant has not yet performed, as determined by the Commissioner. Any increase in the All Inclusive Hourly Rates shall not apply to any work performed by the Consultant during the base term of the Contract, even if payment for such work is made during the extended term or thereafter.

7.3.9 **Decreases:** The name of the individual identified as the Contract Executive by the Consultant in its Proposal for the Contract, as well as his/her qualifications, are set forth in Exhibit A. Exhibit B lists the All Inclusive Hourly Rate applicable to the Contract Executive. Such All Inclusive Hourly Rate was negotiated based on the qualifications and salary rate of the individual identified in Exhibit A. In the event the Consultant fails to provide the individual listed in Exhibit A, the Commissioner shall decrease the All Inclusive Hourly Rate for such individual’s title to an amount based on the qualifications and salary rate of the individual approved as a replacement.

7.3.10 **All Inclusive Hourly Rates for Additional Titles:** If an additional title(s) of personnel is required for a specific Project, the Commissioner shall establish the following: (1) additional required title(s), (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. The All Inclusive Hourly Rate for the additional required title shall be calculated in accordance with the following formula: the Actual Annual Direct Salary Rate per Hour of the individual who will provide the required services, as described below, times the Multiplier for Overhead and Profit set forth in Exhibit A. The Commissioner reserves the right to reject any proposed individual for the title in question if, in his/her determination, the individual’s Actual Annual Direct Salary Rate per Hour is excessive in light of the expertise necessary for the required
services.

(a) **Actual Annual Direct Salary Rate per Hour**: The Consultant shall submit the items set forth below for the individual who will provide the required services. The Consultant shall also submit any records or documentation requested by the Commissioner to verify the individual’s actual annual direct salary, including without limitation, the Consultant’s payroll register for the past two (2) months, or, if applicable, its subconsultant’s payroll register.

(1) **Actual Annual Direct Salary**: The individual’s actual annual direct salary shall be the salary amount directly payable to such individual 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 individual’s actual annual direct salary rate per hour shall be computed as follows: the individual’s actual annual direct salary, as defined above, divided by 2080.

7.4 **Payment for Laboratory Testing Services**: In the event the Consultant is directed to provide laboratory testing services, the Work Order shall specify an Allowance for Laboratory Testing Services. Payment to the Consultant for the laboratory testing services set forth in Exhibit D shall be on a unit price basis.

7.4.1 **Unit Prices**: Unit prices for testing services are set forth in Exhibit D. Such unit prices shall be deemed to include the expenses set forth below.

(a) All expenses incurred by the Consultant and/or its Subconsultant(s) in connection with the performance of the test, including without limitation, expenses for the following: transportation, equipment, handling, calibration, set up, consumable material, operator labor, maintenance, cleaning and insurance

(b) All expenses related to providing test results

(c) All expenses related to management, oversight and quality control procedures

(d) All expenses in connection with non-reimbursable services, as set forth in Article 6.

(e) All expenses related to overhead and any anticipated profit

7.4.2 **No Mark-up**: The Consultant shall not be entitled to any mark-up with respect to laboratory testing services.

7.4.3 **Increase in Unit Prices**: The Unit Prices set forth in Exhibit D shall apply to the three year base term of the Contract. Such Unit Prices shall be subject to one increase only, at the beginning of the renewal term. Any increase in the Unit Prices shall be subject to the limitations set forth below.

(a) Any increase in the Unit Prices shall be based on the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the “Index”), as determined by the Engineering Audit Office (“EAO”).

(b) Any increase in the Unit Prices shall be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**, as determined by EAO. If, for the prior year, the Index showed an increase, the Unit Prices shall be increased. If, for the prior year, the Index declined or showed no increase, the Unit Prices shall remain unchanged.

(c) Any increase in the Unit Prices shall be applied on a prospective basis only and shall have no impact on rates paid to date.

(d) Any increase in the Unit Prices shall only apply to the portion of the work which the Consultant has not yet performed, as determined by the Commissioner. Any increase in the Unit Prices shall not apply to any work performed by the Consultant during the base term of the Contract, even if payment for such work is made during the extended term or thereafter.

7.5 **Payment for Reimbursable Services**: In the event the Commissioner directs the Consultant to provide Reimbursable Services, the provisions set forth below shall apply. In such case, the Work Order shall specify an Allowance for Reimbursable Services. In providing Reimbursable Services, the Consultant 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 Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds $5,000.

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

(a) If payment is on a lump sum basis, payment shall be based upon the percentage of completion.

(b) If payment is on a unit price basis, payment shall be based upon the number of completed units.

(c) If payment is based on actual cost, payment shall be the actual and reasonable cost, as indicated by receipted bills or any other data required by the Commissioner.

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

7.5.3 **Mark Up:** The Consultant shall be entitled to a mark-up of 5% for overhead and profit on payments for Reimbursable Services hereunder; provided, however, the Consultant shall **NOT** be entitled to any mark-up with respect to long distance travel expenses.

7.6 **Requisitions for Payment:** Requisitions for payment may be submitted upon completion of the services set forth in the Work Order. Requisitions shall be in the authorized form and shall set forth the services performed by the Consultant and the total amount of payment requested. The total amount of payment requested shall be broken down into various categories, depending on the required services. Such payment categories may include the following: (1) Payment for Environmental Services, (2) Payment for Laboratory Testing Services, and (3) Payment for Reimbursable Services. Requisitions for payment must be signed by the Contract Executive. The Consultant shall submit one original and three (3) copies of each requisition for payment.

7.6.1 **Requisitions for payment shall be accompanied by the documentation set forth below.**

(a) **Work Order:** The Consultant shall submit a copy of the Work Order and/or Supplemental Work Order for which payment is requested. In addition, the Consultant shall submit a copy of the Commissioner’s written Letter(s) of Acceptance for the services provided.

(b) **Payment for Environmental Services:** For any period for which the Consultant is requesting payment for environmental services, the Consultant shall submit the documentation set forth below.

   (1) Assigned Personnel’s name and title
   (2) Commissioner approval of the Assigned Personnel, either approved Staffing Plan or documentation approving the Assigned Personnel as a replacement
   (3) All Inclusive Hourly Rate applicable to the Assigned Personnel. The All Inclusive Hourly Rate for an Assigned Personnel shall be the rate set forth in Exhibit B for the title for which the Commissioner determines the employee meets the minimum requirements.
   (4) Number of hours per day during which the Assigned Personnel actually performed services for the Project.
   (5) Detailed time sheets completed by the Assigned Personnel for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Personnel, including without limitation: (1) actual hours during which the employee performed services for the Project, (2) actual hours during which the employee performed services for other projects, (3) non-billable hours, as defined above, (4) actual hours, if any, during which the Assigned Personnel performed services for the Project for which the Consultant is not entitled to compensation, and (5) any non-regular business hours.
   (6) Commissioner authorization for services during non-regular business hours, if applicable

(c) **Payment for Laboratory Testing Services Based on Unit Prices:** For payment for laboratory testing services, the Consultant shall submit the documentation set forth below. Payment for laboratory testing services shall be in accordance with the unit prices set forth in Exhibit D.
(1) Laboratory testing services provided
(2) Applicable unit price for the laboratory testing services provided
(3) Total amount for all completed laboratory testing services
(4) Laboratory analysis reports
(5) Copy of the Commissioner’s written acceptance of the laboratory testing services provided
(6) Cover sheet summarizing the test, with the results attached as backup

(d) Payment for Reimbursable Services: For any period for which the Consultant 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.

7.6.2 Satisfactory Progress: All payments hereunder are contingent upon the Consultant’s satisfactory performance of the required services. The Commissioner is authorized to make deductions for any services performed hereunder which he/she determines to be unsatisfactory.

7.6.3 Close-out payment(s). Upon termination or expiration of the Contract, or at any time requested by the Commissioner, the Consultant shall provide electronic copies of all deliverables produced for or in relation to the Contract electronically on a single USB drive. All files shall be in portable document format (PDF) unless directed otherwise by the Commissioner and organized by FMS ID. A summary transmittal for all files shall be provided listing relevant details of each file, including, but not limited to, FMS IDs, OEGS Work Order No., type of deliverable (e.g., Hazmat Survey/Design/Project Monitoring Report/ Laboratory Results, IAQ Report; Environmental Phase I or Phase II, EAS or ULURP etc.), and the date of delivery. The Consultant shall not be entitled to final payment without delivery of such records as set forth herein. Nothing in this Article shall be deemed to waive any part of the General Provisions.

7.6.4 Voucher: Following the receipt of a satisfactory requisition for payment, the Commissioner will approve a voucher in the amount certified for partial payment, less any and all deductions authorized to be made by the Commissioner under any terms of this Agreement or by law. This voucher will thereupon be filed with the Comptroller, with a copy thereof available to the Consultant if requested.

7.7 Liquidated Damages

7.7.1 In the event that a Work Order or Supplemental Work Order issued to the Consultant is funded by the United States Department of Housing and Urban Development through the Community Development Block Grant Disaster Recovery Program, directly or indirectly, the Consultant and the Commissioner shall negotiate liquidated damages to be assessed against the Consultant in the event the Consultant fails to perform the duties specified in the Agreement and the Work Order. If the Consultant and the Commissioner cannot mutually agree on the amount of liquidated damages, the Commissioner will set such amounts. The amount of liquidated damages set forth in the Work Order, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in commencing the work, will be fixed and agreed as liquidated damages that the City will suffer by reason of such delay, and not as a penalty. Such liquidated damages will be in addition to any liquidated damages assessed pursuant to Appendix A for Consultant’s failure to report Subcontractors in the City’s Payee Information Portal.

7.7.2 Liquidated Damages received hereunder are not intended to be nor shall they be treated as either a partial of full waiver or discharge of the City’s right to indemnification under the agreement, or the Consultant’s obligation to indemnify the City, or to any other remedy provided for in this Contract or by law. The Commissioner may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Consultant shall be liable to pay the difference upon demand by the Commissioner.
ARTICLE 8  Time Provisions

8.1  Term of Contract: The Contract shall commence on the date indicated on the Notice to Proceed letter issued by the Commissioner and shall remain in effect for the period set forth in Exhibit A. At the Commissioner’s sole option, the term of this contract may be renewed for the period and for the increased amount set forth in Exhibit A. In addition, the Commissioner may, for good and sufficient cause, extend the term of this Contract for a cumulative period not to exceed one year from the date of expiration.

8.2  Continuation of the Contract: In the event (1) services are required for a Project, (2) a Work Order for the Project is issued by the Commissioner during the term of the Contract, including the last day thereof, and (3) the time frame for completion of the Project extends beyond the term of the Contract, the Contract shall remain in effect for purposes of such Work Order through the time frame for completion of the Project, as set forth in the Work Order or any Supplementary Work Order required to complete the Project. For the purpose of this provision, the term of the Contract shall mean whichever of the following is the latest and actual final period of the Contract: (1) the term of the Contract, (2) the renewal term of the Contract, or (3) the extended term of the Contract.

ARTICLE 9  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 subcontractors, 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 nonresponsive, unless Agency has granted the bidder or proposer, as applicable, a preaward 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 MBEs and/or WBEs. 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 subcontractors, 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 preaward waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

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 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 M BE 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 Part A, Section 11 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 scope and scale 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 Contract 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 Engineer.

THE

CITY OF NEW YORK

By: _____________________________________
   Commissioner

CONSULTANT:

By: _______________________________
   Print Name: ___________________________
   Title: _________________________________
   EI N: _________________________________

Approved as to Form and Certified as to Legal Authority

___________________________________
   Acting Corporation Counsel
   Date: ________________________________
ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of _______________ County of _______________ ss:

On this ___ day of _________, ________ before me personally came ___________________________, who being by me duly sworn, did depose and say that he/she resides in the City of ________________________________, that he/she is the ______________________ of ___________________________________________________________, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

_______________________________________________
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _______________ County of _______________ ss:

On this ___ day of _________, ________ before me personally came ___________________________, to me known and known to me to be the Commissioner of the Department of Design and Construction of The City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Commissioner for the purposes therein mentioned.

_______________________________________________
Notary Public or Commissioner of Deeds
EXHIBIT A

CONTRACT INFORMATION

- **Type of Services:** Comprehensive Environmental Services and Laboratory Testing Services for various projects, as specified by the Commissioner on a Work Order basis.

- **Contract Number / Boroughs:**
  - ____ Contract: PW335ES17 * Boroughs: Brooklyn and Queens
  - ____ Contract: PW335ES18 * Boroughs: Manhattan, the Bronx and Staten Island

- **Total Not to Exceed Amount:** $4,000,000

- **Contract Time Frame:**
  - **Contract Term:** 1095 consecutive calendar days
  - **Renewal of Contract Term:** Duration: 730 consecutive calendar days Increase: up to $2,000,000
  - **Extension of Contract Term:** 365 consecutive calendar days

- **Contract Executive:**
  - Name: _____________________________________
  - Qualifications: ______________________________
  - Years of experience: _________________

- **Subconsultants:**
  - Certified Testing Laboratory: ____________________________________________
  - Subsurface Testing Company ________________________________________________
  - Wetland Delineation _________________________________________________________
  - Other _________________________________________________________________

**NOTE:** All Subconsultants are required to submit a Request for Approval of Subcontractor (RFAS) form to the Chief Agency Contracting Office (ACCO) be vetted and approved through the RFAS process administered by the Vendor Integrity Unit. Regardless of subcontract value, all Subconsultants must be vetted and approved by OEGS prior to performing any Work.

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

- **Subcontracts:** Notwithstanding anything set forth in Section 3.02 of Appendix A, the Contractor is not permitted to enter into any subcontract(s) for environmental services, unless authorized in advance in writing by the Commissioner. Subcontracting is only permitted for the following: (1) services of a certified testing laboratory, (2) environmental subsurface testing, wetland delineation, survey, traffic count, archeological survey or monitoring, and (3) Reimbursable Services, as set forth in Article 6. Provisions regarding subcontracting, including the requirements for approval, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

- **Multiplier:** The Multiplier for Overhead and Profit set forth below shall be used **ONLY** as set forth in Article 7. As indicated therein, such multiplier shall be used to calculate an All Inclusive Hourly Rate for any additional required title(s).
  - Multiplier: ____________________________
# EXHIBIT B
## STAFFING REQUIREMENTS: TITLES, QUANTITIES AND ALL INCLUSIVE HOURLY RATES

**TITLES:** Staffing requirements are set forth below. Such staffing requirements specify the titles of personnel which the Consultant will be required to provide through its own employees.

**ALL INCLUSIVE HOURLY RATES:** All Inclusive Hourly Rates for required titles of personnel are set forth below. Such All Inclusive Hourly Rates are deemed to include all expenses incurred by the Consultant in the performance of all required services for the Project. The expenses deemed included in such All Inclusive Hourly Rates are set forth in Article 7. No increase in such rates shall be provided for services performed during non-regular business hours.

**INCREASE / DECREASE:** The All Inclusive Hourly Rates set forth below shall apply to the three year base term of the Contract. Such All Inclusive Hourly Rates shall be subject to one increase only, at the beginning of the renewal term. Any increase shall be in accordance with the terms set forth in Article 7. The All Inclusive Hourly Rate for the Contract Executive is subject to a decrease in accordance with Article 7 in the event the individual identified as the Contract Executive in Exhibit A is replaced.

<table>
<thead>
<tr>
<th>TITLE</th>
<th>QUANTITY</th>
<th>MINIMUM QUANTITY</th>
<th>ALL INCLUSIVE HOURLY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Executive</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hazardous Material Project Manager</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Project Manager</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certified Industrial Hygienist (CIH)</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certified Safety Professional (CSP)</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registered Design Professional</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asbestos Project Designer</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asbestos Investigator</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asbestos Project Monitor</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Technician /</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial Hygienist</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Lead Risk Assessor</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead Inspector</td>
<td>4</td>
<td></td>
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</tr>
<tr>
<td>Mold Assessor</td>
<td>1</td>
<td></td>
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<tr>
<td>Project Engineer</td>
<td>2</td>
<td></td>
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</tr>
<tr>
<td>Project Scientist</td>
<td>2</td>
<td></td>
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<tr>
<td>Geologist</td>
<td>4</td>
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<tr>
<td>Urban Planner</td>
<td>2</td>
<td></td>
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<td></td>
<td>2</td>
<td></td>
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<tr>
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<td>--------------</td>
<td></td>
</tr>
<tr>
<td>Environmental Specialist</td>
<td>2</td>
<td></td>
<td></td>
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<tr>
<td>Archeologist</td>
<td>1</td>
<td></td>
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</tr>
<tr>
<td>CADD Operator</td>
<td>4</td>
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</table>
## EXHIBIT C: MINIMUM REQUIREMENTS PER TITLE

<table>
<thead>
<tr>
<th>TITLE</th>
<th>MINIMUM REQUIREMENTS</th>
<th>SPECIFIC EXPERIENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>YEARS OF EXPERIENCE</td>
<td>EDUCATION</td>
</tr>
<tr>
<td>Contract Executive</td>
<td>15 years in field of expertise; 10 years in Environmental Engineering or Management</td>
<td>BS in Engineering, or Science Or (Advanced degree may be substituted for 2 years of experience)</td>
</tr>
<tr>
<td>Hazardous Material Project Manager</td>
<td>15 years of field experience in asbestos and lead investigation &amp; abatement management.</td>
<td>Bachelors Degree; Or an Associate’s Degree with a minimum of 15 years NYSDOL &amp; NYCDEP Asbestos Certification</td>
</tr>
<tr>
<td>Environmental Project Manager</td>
<td>15 years of field experience in environmental investigation, management, and remediation of which 8 years of experience is within NYC.</td>
<td>BS in Engineering, Science, or Geology; (CHMM or NYS PG may be substituted for 3 years of experience)</td>
</tr>
<tr>
<td>Certified Industrial Hygienist</td>
<td>10 years of industrial hygiene</td>
<td>Bachelors Degree</td>
</tr>
<tr>
<td>Certified Safety Professional</td>
<td>10 years of construction safety field experience</td>
<td>Bachelors Degree</td>
</tr>
<tr>
<td>Asbestos Project Designer</td>
<td>5 years in asbestos abatement design specification</td>
<td>Bachelors Degree; Or an Associate’s degree plus 10 years certification as an NYSDOL Asbestos Project Designer</td>
</tr>
<tr>
<td>TITLE</td>
<td>YEARS OF EXPERIENCE</td>
<td>EDUCATION</td>
</tr>
<tr>
<td>------------------------------</td>
<td>---------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>Asbestos Investigator</td>
<td>6 years in asbestos assessments/ investigations in NYC.</td>
<td>2 years of college-level education</td>
</tr>
<tr>
<td>Asbestos Project Monitor</td>
<td>4 years asbestos abatement project monitoring in NYC</td>
<td>High School Diploma (1 year college level education may be substituted for 1 year experience)</td>
</tr>
<tr>
<td>Environmental Technician / Industrial Hygienist</td>
<td>2 years environmental monitoring and/or industrial hygiene sampling</td>
<td>2 years of college-level education</td>
</tr>
<tr>
<td>Lead Risk Assessor</td>
<td>4 years in environmental risk assessments involving lead based paint lead in buildings</td>
<td>2 years of college level education</td>
</tr>
<tr>
<td>Lead Inspector</td>
<td>4 years in environmental risk assessments involving lead based paint lead in buildings</td>
<td>High School Diploma (1 year college level education may be substituted for 1 year experience)</td>
</tr>
<tr>
<td>Mold Assessor</td>
<td>3 years in mold assessment and remediation design</td>
<td>Associates degree</td>
</tr>
<tr>
<td>Registered Design Professional</td>
<td>5 years with NYC DEP asbestos regulations and DOB/FDNS regulations</td>
<td>Bachelor in Engineering, Science or Architecture</td>
</tr>
<tr>
<td>TITLE</td>
<td>YEARS OF EXPERIENCE</td>
<td>EDUCATION</td>
</tr>
<tr>
<td>-----------------------</td>
<td>---------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>Project Engineer / Scientist</td>
<td>5 years</td>
<td>environmental field investigation, mitigation/ remediation design and /or monitoring</td>
</tr>
<tr>
<td>Geologist</td>
<td>6 years</td>
<td>environmental subsurface investigations</td>
</tr>
<tr>
<td>Archeologist</td>
<td>8 years</td>
<td>experience in archeological study</td>
</tr>
<tr>
<td>Urban Planner</td>
<td>8 years</td>
<td>experience in environmental planning in NYC</td>
</tr>
<tr>
<td>Environmental Specialist</td>
<td>8 years</td>
<td>experience in environmental permitting</td>
</tr>
<tr>
<td>CADD Operator</td>
<td>3 years</td>
<td>construction design drawing utilizing Autocad</td>
</tr>
</tbody>
</table>

**NOTE:** ALL TITLES (EXCEPT CADD OPERATOR) MUST HOLD A VALID OSHA 30 HOUR CONSTRUCTION SAFETY & HEALTH CARD
EXHIBIT D

TESTING SERVICES AND UNIT PRICES

Testing Services and Unit Prices: The Consultant shall provide the testing services set forth in this Exhibit. Payment for Testing Services shall be in accordance with the unit prices set forth below. The Consultant shall not be entitled to any mark-up on unit prices for testing services.

Items Deemed Included: Unit Prices for Testing Services are deemed to include the items set forth below.

(a) All expenses incurred by the Consultant and/or its Subconsultant(s) in connection with the performance of the test, including without limitation, expenses for the following: transportation, equipment, handling, calibration, set up, consumable material, operator labor, maintenance, cleaning and insurance
(b) All expenses related to providing test results
(c) All expenses related to management, oversight and quality control procedures
(d) All expenses in connection with non-reimbursable services, as set forth in Article 6.
(e) All expenses related to overhead and any anticipated profit

Payment for Environmental Services for Testing: The Consultant shall be entitled to payment for environmental services in connection with the provision of tests set forth in Exhibit D, including collecting samples and providing Test Reports. Payment for such environmental services shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit B.

Test Reports: For each test performed by the laboratory, the Consultant shall provide a Test Report that addresses all of the items set forth below, as well as any other relevant information. The Test Report shall be sent to the City by email within 24 hours of the test date or within the turn-around-time (TAT) requested by the DDC for the particular project.

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

Other Testing Services: The Consultant may be directed to perform other types of tests or to provide other types of testing equipment. When so directed in writing, the Consultant shall provide such services or equipment as a Reimbursable Service.

Increase in Unit Prices: Unit Prices for Testing Services set forth in this Exhibit D shall apply to the three year base term of the Contract. Such Unit Prices shall be subject to one increase only, at the beginning of the renewal term. Any increase shall be in accordance with the terms set forth in Article 7.
<table>
<thead>
<tr>
<th>TEST</th>
<th>TEST METHOD</th>
<th>TURN-AROUND-TIME</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASBESTOS</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>PLM Analysis – Friable ACM</td>
<td>Bulk</td>
<td>1-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PLM Analysis – Friable ACM</td>
<td>Bulk</td>
<td>4-hour</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PLM Analysis – NOB ACM</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PLM Analysis - Vermiculite</td>
<td>Bulk</td>
<td>2 day</td>
<td>Per test</td>
<td>__________</td>
</tr>
<tr>
<td>TEM Analysis – Friable ACM</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>TEM Analysis – NOB ACM</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PCM Analysis – ACM</td>
<td>Air</td>
<td>1-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>PCM Analysis – ACM</td>
<td>Air</td>
<td>4-hour</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>TEM Analysis – ACM</td>
<td>Air</td>
<td>1-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td><strong>LEAD PAINT &amp; DUST &amp; WATER</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead Paint Analysis</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Lead Paint Analysis</td>
<td>Wipe</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Lead in Air Sample Analysis</td>
<td>Air</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>TEST</td>
<td>TEST METHOD</td>
<td>TURN-AROUND-TIME</td>
<td>UNIT</td>
<td>UNIT PRICE</td>
</tr>
<tr>
<td>------------------------------------</td>
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<td>------------</td>
</tr>
<tr>
<td>Lead in Soil Sample Analysis</td>
<td>Bulk</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Lead in Water Sample Analysis</td>
<td>Water</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>XRF Test Apparatus – Lead</td>
<td>Surface</td>
<td>N/A</td>
<td>per diem</td>
<td>__________</td>
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<tr>
<td><strong>INDOOR AIR QUALITY (IAQ)</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Total &amp; Respirable Dust</td>
<td>Air</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Silica</td>
<td>Air</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Microbial Analysis</td>
<td>Air</td>
<td>10-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Microbial Analysis</td>
<td>Wipe</td>
<td>10-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Real Time Analyzer (Temp., RH, CO, CO₂)</td>
<td>Air</td>
<td>N/A</td>
<td>per diem</td>
<td>__________</td>
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<tr>
<td>Colorimetric chemical detector tubes including pump</td>
<td>Air</td>
<td>N/A</td>
<td>per 10 tests</td>
<td>__________</td>
</tr>
<tr>
<td><strong>SOIL/WATER</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Target Compound List Volatile Organic Compounds +MTBE, TBA, Xylenes (TCL VOC)</td>
<td>EPA 8260C</td>
<td>2-day</td>
<td>per test</td>
<td>__________</td>
</tr>
<tr>
<td>Target Compound List Base Neutral/Acid Extractables Semi-Volatile Organic Compounds (TCL-BNAE SVOC)</td>
<td>EPA 8270D</td>
<td>5-day</td>
<td>per test</td>
<td>__________</td>
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</tbody>
</table>
## TESTING SERVICES

<table>
<thead>
<tr>
<th>TEST</th>
<th>TEST METHOD</th>
<th>TURN-AROUND-TIME</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York STARS List Volatile Organic Compounds (STARS-VOC)</td>
<td>EPA 8260C</td>
<td>2-day</td>
<td>per test</td>
<td>___________</td>
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<tr>
<td>New York STARS List Base Neutrals Semi-Volatile Organic Compounds (STARS-SVOC)</td>
<td>EPA 8270D</td>
<td>5-day</td>
<td>per test</td>
<td>___________</td>
</tr>
<tr>
<td>Polynuclear Aromatic Hydrocarbons</td>
<td>EPA 8270C</td>
<td>5-day</td>
<td>per test</td>
<td>___________</td>
</tr>
<tr>
<td>Total Petroleum Hydrocarbons</td>
<td></td>
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<tr>
<td>Diesel Range Organics Gasoline Range Organics (TPHC-DRO/GRO)</td>
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<tr>
<td>Target Analyte List Metals (TAL-Metals)</td>
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<td>___________</td>
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<tr>
<td>Polychlorinated Biphenyls (PCB)</td>
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<td>___________</td>
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<tr>
<td>Target Compound List Pesticides (TCL-Pest)</td>
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<td></td>
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<td>___________</td>
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<tr>
<td>Target Compound List Herbicides (TCL-Herb)</td>
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<td></td>
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<td>___________</td>
</tr>
<tr>
<td>Priority Pollutant Metals (PP-Metals)</td>
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<td></td>
<td>___________</td>
</tr>
<tr>
<td>TCL/TAL Suite (Includes: TCL-VOC, TCL-BNAE, TAL Metals, PCB, TCL Pest, and TCL Herb)</td>
<td>EPA 8260C, 8270D, 6020/7000 Series, 8082A, 8081B, 8151A</td>
<td>5-day</td>
<td>per test</td>
<td>___________</td>
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<tr>
<td>TCLP Metals (RCRA 8)</td>
<td></td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>___________</td>
</tr>
</tbody>
</table>
## TESTING SERVICES

<table>
<thead>
<tr>
<th>TEST</th>
<th>TEST METHOD</th>
<th>TURN-AROUND-TIME</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toxicity Characteristic Leaching Procedure for Lead only (TCLP Lead)</td>
<td>EPA 1311</td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>/</td>
</tr>
<tr>
<td></td>
<td>6000 Series</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8260C,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8270D,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6000 Series</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8081B,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8151A</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Full Toxicity Characteristic Leaching Procedure (Full TCLP) (Includes: TCLP VOCs, TCLP BNAE SVOCs, TCLP Metals, TCLP Pests, TCLP Herbs, and TCLP Extractions)</td>
<td>EPA 1311</td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>/</td>
</tr>
<tr>
<td></td>
<td>8260C,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8270D,</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>6000 Series</td>
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<td></td>
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</tr>
<tr>
<td></td>
<td>8081B,</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8151A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TCLP Waste Class (Includes: Full TCLP, PCB, TPHC-DRO/GRO, and RCRA Characteristics)</td>
<td>As above</td>
<td>3-day / 5-day</td>
<td>per test</td>
<td>/</td>
</tr>
<tr>
<td>RCRA Characteristics (Includes: Reactivity, Ignitability, Corrosivity, and Paint Filter Test)</td>
<td>EPA 9012B/9034</td>
<td>3-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td></td>
<td>9045C,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9095B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NYCDEP Effluent (Includes: Non-polar Material, pH, Field Temperature, Flash Point, Cadmium, Chromium VI, Copper, Lead, Mercury, Nickel, Zinc, Benzene, Carbontetrachloride, Chloroform, 1,4 Dichlorobenzene, Ethylbenzene, MTBE, Naphthalene, Phenol, Tetrachloroethylene, Toluene, 1,2,4 Trichlorobenzene, 1,1,1 Trichloroethane, Total Xylenes, &lt; 65 Parts Per Trillion MDL PCBs, Total Suspended Solids, Carbonaceous Oxygen Demand, Chloride, Total Nitrogen, Total Solids)</td>
<td>Non polar Material by 1664</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td></td>
<td>PCBs by 608</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MDL &lt; 65 ppt</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>All others as above</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td>Soil Gas VOC Analysis</td>
<td>TO-15</td>
<td>5-day</td>
<td>per test</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(SUMMA Canister)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flame Ionization Detector (FID)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## TESTING SERVICES

<table>
<thead>
<tr>
<th>TEST</th>
<th>TEST METHOD</th>
<th>TURN-AROUND-TIME</th>
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<th>UNIT PRICE</th>
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<tbody>
<tr>
<td>Photo Ionization Detector (PID)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Multiple Gas Monitor (% LEL, % O₂, H₂S, CO)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
</tr>
<tr>
<td>Mercury Vapor Analyzer</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
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<tr>
<td>Landfill Gas Monitor (Methane, %LEL, Carbon Dioxide)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
<td>_________</td>
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<tr>
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<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
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<tr>
<td>Oil-Water Interface Probe</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
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<td>Radiation Meter (Alpha, Beta, Gamma)</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
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<tr>
<td>Global Positioning System</td>
<td>Direct Read</td>
<td>N/A</td>
<td>per diem</td>
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SCHEDULE B: M/WBE UTILIZATION PLAN

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

APPENDIX A

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

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

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

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

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

F. “Comptroller” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

H. “Days” means calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

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

K. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.
L. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), §§ 1-01 et seq.

M. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a et seq.). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.
C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

Section 2.03 Certification Relating to Fair Practices

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

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

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

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

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

Section 2.04 Disclosures Relating to Vendor Responsibility

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

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.
Section 2.06 Authority to Execute Agreement

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee’s disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

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

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.
E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. Approval when subcontract is $20,000 or less. The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed $20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City’s Payee Information Portal (www.nyc.gov/pip).

2. Approval when subcontract is greater than $20,000.

   a. The Contractor shall not enter into any subcontract for an amount greater than $20,000.00 without the prior approval by the Department of the subcontractor.

   b. Prior to entering into any subcontract for an amount greater than $20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City’s Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor’s industry.¹

   c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

¹ Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.
d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed $25,000.00, the Department’s approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department’s receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department’s acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

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

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

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

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

C. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.
D. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days’ notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

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

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City’s Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of $100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.
Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor’s subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person’s performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor’s employees, agents, subcontractors, or subcontractor’s employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor’s employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers’ Compensation coverage, Employers’ Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days’ written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner’s determination.
Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).
4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than $1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than $750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer’s covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department’s approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or
any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor’s account an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

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

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

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;
3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of $50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

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

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

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than $100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

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

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

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

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

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

e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services (“DLS”); and

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

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

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or
d. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of $100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

Section 4.06 Paid Sick Leave Law

A. Introduction and General Provisions.

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.² Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

² Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.
2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City’s Department of Consumer Affairs ("DCA"). DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

B. Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.
3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

   a. such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;

   b. such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

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

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

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. Exemptions and Exceptions. Notwithstanding the above, the PSLL does not apply to any of the following:

   1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;

5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

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

7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

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

D. Retaliation Prohibited. An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

E. Notice of Rights.

1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA’s website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed $50.00 for each employee who was not given appropriate notice.
F. Records. An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

G. Enforcement and Penalties.

1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500.00 for a first violation, $750.00 for a second violation within two years of the first violation, and $1,000.00 for each succeeding violation within two years of the previous violation.

H. More Generous Policies and Other Legal Requirements. Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

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

2. If any of Contractor’s officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney’s fees.

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

   a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

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

4. For the purposes of this Section 4.07, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of $100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of $100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at $100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.
ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If
observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

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

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

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

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

B.

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

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

C.

6. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
7. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

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

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

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

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure
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approval”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

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

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

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.
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E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

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

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

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.
ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement.

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, Certificate of Workers’ Compensation Insurance;
3. Form SI-12, Certificate of Workers’ Compensation Self-Insurance;
4. Form GSI-105.2, Certificate of Participation in Worker’s Compensation Group Self-Insurance;
5. Form DB-120.1, Certificate of Disability Benefits Insurance;
6. Form DB-155, Certificate of Disability Benefits Self-Insurance;
7. Form CE-200 – Affidavit of Exemption;
8. Other forms approved by the New York State Workers’ Compensation Board; or
9. Other proof of insurance in a form acceptable to the City.

Section 7.03 Other Insurance

A. Commercial General Liability Insurance. The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. Commercial Automobile Liability Insurance. If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. Professional Liability Insurance.

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.
D. **Crime Insurance.** If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. **Cyber Liability Insurance.** If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor’s cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. **Other Insurance.** The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

**Section 7.04 General Requirements for Insurance Coverage and Policies**

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;

2. have an A.M. Best rating of at least A-/VII, a Standard & Poor’s rating of at least A, a Moody’s Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and

3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.
C. There shall be no self-insurance program, including a self-insurance retention, exceeding $10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office
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of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor’s employees was injured). Such notice shall expressly specify that “this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured” (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys’ fees, arising from an insurer’s disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor’s failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such
entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

**ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

**Section 8.01 Reasonable Precautions**

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

**Section 8.02 Protection of City Property**

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

**Section 8.03 Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City, or its officials or employees, of a claim upon demand, the Contractor shall reimburse the City, or its officials or employees as the case may be, for all reasonable attorney’s fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officials and employees with a defense or reimbursement for attorney’s fees.
Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor’s obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor’s obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

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

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.
B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City’s tender of the claim or action without a reservation of rights.

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

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.
ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by the City Without Cause

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

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize
any of the Contractor’s suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

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

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

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

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

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

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

   b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
c. a criminal violation of any state or federal antitrust law;

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

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

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

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

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

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.
E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

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

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

F. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be
less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of
suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor’s breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

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

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the
“EFT Vendor Payment Enrollment Form” available from the Agency or at http://www.nyc.gov/dof in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section 11.02 is applicable to contracts valued at $25,000.00 and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys’ fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be
finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor’s work to the Agreement, and the acceptability and quality of the Contractor’s work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing (“Notice of Dispute”) to the Agency Head within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City
Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head’s ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

3. Agency Head Determination. Within 30 Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head’s decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board (“CDRB”) pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
1. **Time, Form, and Content of Notice.** Within 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. **Agency Response.** Within 30 Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

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

4. **Opportunity of Comptroller to Compromise or Adjust Claim.** The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller’s receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. **Contract Dispute Resolution Board.** There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB’s
functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer (“CCPO”) or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller’s Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH’s offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of
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memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency’s case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB’s decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB’s decision.

6. Finality of CDRB Decision. The CDRB’s decision shall be final and binding on all parties. Any party may seek review of the CDRB’s decision solely in the form of a challenge, filed within four months of the date of the CDRB’s decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB’s decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

**Section 12.04 Claims and Actions**

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in
any action, unless the Contractor shall have strictly complied with all requirements relating to the
giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action
shall be commenced within six months after the final payment under this Agreement, or within
six months of the termination or expiration of this Agreement, or within six months after the
accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

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

Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this
Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice,
voucher, judgment of any court of competent jurisdiction or any other administrative means,
shall constitute and operate as a release of the City from any and all claims of and liability to the
Contractor, of which the Contractor was aware or should reasonably have been aware, arising out
of the performance of this Agreement based on actions of the City prior to such acceptance of
final payment, excepting any disputes that are the subject of pending dispute resolution
procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this
Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be
construed to be a modification of the terms of the Agreement unless and until the same shall be
agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby
deemed to be a part of this Agreement, whether actually inserted or not.
Section 13.03  Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04  Compliance With Laws

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

Section 13.05  Unlawful Discrimination in the Provision of Services

A. **Discrimination in Public Accommodations.** With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. **Discrimination in Housing Accommodations.** With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. **Admin. Code § 6-123.** In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of $50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.
D. Immigration status. In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person’s immigration status.

Section 13.05 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). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

Section 13.06 Voter Registration

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.
B. **Distribution of Voter Registration Forms.** In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department’s request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section 13.06, the word “Contractor” shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.
7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

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

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor’s or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

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

4. The Contractor and the Contractor’s employees shall not:

   a. seek to influence an applicant’s political preference or party designation;

   b. display any political preference or party allegiance;
c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or


d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.07 Political Activity

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

Section 13.08 Religious Activity

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

Section 13.09 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 13.10 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 13.11 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of $250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. “Contractors” to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter “pamphlet”), the Contractor hereby agrees as follows:
1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.12 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks
and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party
may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.
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.
## SCHEDULE A

### Article 7 -- Insurance

<table>
<thead>
<tr>
<th>Types of Insurance (per Article 7 in its entirety, including listed paragraph)</th>
<th>Minimum Limits and Special Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>■ Workers’ Compensation §7.02</td>
<td>Statutory amounts.</td>
</tr>
<tr>
<td>■ Disability Benefits Insurance §7.02</td>
<td></td>
</tr>
<tr>
<td>■ Employers’ Liability §7.02</td>
<td></td>
</tr>
<tr>
<td>■ Commercial General Liability §7.03(A)</td>
<td>$1,000,000.00 per occurrence</td>
</tr>
<tr>
<td></td>
<td>$1,000,000.00 personal &amp; advertising injury (unless waived in writing by the Department)</td>
</tr>
<tr>
<td></td>
<td>$2,000,000.00 aggregate</td>
</tr>
<tr>
<td></td>
<td>$0 products/completed operations</td>
</tr>
<tr>
<td></td>
<td>Additional Insureds:</td>
</tr>
<tr>
<td></td>
<td>1. City of New York, including its officials and employees, and</td>
</tr>
<tr>
<td></td>
<td>2. __________________________</td>
</tr>
<tr>
<td></td>
<td>3. __________________________</td>
</tr>
<tr>
<td>□ Commercial Auto Liability §7.03(B)</td>
<td>$1,000,000.00 per accident combined single limit</td>
</tr>
<tr>
<td></td>
<td>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</td>
</tr>
<tr>
<td>□ Professional Liability/Errors &amp; Omissions §7.03(C)</td>
<td>$1,000,000.00 per claim</td>
</tr>
<tr>
<td>□ Crime Insurance §7.03(D)</td>
<td>$__________ Employee Theft/Dishonesty</td>
</tr>
<tr>
<td>$___________ Computer Fraud</td>
<td>$___________ Funds Transfer Fraud</td>
</tr>
<tr>
<td>$___________ Client Coverage</td>
<td>$___________ Forgery or Alteration</td>
</tr>
<tr>
<td>$___________ Inside the Premises (theft of money and securities)</td>
<td>$___________ Inside the Premises (robbery or safe burglary of other property)</td>
</tr>
<tr>
<td>$___________ Outside the Premises</td>
<td>$___________ Money Orders and Counterfeit Money</td>
</tr>
</tbody>
</table>

City of New York is a loss payee as its interests may appear.

- [ ] Cyber Liability Insurance §7.03(E)  
  [If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]

- [ ] [OTHER]  
  [If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]

- [ ] [OTHER]  
  [If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]

### Section 10.07 – Liquidated Damages

- Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal  
  $100 per day

### Section 14.04 – Notice
<table>
<thead>
<tr>
<th>Department’s Mailing Address and Email Address for Notices</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor’s Mailing Address and Email Address for Notices</td>
<td></td>
</tr>
</tbody>
</table>
CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers’ Compensation Insurance, Employer’s Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

(1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

(2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.
CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

_____________________________________________________[Name of broker or agent (typewritten)]
_____________________________________________________[Address of broker or agent (typewritten)]
_____________________________________________________[Email address of broker or agent (typewritten)]
_____________________________________________________[Phone number/Fax number of broker or agent (typewritten)]
_____________________________________________________[Signature of authorized official, broker, or agent]
_____________________________________________________[Name and title of authorized official, broker, or agent (typewritten)]

State of ……………………….)
 ) ss.: 
County of …………………….)
Sworn to before me this _____ day of ___________ 20___

_______________________________________________________NOTARY PUBLIC FOR THE STATE OF ____________________
WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER
REPORT
CORRUPTION, FRAUD, UNETHICAL CONDUCT
RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT
CALL THE NYC DEPARTMENT OF INVESTIGATION
212-825-5959

DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:
New York City Department of
Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:
www.nyc.gov/doi

All communications are confidential

THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.

- To be protected by this law, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than $100,000.

- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.
EXHIBIT G

HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars ($1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services's (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor's representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.
In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars ($2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars ($500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by Law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

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

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

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.