NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION

REQUEST
FOR
PROPOSALS

RFP

PIN
8502008RQ0032P

PRE-PROPOSAL CONFERENCE
APRIL 17, 2008

PROJECT
PW335ES13, Requirements Contract for Environmental Services for Various Capital Projects Citywide

SUBMISSION DEADLINE
APRIL 30, 2008

MICHAEL R. BLOOMBERG
Mayor

DAVID J. BURNEY, FAIA
Commissioner

MARK A. CANU
Associate Commissioner
Division of Technical Support

DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF TECHNICAL SUPPORT

REQUEST FOR PROPOSAL

PROJECT: PW335ES13
Requirements Contract for Environmental Services for Various Capital Projects, Citywide

TABLE OF CONTENTS

PREFACE

I. TIMETABLE

II. SUMMARY OF REQUEST FOR PROPOSALS

III. SCOPE OF WORK AND CONTRACT CONDITIONS

IV. FORMAT AND CONTENT OF THE PROPOSAL

V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

VI. GENERAL INFORMATION TO PROPOSERS

Attachment 1 – Statement of Understanding
Attachment 2 – Fee Proposal Form
Attachment 3 – Requirements Per Title
Attachment 4 – Acknowledgement of Addenda
Attachment 5 – Confirmation of VENDEX Compliance and VENDEX Certification of No Change (Download VENDEX Questionnaires from nyc.gov/vendex)
Attachment 6 – M/WBE Subcontractor Utilization Plan
Attachment 7 – Doing Business Data Form

Appendix 1 – Contract Document

Printed on paper containing 30% post-consumer material.

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 Thursday, April 17, 2008, at DDC headquarters, 30-30 Thomson Avenue, Long Island City, NY 11101, in Conference Room 401, 4th Floor. Attendance is recommended but not mandatory to propose on the contract described in this RFP, it is strongly encouraged.

Submission Deadline:

The proposer shall deliver, on or before 4:00 PM on Wednesday, April 30, 2008, the Proposal in a clearly marked envelope or package. The Proposal shall consist of THREE separate, clearly marked, sealed packages containing the following: (1) the Technical Proposal (1 original and 4 copies), (2) Subcontractor Utilization Plan (1 original), and (3) Doing Business Data Form.

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

Belkis Palacios, (718) 391-1866
Professional Contracts Section
Department of Design and Construction
30-30 Thomson Avenue, 4th Floor (Entrance on 30th Place)
Long Island City, NY 11101
Email: palaciob@ddc.nyc.gov

NOTE: Respondents are held responsible for ensuring that the Professional Contract Section receives the RFP response package by the deadline. Respondents are warned not to rely on signed delivery slips from their messenger services. Occasionally packages are delivered to the School Construction Authority located in the same building and the packages are not forwarded to the DDC Professional Contracts Section in a timely manner.

Entrance to DDC is on 30th Place, *not* Thomson Avenue despite our Thomson Avenue house number.

B. Inquiries: In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing or by e-mail, 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 and posted at the DDC website: http://ddcftp.nyc.gov/rtpweb. All inquiries must be directed ONLY to the contact person listed above.

C. Addenda: Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the addendum to the technical proposal. All addenda shall become a part of the requirements for this RFP.

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

a. Identify Consultant: Within six weeks of submission deadline

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

c. Commence Work: When directed by DDC.

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 Technical Support, is seeking an appropriately qualified firm to provide environmental services and laboratory testing, as specified by the Commissioner on a work order basis for various projects.

In order to ensure that environmental services and laboratory testing are performed in a timely manner for various projects, the subject requirements contract 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 the Specific Requirement Exhibit B of the attached contract.

The Commissioner reserves the right to issue Work Orders to the consultant for required services in areas other than the five boroughs.

B. Joint Ventures and Other Multiple Consultant Relationships

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

DDC does not recognize the corporate configuration wherein one company is “in association with” another. Relationships between two or more firms shall be structured either as a joint venture or prime consultant/subconsultant(s). 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). Evaluation of the submitted proposal will be handled accordingly, and if selected for contract award, the contract documents will indicate only the prime firm (the firm that was invited to submit a proposal) on the signature page; each firm that is a party to the proposal will be reflected in Exhibit A which lists the subconsultants.

C. Contract Term/Cost Estimate

The contract will have a not to exceed value of $2,000.000.00 and shall remain in effect for a period of 1095 consecutive calendar days. At the Commissioner’s sole option, the term of the contract may be renewed for 730 additional consecutive calendar days for up to an additional $1,000.000.00.

D. Insurance

The Consultant and all subcontractors, if any, performing services on the Project shall provide the types and amounts of insurance specified in Article 11 of the enclosed contract. Proposers are advised to carefully review such insurance requirements.

E. Payment Provisions

Payment for all required services shall be in accordance with the Specific Requirement Exhibit B of the attached contract. Information regarding the Fee Proposal is set forth in ***Attachment 2 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 and laboratory testing services described in this RFP and in the specific requirements, Exhibit B 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 and incorporated as part of this RFP. Any firm awarded a contract from this RFP will be required to sign this form of contract. Proposers are advised to carefully review the attached contract in its entirety before submitting a proposal.

C. Environmental Services and Laboratory Testing Services

The range and type of environmental services and the laboratory testing services the Consultant may be required to provide shall include without limitation, the following: asbestos containing materials, lead-based paint, lead dust, mold or other biological substances as described in Specific Requirement Exhibit B of the attached contract. As the need arises for environmental 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 section of the attached contract, which details the environmental and related services subsumed in the services to be rendered under this contract.

D. Work Order Process

The Work Order process is set forth in the Specific Requirement Exhibit B of the attached contract. Proposers are advised to review this section 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 the Specific Requirement Exhibit B of the attached contract.

E. The 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 Specific Requirement Exhibit B of the attached contract. Proposers are advised to carefully review this section of the attached contract to ensure their capability of complying with specified staffing requirements.

F. Guaranteed Minimum

The City guarantees that under the contract it will issue Work Orders to the Consultant in the total minimum amount of $5,000. The City has no obligation to order the performance of services under the contract in excess of the guaranteed minimum amount specified, and, no action for damages or for loss of profits shall accrue to the Engineer by reason thereof.

G. Staffing Requirements

The consultant shall throughout the term of the contract provide all personnel necessary and required for performance of comprehensive environmental and laboratory testing services for various projects in accordance with the work order issued by the Commissioner.

1. Contract Executive

The Consultant(s) shall, as part of this Technical Proposal, identify the Contract Executive. 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: (1) coordinating the activities of the Consultant's personnel performing services pursuant to a Work Order, and (2) providing, on an as-needed basis, executive or management expertise and oversight with respect to the projects, submitting and signing required reports and requisitions for payments.

2. Qualifications and Approval of the Consultant’s Personnel

Prior to the approval of a Work Order, all proposed personnel are subject to the prior written approval of the Commissioner. With respect to the proposed personnel, the Consultant shall provide the following: resumes and any other information regarding the qualifications and/or areas of expertise. The Consultant specifically agrees that its employees, agents and consultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

3. Replacement Personnel

Replacement personnel shall possess qualifications substantially similar to those of the personnel being replaced and are subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the Engineer 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.

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

The contract resulting from this Request for Proposals will be subject to Local Law 129 of 2005, the Minority-Owned and Women Business Owned Enterprises (M/WBE) program. Please refer to Attachment 6 for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms.

If an M/WBE Subcontractor Utilization Plan is required for this proposal, the plan must be submitted in a separate, sealed envelope marked "Subcontractor Utilization Plan" at the same time the technical proposal is submitted. This envelope will be opened only when and if the firm is selected for fee negotiations. Failure to include or properly fill out the Subcontractor Utilization Plan will result in the rejection of the proposal as non-responsive. If a full waiver has been granted, the proposer shall include the signed waiver form in the envelope in lieu of the Subcontractor Utilization Plan. If a partial waiver has been granted, the proposer the proposer shall include the signed waiver form in the envelope with its Subcontractor utilization Plan.

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. Environmentally Preferable Purchasing Laws

This contract is subject to one or more of the following local laws on environmentally preferable purchasing (EPP) and any rules enacted pursuant to such local laws: Local Law 118 of 2005, Local Law 119 of 2005, Local Law 120 of 2005 and Local Law 121 of 2005.

In general, the requirements in the EPP laws for construction projects relate to Energy Star certified products, bathroom fixtures, lighting products, carpets, architectural coatings and construction or furnishing materials. A list of these products/materials and their minimum standards are available in the *New York City EPP Minimum Standards for Construction Products*. A hard copy of the standards may be obtained from the agency or at MOCS website http://www.nyc.gov/html/mocs/html/programs/other_epp.shtml.

For contracts covered by the EPP laws, any product used in construction and listed in the New York City EPP Minimum Standards for Construction Products must meet or exceed relevant standards in the *New York City EPP Minimum Standards for Construction Products*.

The consultant will be required to provide a report, for any period requested by an agency, on products specified by or for the City that appear in the *New York City EPP Minimum Standards for Construction Products*. The report must contain the following information: agency, item description, quantity ordered and dollar value of all items ordered over the period requested.

J. Compliance with Local Law 34 of 2007

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the City" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation should complete the Doing Business Data Form (see Attachment 7) and return it with this proposal. The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions.

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 8 ½ " x 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: http://www.epa.gov/epg/products/printing/html). Pages should be paginated. The proposal will be evaluated on the basis of its content, not its length. Failure to comply with any of these instructions will not make the proposal non-responsive. Submit the proposal in clearly labeled, sealed packages as follows:

1. Technical Proposal (1 original and 4 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus forms 254 and 255 for the proposer and its subconsultants. These forms are available at http://nyc.gov/html/ddc/otherfrm.html. The Technical Proposal shall not include the Fee Proposal.

2. Fee Proposal (1 original): **To be submitted only upon request.** The Fee Proposal shall consist of the elements requested in Subsection C below. A form for the submission of the Fee Proposal is included as Attachment 2 of this RFP.

B. Technical Proposal

Include the following information in the technical proposal in the order outlined below. There may be further breakdowns of this format for each item, if the proposer so requires to clarify his proposal. DDC reserves the right to reject any proposal that does not conform to this general format:

Introductory Material:

- Cover Letter: Submit a maximum two-page cover letter, indicating the firm's name and address, and the name, address and telephone number of the person authorized to represent the firm. The DDC project name and number must be included.

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

- Summary: Submit a brief statement of the salient features of the proposal, including approach, qualifications and nature of the proposed project team. Do not include fee data in the summary.

Support Documentation:

1. Experience of Firm and Subconsultants : Discuss and demonstrate the proposer's success in directly providing environmental services and laboratory testing services on projects similar in nature and scope to the projects included in this RFP. Provide information on the extent, quality, and relevance of the firm's experience, inclusive of client satisfaction information and a discussion of problems that may have arisen during delivery of services and how they were resolved. Explain the relationship between the proposer's firm and each subconsultant, including history of relationship and how the deployment of responsibilities between the proposer's firm and each subconsultant will be structured. In addition:

   - Attach a completed SF-254 Form, which lists the number of full-time staff currently on staff and the projects on which the firm is currently working, have completed and future projects and commitments. Provide the value of these contracts and their schedules.

   - Submit written materials of firm's past environmental work in the five boroughs of New York City as they support this project. The materials may take the form of Surveys, Designs, Specifications, Phase I, Phase II Reports, and other similar technical documents.

   - Attach a completed SF-254 form for each of the subconsultants proposed to be part of the designation. (DDC must approve the actual subconsultants prior to award).

2. Proposed Project Team:

   Present the proposer's proposed project team for this project, including deployment of project team responsibilities. In additions, attach the following:

   (a) A completed SF-255 Form, which identifies the proposed Principal-in-Charge and project manager on the subject project.

   (b) A resume of each person on the project team.

   (c) If applicable, a completed SF-255 form for each subconsultant to be utilized as part of the project team. (DDC must approve the actual subconsultants prior to award).

3. Firm's Capability:

Discuss and demonstrate the firm's capability to provide requisite Staff, managerial personnel and other resources as and when required to meet and satisfactorily perform, on a work order basis, the scope of services set forth in this RFP and detailed in the Specific Requirement (Exhibit B) of the attached contract. The prime firm's workload including other DDC projects will be considered in the evaluation.

C. Statement of Understanding

The Statement of Understanding form included as Attachment 1 of this RFP shall be signed by a responsible partner or corporate officer of the proposing firm and submitted with the firm's Technical Proposal.

D. Acknowledgement of Addenda

The acknowledgement of Addenda form (Attachment 4) serves as the proposer's acknowledgement of the receipt of addenda to this RFP that may have been issued by the Agency prior to the Proposal Due Date and Time. The proposer should complete this form as instructed on the form. All addenda shall become a part of the requirements for this RFP.

E. Fee Proposal

A form for the submission of the Fee Proposal is included as Attachment 2 of the RFP. Upon written notification, the proposer must submit the Fee Proposals in separate, clearly labeled, sealed package within ten business days of such notice. The proposer must complete the fee proposal as per instructions in Attachment 2.

F. Proposal Package Contents (Checklist)

The Proposal Package should contain the following materials:

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

   - Statement of Understanding (Attachment 1)
   - Requirements Per Title (Attachment 3)
   - Acknowledgement of Addenda (Attachment 4)

2. Subcontractor Utilization Plan (Attachment 6)
   Sealed envelope clearly marked as "Subcontractor Utilization Plan".

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

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

1. 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 2 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 re-evaluated. Proposers shall be ranked in accordance with the scores. The ranking will be submitted to the Executive Consultant Selection Committee (ECSC) who will certify the results and authorize fee negotiation to commence with the highest ranked firm. Should negotiations fail with the highest ranked firm, the ECSC will authorize fee negotiation with the next highest ranked firm. The firm(s) whose proposal(s) is/are determined to be the most advantageous to the City will be awarded the project.

2. Evaluation Criteria

a. Experience of Firm and Subconsultant (weight 35%)

b. Individuals proposed for the project team (weight 35%)

c. Firm's Capability (weight 30%)

3. Basis of Award

The Department of Design and Construction will award contract(s) to the responsible proposer(s) whose proposal(s) is/are 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 negotiations of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude not more than thirty days after receipt of the fee proposal.

4. Supply and Service Report:

Upon selection, the successful proposer will be required to submit one original copy of the Department of Business Services Supply and Service Report, a copy of which can be downloaded from http://www.nyc.gov/html/ddc/html/otherfrm.html. Upon written notification, the

proposer must submit the Service and Supply Report within ten days of such notification.

5. VENDEX

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

The proposer is advised that VENDEX Questionnaires and procedures have changed. See www.nyc.gov/vendex to download the VENDEX Questionnaires and a Vendor's guide to VENDEX or contact DDC's VENDEX Unit at 718-391-1845.

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

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

6. 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. Non-Binding Acceptance of Proposals: This RFP does not commit the City to award a contract for any services.

B. Incurring Proposal Costs: The City of New York is not liable for any costs incurred in the preparation of a response to this RFP.

C. Confidentiality: The contents of a Proposer's RFP response are not deemed confidential unless the Proposer identifies those portions of its response which it deems confidential, or containing proprietary information, or trade secrets. The Proposer must provide justification as to 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.

D. Reserved Rights: All proposal material submitted becomes the property of the City and the City reserves the right, at its sole discretion, to:

1. Reject any and all proposals received in response to this RFP;

2. Award a contract to other than the lowest-fee Proposer;

3. Waive, modify or correct any irregularities in proposals received, after prior notification to the Proposer;

4. Use without limitation any or all of the ideas from submitted proposals;

5. Contract for all or selected parts of the Proposer's proposal, selecting from the services offered without affecting the itemized pricing;

6. Extend the time for submission of all proposals after notification to all prospective Proposers known to have received the RFP;

7. May conduct discussions with offerers submitting acceptable proposals, award may be made without any discussion;

8. Terminate consideration of a selected Proposer and select the next most responsive Proposer, or take such other action as deemed appropriate if both parties fail to reach a signed contract within a reasonable time;

9. Postpone or cancel this RFP, in whole or in part, and to reject all proposals.

E. Contractual Requirements

1. Any firm awarded a contract as a result of this RFP will be required to sign the City's standard contract for Environmental Services. A sample draft copy of the contract is attached for your information. The requirements for

performance of this Project, as well as insurance, payment terms and all other provisions are contained in the contract.

2. Any information which may have been released either orally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither the City nor the Proposer.

3. The City will deal only with the Contractor and the City has no financial obligation to sub-consultants and sub-contractors of the Contractor. However, all sub-consultants and sub-contractors are subject to the City's contracting requirements including Equal Employment Opportunity (Executive Order #50 of 1980 as revised).

4. Prior to award of a contract, the Proposer must agree with the agency regarding the schedule of payments and deliverables. In the event that a satisfactory decision cannot be reached regarding those schedules, the agency reserves the right to award to another proposer.

5. The prompt Payment provisions set forth in the edition of the Procurement Policy Board Rules in effect at the time of this solicitation shall be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest payments made after the required payment date except as set forth in the Rules.

   The contractor (consultant) must submit a proper invoice to receive payment, except where the contract provides that the contractor shall be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

   Determinations of interest due shall be made in accordance with the provisions of the Procurement Policy Board Rules and General Municipal Law 3-a.

6. 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 1005, 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.

7. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provision 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 accessing the City's website at www.nyc.gov/ppb.

8. 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 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 VENDEX Questionnaires/Certificate of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to Local Based Enterprises program and its implementation rules.

9. Pursuant to New York City's Procurement Policy Board 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.

10. 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.

11. The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

_____ _____

ACCO Signature Date

ATTACHMENT 1

STATEMENT OF UNDERSTANDING

By signing in the space provided below, the undersigned certifies that the respondent (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 environmental services contract, attached hereto, and (iv) will, if its proposal is accepted, enter into the attached Standard contract with the New York City Department of Design and Construction.

Is the response 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**

I hereby certify that my firm will carry all types of insurance specified in the contract.

The undersigned further stipulates that the information in this Proposal is, to the best of knowledge, true and accurate.

_____
Name of Proposer

By:_____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Firm EIN #

_____ _____
Address Email Address

ATTACHMENT 2

FEE PROPOSAL (PW335ES13)

REQUIRED TITLES AND ALL INCLUSIVE HOURLY RATES

TITLES: Staffing requirements are set forth below. Such staffing requirements specify the titles of personnel which the Consultant may be required to provide, through its own employees and/or through its Subconsultants.

ALL INCLUSIVE HOURLY RATES: All Inclusive Hourly Rates are deemed to include all expenses incurred by the consultant and/or its subconsultants in the performance of all required services for the project. The expenses deemed included in such All Inclusive Hourly Rates are set forth in the Specific Requirements. Consultant shall not be entitled to any increase in such rates for services performed during overtime hours.

TITLE	ALL INCLUSIVE HOURLY RATE	ESTIMATED HOURS	ESTIMATED AMOUNT PER TITLE
Contract Executive	_____	X 300	_____
Project Manager	_____	X 350	_____
Certified Industrial Hygienist (CIH) _____	_____	X 300	
Certified Safety Professional (CSP)	_____	X 300	_____
Project Designer	_____	X 300	_____
Project Engineer/Architect/ Scientist	_____	X 300	_____
CADD Operator	_____	X 300	_____
Inspector/Investigator	_____	X 300	_____
Project Monitor	_____	X 300	_____
Environmental Technician/ Industrial Hygenist	_____	X 300	_____

Total Estimated Labor Cost: _____

Increases in All Inclusive Hourly Rates: During any extension and /or renewal of the term of the Contract, the All Inclusive Hourly Rates set forth in this Attachment 2 shall be subject to increases as provided for herein. The first such increase shall be made at the beginning of the calendar year which is at least two years after the commencement of the Contract, i.e., in the month of January of the year which is at least two full years after the date of the advice of award. Subsequent increases shall be made on a yearly basis at the beginning of each calendar year for the remainder of the contract term or any extension thereof. Such increases shall be based upon any increase in the Employment Cost Index for Professional, Specialty and Technical Occupations, compiled and published by the U.S. Bureau of Labor Statistics. Any increase provided for herein shall be applied on a prospective basis only.

ATTACHMENT 2 (cont.)

Testing Services and Unit Prices

Items included in Unit Prices: Unit Prices for Testing Services shall include the items set forth below:

(1) all expenses incurred by the consultant and/or its subconsultant(s) in connection with the performance of the test, including without limitation, expenses for equipment, transportation, handling, calibration, set up, consumable material, operator labor, maintenance, cleaning, insurance

(2) all expenses related to providing reports of test results

(3) all expenses related to management, oversight and quality control procedures

(4) all expenses related to overhead and any anticipated profit

TESTING SERVICES				UNIT Price PER TEST	TOTAL AMOUNT PER TEST
TEST	TEST METHOD	TURN-AROUND-TIME	ESTIMATED # OF TESTS		
ASBESTOS					
PLM Analysis – Friable ACM	Bulk	1-day	200	_____	_____
PLM Analysis – Friable ACM	Bulk	4-hour	200	_____	_____
PLM Analysis – NOB ACM	Bulk	2-day	200	_____	_____
TEM Analysis – Friable ACM	Bulk	2-day	200	_____	_____
TEM Analysis – NOB ACM	Bulk	2-day	300	_____	_____

PCM Analysis – ACM	Air	1-day	200	_____	_____
PCM Analysis – ACM	Air	4-hour	200	_____	_____
TEM Analysis – ACM	Air	1-day	200	_____	_____
LEAD PAINT & DUST					
Lead Paint Analysis	Bulk	2-day	200	_____	_____
Lead Paint Analysis	Wipe	2-day	200	_____	_____
Lead in Air Sample Analysis	Air	2-day	200	_____	_____
Lead in Soil Sample Analysis	Bulk	2-day	200	_____	_____
Lead in Water Sample Analysis	Water	2-day	200	_____	_____
XRF Test Apparatus – Lead	Surface	N/A	200	_____	_____
INDOOR AIR QUALITY (IAQ)					
Microbial Analysis Total & Respirable Dust	Air	10-day	200	_____	_____
Microbial Analysis	Air	10-day	200	_____	_____
Microbial Analysis	Wipe	10-day	200	_____	_____
Real Time Analyzer (Temp., RH, CO, CO_2)	Air	N/A	100	_____ per diem	_____

Colorimetric chemical detector tubes including pump	Air	N/A	100	per 10 tests	_____
SOIL/WATER/AIR/OTHER – CHARACTERIZATION					
Total Petroleum Hydrocarbons Diesel Range Organics Gasoline Range Organics (TPHC-DRO/GRO)	EPA 8015B	2-day	400	_____	_____
Target Compound List Volatile Organic Compounds +MTBE, TBA, Xylenes (TCL VOC)	EPA 8260B/624	2-day	400	_____	_____
Target Compound List Base Neutral / Acid Extractables Semi-Volatile Organic Compounds (TCL-BNAE SVOC)	EPA 8270C/625	5-day	400	_____	_____
New York STARS List Volatile Organic Compounds (STARS-VOC)	EPA 8021B/8260	5-day	400	_____	_____
New York STARS List Base Neutrals Semi-Volatile Organic Compounds (STARS-SVOC)	EPA 8270C/625	5-day	400	_____	_____
Polynuclear Aromatic Hydrocarbons (PAH)	EPA 8270C/625	5-day	400	_____	_____
Polychlorinated Biphenyls (PCB)	EPA 8082/608	5-day	400	_____	_____
Target Compound List Pesticides (TCL-Pest)	EPA 8081A/608	5-day	400	_____	_____
Target Compound List Herbicides (TCL-Herb)	EPA 8151A/608	5-day	400	_____	_____
Target Analyte List Metals (TAL-Metals)	EPA 6010/6020/ 200.8 7000 Series	5-day	400	_____	_____

Priority Pollutant Metals (PP-Metals)	EPA 7000 Series	5-day	400	_____	_____
RCRA 8 Metals	EPA 6010/6020/ 200.8 7000 Series	5-day	400	_____	_____
TCLP Metals (RCRA 8)	EPA 1311 3010A/ 6010B	5-day	400	_____	_____
Individual Total Metal via ICP/MS, ICP, Flame AA	EPA 6010/6020/200.8 7000Series	5-day	400	_____	_____
Toxicity Characteristic Leaching Procedure for Lead only (TCLP Lead)	EPA 1311 7000 Series/6020	5-day	400	_____	_____
TCL/TAL Suite (Includes: TCL-VOC, TCL-BNAE, TAL Metals, PCB, TCL Pest, Total Cyanide)	EPA 8260B/624, 8270C/625, 7000Series 6010/6020/200.8, 8082/608, 8081A/ 608, 9010B/ 335.2	5-day	400	_____	_____
Phenols	EPA 9066/420.2	5-day	400	_____	_____
Total Cyanide	EPA 9010A/9012A/ 9014/ 335.2	5-day	400	_____	_____
Full Toxicity Characteristic Leaching Procedure (Full TCLP) (Includes: TCLP VOCs, TCLP BNAE, TCLP Metals, TCLP Pests, TCLP Herbs, and TCLP Extractions)	EPA 1311 8260B, 8270C, 7000 Series/ 6020, 8081, 8151A, 624, 625, 200.8, 608	5-day	400	_____	_____
RCRA Characteristics (Includes: Reactivity, Ignitability, Corrosivity, and Paint Filter Test)	EPA 7.3.4.2/ 7.3.3.2 1030/1010 9040B/ 150.1 9095	5-day	400	_____	_____

TCLP Waste Class (Includes: Full TCLP, PCB, TPHC-DRO/GRO, and RCRA Characteristics)	As above	5-day	400	_____	_____
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, < 65 Parts Per Trillion MDL PCBs, Total Suspended Solids, Carbonaceous Oxygen Demand, Chloride, Total Nitrogen, Total Solids)	Non polar Material by 1664 PCBs by 608 with MDL < 65 ppt All others as above	5-day	400	_____	_____
Soil Gas VOC Analysis	TO-15 (SUMMA Canister)	5-day	400	_____	_____
Flame Ionization Detector (FID)	Direct Read	N/A	400	per diem	_____
Photo Ionization Detector (PID)	Direct Read	N/A	400	per diem	_____
Multiple Gas Monitor (% LEL, % O_2, H_2S, CO)	Direct Read	N/A	400	per diem	_____
Mercury Vapor Analyzer	Direct Read	N/A	400	per diem	_____
4.05 Landfill Gas Monitor (Methane, %LEL, Carbon Dioxide)	Direct Read	N/A	400	per diem	_____

4.06 Multiple Water Analyzer (pH, Conductivity, Temperature, Dissolved Oxygen, Salinity, Turbidity)	Direct Read	N/A	400	per diem	_____
4.07 Oil-Water Interface Probe	Direct Read	N/A	400	per diem	_____
4.08 Radiation Meter (Alpha, Beta, Gamma)	Direct Read	N/A	400	per diem	_____
4.09 Global Positioning System	Direct Read	N/A	400	per diem	_____

ASBESTOS				
PLM Analysis – Friable ACM	Bulk	1-day	per test	_____
PLM Analysis – Friable ACM	Bulk	4-hour	per test	_____
PLM Analysis – NOB ACM	Bulk	2-day	per test	_____
TEM Analysis – Friable ACM	Bulk	2-day	per test	_____
TEM Analysis – NOB ACM	Bulk	2-day	per test	_____
PCM Analysis – ACM	Air	1-day	per test	_____
PCM Analysis – ACM	Air	4-hour	per test	_____
TEM Analysis – ACM	Air	1-day	per test	_____

LEAD PAINT & DUST				
Lead Paint Analysis	Bulk	2-day	per test	_____
Lead Paint Analysis	Wipe	2-day	per test	_____
Lead in Air Sample Analysis	Air	2-day	per test	_____
Lead in Soil Sample Analysis	Bulk	2-day	per test	_____
Lead in Water Sample Analysis	Water	2-day	per test	_____
XRF Test Apparatus – Lead	Surface	N/A	per diem	_____
INDOOR AIR QUALITY (IAQ)				
Microbial Analysis Total & Respirable Dust	Air	10-day	per test	_____
Microbial Analysis	Air	10-day	per test	_____
Microbial Analysis	Wipe	10-day	per test	_____
Real Time Analyzer (Temp., RH, CO, CO_2)	Air	N/A	per diem	_____
Colorimetric chemical detector tubes including pump	Air	N/A	per 10 tests	_____
SOIL/WATER/AIR/OTHER – CHARACTERIZATION				
Total Petroleum Hydrocarbons Diesel Range Organics Gasoline Range Organics (TPHC-DRO/GRO)	EPA 8015B	2-day	per test	_____
Target Compound List Volatile Organic Compounds +MTBE, TBA, Xylenes (TCL VOC)	EPA 8260B/624	2-day	per test	_____

Target Compound List Base Neutral / Acid Extractables Semi-Volatile Organic Compounds (TCL-BNAE SVOC)	EPA 8270C/625	5-day	per test	_____
New York STARS List Volatile Organic Compounds (STARS-VOC)	EPA 8021B/8260	5-day	per test	_____
New York STARS List Base Neutrals Semi-Volatile Organic Compounds (STARS-SVOC)	EPA 8270C/625	5-day	per test	_____
Polynuclear Aromatic Hydrocarbons (PAH)	EPA 8270C/625	5-day	per test	_____
Polychlorinated Biphenyls (PCB)	EPA 8082/608	5-day	per test	_____
Target Compound List Pesticides (TCL-Pest)	EPA 8081A/608	5-day	per test	_____
Target Compound List Herbicides (TCL-Herb)	EPA 8151A/608	5-day	per test	_____
Target Analyte List Metals (TAL-Metals)	EPA 6010/6020/ 200.8 7000 Series	5-day	per test	_____
Priority Pollutant Metals (PP-Metals)	EPA 7000 Series	5-day	per test	_____
RCRA 8 Metals	EPA 6010/6020/ 200.8 7000 Series	5-day	per test	_____
TCLP Metals (RCRA 8)	EPA 1311 3010A/ 6010B	5-day	per test	_____
Individual Total Metal via ICP/MS, ICP, Flame AA	EPA 6010/6020/200.8 7000Series	5-day	per test	_____
Toxicity Characteristic Leaching Procedure for Lead only (TCLP Lead)	EPA 1311 7000 Series/6020	5-day	per test	_____
TCL/TAL Suite (Includes: TCL-VOC, TCL-BNAE, TAL Metals, PCB, TCL Pest, Total Cyanide)	EPA 8260B/624, 8270C/625, 7000Series 6010/6020/200.8, 8082/608, 8081A/ 608, 9010B/ 335.2	5-day	per test	_____

Phenols	EPA 9066/420.2	5-day	per test	_____
Total Cyanide	EPA 9010A/9012A/9014/ 335.2	5-day	per test	_____
Full Toxicity Characteristic Leaching Procedure (Full TCLP) (Includes: TCLP VOCs, TCLP BNAE, TCLP Metals, TCLP Pests, TCLP Herbs, and TCLP Extractions)	EPA 1311 8260B, 8270C, 7000 Series/ 6020, 8081, 8151A, 624, 625, 200.8, 608	5-day	per test	_____
RCRA Characteristics (Includes: Reactivity, Ignitability, Corrosivity, and Paint Filter Test)	EPA 7.3.4.2/ 7.3.3.2 1030/1010 9040B/ 150.1 9095	5-day	per test	_____
TCLP Waste Class (Includes: Full TCLP, PCB, TPHC-DRO/GRO, and RCRA Characteristics)	As above	5-day	per test	_____
NYCDEP Effluent (Includes: Non-polar Material, pH, Field Temperature, Flash Point, Cadmium, Chromium VI, Copper, Lead, Mercury, Nickel, Zinc, Benzene, Carbon tetrachloride, Chloroform, 1,4 Dichlorobenzene, Ethyl benzene, MTBE, Naphthalene, Phenol, Tetrachloroethylene, Toluene, 1,2,4 Trichlorobenzene, 1,1,1 Trichloroethane, Total Xylenes, < 65 Parts Per Trillion MDL PCBs, Total Suspended Solids, Carbonaceous Oxygen Demand, Chloride, Total Nitrogen, Total Solids)	Non polar Material by 1664 PCBs by 608 with MDL < 65 ppt All others as above	5-day	per test	_____
Soil Gas VOC Analysis	TO-15 (SUMMA Canister)	5-day	per test	_____
Flame Ionization Detector (FID)	Direct Read	N/A	per diem	_____

Photo Ionization Detector (PID)	Direct Read	N/A	per diem	_____
Multiple Gas Monitor (% LEL, % O_2, H_2S, CO)	Direct Read	N/A	per diem	_____
Mercury Vapor Analyzer	Direct Read	N/A	per diem	_____
4.05 Landfill Gas Monitor (Methane, %LEL, Carbon Dioxide)	Direct Read	N/A	per diem	_____
4.06 Multiple Water Analyzer (pH, Conductivity, Temperature, Dissolved Oxygen, Salinity, Turbidity)	Direct Read	N/A	per diem	_____
4.07 Oil-Water Interface Probe	Direct Read	N/A	per diem	_____
4.08 Radiation Meter (Alpha, Beta, Gamma)	Direct Read	N/A	per diem	_____
4.09 Global Positioning System	Direct Read	N/A	per diem	_____

Total Estimated Labor Cost: _____

Total Estimated Classification Tests: _____

Total Estimated Performance Tests: _____

Total Estimated Environmental Tests: _____

Total Equipment: _____

Total (price in figures) _____

The respondent is alerted that the estimate of hours set forth in the Schedule of Fees on page 19 of this RFP are estimates only, given solely to be used as a uniform basis for the comparison of proposals and is not to be considered part of the contract. The man-hours actually required to complete the project may be more or less than so estimated, and if so, no action for damages or loss of profits shall accrue to the consultant by reason thereof. **The consultant shall not leave any blanks.**

Submitted by:

Firm Name: _____

Address: _____

_____

E-Mail Address: _____

Name(s) of Principal(s): _____ _____ _____

_____ _____

Federal Tax ID Number: _____

_____ _____

Signature of Principal Date

ATTACHMENT 3

MINIMUM REQUIREMENTS PER TITLE

TITLE	MINIMUM REQUIREMENTS			SPECIFIC EXPERIENCE
	YEARS EXPERIENCE	EDUCATION	LICENSE/ CERTIFICA-TION	
Contract Executive	15 years in field of expertise; 5 years in Environmental Engineering or science field	Advanced degree may be substituted for certification	PE or RA in New York; or CIH – 5 years holding certification	Construction Management and/or construction services
Project Manager	10 years experience in field of expertise; 5 years in environmental field	Minimum BS in engineering, architecture, or science	N/A	Project Management and Construction Management; Must be able to write technical documents; strong verbal skills
Certified Industrial Hygienist	10 years	Minimum BS in engineering, architecture, science, or related field	CIH, as administered by the American Board of Industrial Hygiene	IAQ, mold remediation, asbestos and lead background
Certified Safety Professional	10 years	Minimum BS in engineering, architecture, science, or related field	CSP, as administered by the Board of Certified Safety Professionals	Construction safety
Project Designer	8 years in field of expertise; 5 years in environmental design	Minimum BS in engineering, architecture, or science	NYS DOL License as Project Designer for asbestos work	
Project Engineer/Architect/ Scientist	6 years in field of expertise including construction, Codes, life safety issues	Minimum BS in engineering, architecture, or science		Must be able to interpret construction drawings and specifications; must be familiar with standards, Codes, etc.
CADD Operator	5 years construction design field	2 years of college-level education		Development of environmental remediation drawings, sketches, and details; must be proficient in latest version of CADD

TITLE	MINIMUM REQUIREMENTS			SPECIFIC EXPERIENCE
	YEARS EXPERIENCE	EDUCATION	LICENSE/ CERTIFICA-TION	
Inspector / Investigator	4 years in environmental science	2 years of college-level education	NYS AHERA Inspector; NYC DEP Investigator; training and licensing as a lead inspector from USEPA	
Project Monitor	2 years in environmental science	2 years of college-level education	NYS DOL Project Monitor and all licenses for the specific hazard of the project.	
Environmental Technician / Industrial Hygienist	2 years in environmental science	2 years of college-level education	NYS DOL Air Monitoring Technician and all licenses for the specific hazard of the project	HAZWOPER mandatory

ATTACHMENT 4

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS:	PIN #:

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

___Part I

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

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

___Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT 5

CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of Vendex Compliance

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

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

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

ATTACHMENT 6

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 Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the 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 made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below.

The Contractor must comply with all applicable M/WBE requirements for this Contract.

Article I, Part A, below, sets forth provisions related to the participation goals for construction 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 AND PROFESSIONAL SERVICES CONTRACTS

1. The **Target Subcontracting Percentage** applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line (1)).

The **"Target Subcontracting Percentage"** is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of

business award to one or more subcontractors for amounts under $1 million for construction and professional services.

A prospective contractor may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at poped@ddc.nyc.gov or via facsimile at (718) 391-1556. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)).

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under $1 million.

3. If **Subcontractor Participation Goals** have been established for this Contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under $1 million, Contractor shall be subject to the **Subcontractor Participation Goals**, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If **Subcontractor 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, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under $1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under $1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the **Target Subcontracting Percentage**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below.

THE BIDDER/PROPOSER MUST FULLY COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). BIDS/PROPOSALS WHICH DO NOT INCLUDE A COMPLETED SUBCONTRACTOR UTILIZATION PLAN WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE SUBCONTRACTOR UTILIZATION PLAN (SCHEDULE B, PART II) INDICATES THAT THE BIDDER/PROPOSER DOES NOT INTEND TO AWARD THE TARGET SUBCONTRACTING PERCENTAGE, THE BID/PROPOSAL WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS THE AGENCY HAS GRANTED A WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE (SCHEDULE B, PART III).

5. Where a Subcontractor 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 multi-year contracts, such list shall also be submitted every year thereafter. 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. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/getcertified, by emailing DSBS at MWBE@sbs.nyc.gov, by calling the DSBS certification hotline at (212) 513-6311, 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 (as indicated above) in order to seek certification.

7. Where a Subcontractor 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 paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor pursuant to such plan as well as 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 paid to subcontractors (including subcontractors that are not MBEs or WBEs); 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 hired pursuant to such plan, 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 Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section 11 below.

9. Where a Subcontractor Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

10. Pre-award waiver of **Target Subcontracting Percentage**. Agency may grant a full or partial waiver of the **Target Subcontracting Percentage** to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, 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 for under one million

dollars represented by the **Target Subcontracting Percentage**. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.

11. Modification of Subcontractor Utilization Plan. A Contractor may request a modification of its Subcontractor Utilization Plan (**Subcontractor Participation Goals**) after award of this Contract. The Agency may grant such request if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Subcontractor Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(a) 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;

(b) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;

(d) 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 Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(e) 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;

(f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(h) 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.

12. If **Subcontractor Participation Goals** have been established for 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 a Subcontractor 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 Subcontractor Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

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

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, 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 M/WBE's to meet the required **Subcontractor 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 Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering 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 this Section 6-129, including, but not limited any Subcontractor 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) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, 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) exercise 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) take any other appropriate remedy.

4. Whenever Agency has reason to believe that an MBE 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), 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.

5. 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 or WBE in

any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

6. The Contractor's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

ATTACHMENT 6

M/WBE PROGRAM

SUBCONTRACTOR UTILIZATION PLAN

Subcontractor Utilization Plan: The Subcontractor Utilization Plan for this Contract is set forth on the following pages of this RFP. The Subcontractor 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 Subcontractor Utilization Plan (Part II) with its Technical Proposal in a sealed envelope clearly marked as "Subcontractor Utilization Plan".

Requirements Contracts: As part of the Subcontractor Utilization Plan (Part II), the proposer is required to insert the "Total Bid/Proposal Value". If this RFP involves a Requirements Contract, the proposer shall insert the "Not to Exceed" amount of the contract in the space provided for the "Total Bid/Proposal Value". The "Not to Exceed" amount of the contract is set forth in Exhibit A of the attached Contract.

Waiver: The proposer may seek a full or partial pre-award waiver of the Target Subcontracting Percentage in accordance with Article 46 of the Contract (See Part A, Section 10). The proposer's request for a waiver must be submitted at least seven (7) consecutive calendar days prior to the proposal due date. Waiver requests submitted after the deadline will not be considered. The form for requesting a waiver of the Target Subcontracting Percentage is set forth in the Subcontractor Utilization Plan (Part III).

Rejection of the Proposal: The proposer must fully complete the Subcontractor Utilization Plan (Part II) set forth on the following pages. Proposals that do not include a completed Subcontractor Utilization Plan (Part II) will be deemed to be non-responsive, unless a full waiver of the Target Subcontracting Percentage is granted (Subcontractor Utilization Plan, Part III). In the event that the proposer's Subcontractor Utilization Plan (Part II) indicates that the proposer does not intend to award the Target Subcontracting Percentage, the proposal will be deemed to be non-responsive, unless the Agency has granted a waiver of the Target Subcontracting Percentage (Subcontractor Utilization Plan, Part III).

Tax ID #: _____ PIN#: _____

THE CITY OF NEW YORK

Subcontractor Utilization Plan -Part I: Agency's Target

This page to be completed by contracting agency

Contract Overview

Pin # 8502008RQ0032P **FMS Project ID#: PW335ES13**
Project Title Requirements Contract for Environmental Services for Various Capital Projects
Contracting Agency Department of Design and Construction
Agency Address 30-30 Thomson Ave City Long Island City State NY Zip Code 11101
Contact Person James A. Cerasoli Title MWBE Compliance Analyst
Telephone # (718) 391-1549 Email cerasoli@ddc.nyc.gov

Project Description *(attach additional pages if necessary)*

Requirements Contract for Environmental Services for Various Capital Projects Within All Five Boroughs

(1) √ **Target Subcontracting Percentage**
Percentage of total contract dollar value that agency estimates will be awarded to subcontractors in amounts under $1 million for construction and professional services. 5%

Subcontractor Participation Goals*
Complete and enter total for each Construction or Professional Services, or both (if applicable)

Group	Construction	Professional Services
Black American		Unspecified %
Hispanic American		Unspecified %
Asian American		No Goal %
Caucasian Female		Unspecified%
Total Participation Goals	**(2) %**	**(3) 60 %**

*Note: For this procurement, individual ethnicity and gender goals are not specified. Bidders/proposers may meet the Total Participation Goal through subcontracts with vendors certified in one or more of the ethnicity or gender categories

Tax ID #: _____

Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan

This page and the next (Part II herein) are to be completed by the bidder/proposer. NOTE: Bids/proposals which do no include a completed subcontractor utilization plan (Part II herein) will be deemed to be non-responsive, unless a full waive of the target subcontracting percentage is granted (Part III herein).

Section I: Prime Contractor Contact Information

Tax ID # _____ FMS Vendor ID # _____

Business Name _____ Contact Person _____

Address _____

Telephone # _____ Email _____

Section II: General Contract Information

1. Define the industry in which work is to be performed.

   - **Construction** includes all contracts for the construction, rehabilitation, and/or renovation of physical structures. This category does include CM Build as well as other construction related services such as: demolition, asbestos and lead abatement, and painting services, carpentry services, carpet installation and removal, where related to new construction and not maintenance.
   - **Professional Services** are a class of services that typically require the provider to have some specialized field or advanced degree. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health services, pure construction management, environmental analysis, scientific testing, architecture and engineering, and traffic studies, and similar services.

   a. Type of work on Prime Contract *(Check one)*:

   ☐ Construction
   ☐ Professional Services

   b. Type of work on Subcontract *(Check all that apply)*:

   ☐ Construction ☐ Other
   ☐ Professional Services

2. What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts? _____%

3. Will you award subcontract(s) in amounts below $ 1 million for construction and/or professional services contracts within the first 12 months of the notice to proceed on the contract? ☐ Yes ☐ No

Section III: Subcontractor Utilization Summary

IMPORTANT: *If you do not anticipate that you will subcontract at the target level the agency has specified, because you will perform more of the work yourself, you must seek a waiver of the Target Subcontracting Percentage by completing p. 4).*

Step 1: Calculate the percentage (of your total bid) that will go towards subcontracts under S1M for construction and/or professional services	Subcontracts under $1M (4) (construction/professional services)		Total Bid/Proposal Value		Calculated Target Subcontracting Percentage
	$ _____	÷	$ _____	x 100 =	_____ %

- **Subcontracts under $1M (construction/professional services):** Enter the value you expect to award to subcontractors in dollars for amounts under $1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2.
- **Total Bid/Proposal Value:** Provide the dollar amount of the bid/proposal.
- **Calculated Target Subcontracting Percentage:** The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under $1 million for construction and/or professional services. **This percentage must equal or exceed the percentage listed by the agency on page 1, at line (1).**

! Important: The "Calculated Target Subcontracting Percentage" MUST equal or exceed the Target Subcontracting Percentage listed by the agency on Page 1, Line (1) or the bid/proposal will be deemed non-responsive.

Tax ID #: _____

Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan – cont.

Step 2:
Calculate value of subcontractor participation goals

		Subcontracts under $1M (construction/professional services)	
a.	Copy value from Step 1, line (4) – the total value of all expected subcontracts under $1M for construction and/or professional services	$ _____	
b.	• From line a. above, allocate the dollar value of "Subcontracts under $1M" by Construction and Professional Services, • If all subcontracts under $1M are in one industry, enter '0' for the industry with no subcontracts. • Amounts listed on these lines should add up to the value from line a.	Construction	Professional Services
	Subcontracts under $1M by Industry	$ _____	$ _____
c.	• For Construction enter percentage from line (2) from Page 1. • For Professional Services enter percentage from line (3) from Page 1. • **These Percentages must be copied from the Agency Plan, or the bid/proposal will be deemed non-responsive.**	x _____ %	x _____ %
d.	Value of Total Participation Goals	$ _____	$ _____

Step 3:

✓ **Subcontracts in Amounts Under $1 M Scope of Work – Construction**

Enter brief description of type(s) of subcontracts in amounts under $1M anticipated, by type of work, not by name of subcontractor

✓ **Subcontracts in Amounts Under $1 M Scope of Work – Professional Services**

Enter brief description of type(s) of subcontracts in amounts under $1M anticipated, by type of work, not by name of subcontractor

Section IV: Vendor Certification

I hereby 1) acknowledge my understanding of the M/WBE requirements as set forth herein and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder; 2) affirm that the information supplied in support of this subcontractor utilization plan is true and correct; 3) agree, if awarded this Contract, to comply with the M/WBE requirements of this Contract and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this contract; and 4) agree, if awarded this contract, to make all reasonable, good faith efforts to attain the Target Subcontracting Percentage as specified by the Agency, and to solicit and obtain the participation of M/WBEs so as to meet the required Subcontractor Participation Goals.

Signature _____ Date _____

Print Name _____ Title _____

PART III – REQUEST FOR WAIVER OF TARGET SUBCONTACTING PERCENTAGE

Contract Overview

Tax ID # _____ FMS Vendor ID # _____

Business Name _____

Contact Name _____ Telephone # _____ Email _____

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

PIN # (for this procurement) _____

Type of work on Prime Contract *(Check one)*: ☐ Construction ☐ Professional Services

Type of work on Subcontract *(Check all that apply)*: ☐ Construction ☐ Professional Services ☐ Other

SUBCONTRACTING *as described in bid/solicitation documents* *(Copy this % figure from Schedule B, Part I, line 1)*

_____ % of the total contract value anticipated by the agency to be subcontracted for construction/professional services subcontracts valued below $1 million (each)

ACTUAL SUBCONTRACTING *as anticipated by vendor seeking waiver*

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for construction/ professional services subcontracts valued below $1 million (each)

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

☐ Vendor does not subcontract construction/professional services, and has the capacity and good faith intention to perform all such work itself.

☐ Vendor subcontracts *some* of this type of work but at *lower* % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract.

☐ Other _____

References

List 3 most recent contracts/subcontracts performed for NYC agencies (if any)

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

List 3 most recent contracts/subcontracts performed for other agencies/entities

(complete ONLY if vendor has performed fewer than 3 NYC contracts)

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

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

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

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

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

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

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:** _____

ATTACHMENT 7
DOING BUSINESS DATA FORM

DOING BUSINESS ACCOUNTABILITY PROJECT
QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM
PROPOSERS AND AWARDEES, SPRING 2008

What is the purpose of this *Data Form*?

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

Why have I received this *Data Form*?

The contract, franchise or concession you are proposing on, or have already been awarded, is considered a business dealing with the City under LL 34. No award will be made unless this *Data Form* is completed. Most types of contracts, franchises and concessions valued at more than $5,000 are considered business dealings. Exceptions include transactions awarded on an emergency basis or by publicly advertised, non-pre-qualified competitive sealed bid. Later in 2008, the types of transactions considered business dealings will be expanded to include grants, economic development agreements, pension fund investments and real property and land use transactions with the City.

What vendors will be included in the *Doing Business Database*?

All of the business that a vendor does or proposes to do with the City and other local governmental entities will be added together. Vendors that hold $100,000 or more in contracts for goods or services, or franchises or concessions ($500,000 or more for construction contracts), are considered to be doing business with the City for the purposes of this law and will be included in the *Doing Business Database*. As noted above, later in 2008 other types of transactions will also result in vendor inclusion in the database. Because all of the business that a vendor does or proposes to do with the City will be added together, you must complete the *Data Form* for all covered transactions even if you do not currently do enough business with the City to be listed in the *Database*.

What individuals will be included in the *Doing Business Database*?

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

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the *Data Form* for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% of more of the vendor. This includes stockholders, partners and anyone else with an ownership or controlling interest in the vendor.
- **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, franchise or concession with the City. If the vendor holds any City contracts, franchises or concessions, you must list at least one Senior Manger, or your Data Form will be considered incomplete. Later in 2008, senior managers responsible for the additional types of transactions indicated above will also be included in the *Doing Business Database*.

I provided some of this information on the VENDEX Questionnaire. Why do I have to do it again?

Although the *Doing Business Data Form* and the VENDEX Questionnaire request some of the same information, they serve entirely different purposes. In addition, the *Data Form* requests information concerning senior managers, which is not part of the VENDEX Questionnaire.

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Will the information on this *Data Form* be available to the public?

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

No one in my organization plans to contribute to a candidate; do I have to fill out this *Data Form*?

Yes. All vendors are required to return this *Data Form* with complete and accurate information, regardless of the history or intention of the vendor or its officers, owners or senior managers to make campaign contributions. The *Doing Business Database* must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

I have already completed a *Doing Business Data Form*. Do I have to submit another one?

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

How does a person remove him/herself from the *Doing Business Database*?

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

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

- **Contract and Concession holders**: generally for the term of the contract or concession, plus one year.
- **Franchise holders**: from the commencement or renewal of the franchise, 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.
- **Line item and discretionary appropriations**: from the date of budget adoption until the end of the contract, plus one year.

For information on other types of transactions, contact the Doing Business Accountability Project at 212-788-8104.

What are the new campaign contribution limits for people doing business with the City?

Contributions to City Council candidates are limited to $250; to Borough President candidates $320; and to candidates for citywide office $400 – per election cycle. Please contact the NYC Campaign Finance Board for more information at **www.nyccfb.info**, or 212-306-7100.

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

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

02/11/07

PIN: 8502008RQ0032P

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

For City Agency Use

Agency: _____

PIN/Contract ID/PO#: _____

Spring 2008

Doing Business Data Form - Proposers

Transaction type: ☐ **Contract** ☐ **Franchise/Concession**

A Doing Business Data Form is to be completed by any vendor that submits a proposal for a contract, franchise or concession (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink. For all submissions, please be sure to sign the last page and return the completed Data Form, in a separate envelope, to the contracting agency along with your proposal. **The submission of a Data Form that is not accurate and complete may result in appropriate sanctions.**

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

General Instructions for Sections 2, 3, and 4:

Office Title: The actual office title held by the officer, owner or manager.
Employer (if not vendor): If the individual is not employed by the vendor, list his/her employer's name.

Certification:

Fill out the certification box on the last page completely and return the completed Data Form, in a separate envelope, to the contracting agency along with your proposal. Please contact the Doing Business Accountability Project at DoingBusiness@cityhall.nyc.gov or 212-788-8104 with any questions. Thank you for your cooperation.

Section 1: Vendor Information

Vendor Name: _____

Vendor EIN/TIN: _____

Vendor Filing Status (select one):

☐ Vendor 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 vendor.*

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

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

Vendor Address: _____

City: _____ State: _____ ZIP: _____

Vendor Phone #: _____ Vendor is a Non-Profit: ☐ Yes ☐ No

Vendor E-mail: _____

Section 2: Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

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

Chief Financial Officer (CFO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

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

Chief Operating Officer (COO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

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

Section 3: Principal Owners

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

There are no owners listed because (select one):

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

☐ Other (explain): _____

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Section 4: Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the vendor's contracts (if this is a contract proposal) or franchises and concessions (if this is a franchise or concession proposal) with the City. 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 contract, franchise or concession 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 vendor is filing a Change Data Form, list any individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____ Employer (if not vendor): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____ Employer (if not vendor): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____ Employer (if not vendor): _____

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

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Vendor Certification

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

Name: _____

Signature: _____ Date: _____

Vendor Name: _____

Title: _____ Work Phone #: _____

Return the completed Data Form to the contracting agency along with your proposal.

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

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THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF TECHNICAL SUPPORT

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

REQUIREMENTS CONTRACT

ENVIRONMENTAL SERVICES FOR VARIOUS PROJECTS

FMS NUMBER: **PW335ES13**

REGISTRATION NUMBER: _____

PIN NUMBER: **8502008RQ0032P**

CONSULTANT: _____
_____
_____

Telephone: _____
Facsimile: _____

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 this Agreement which has been signed by the parties, including (1) the Request for Proposals for the Contract; (2) the Consultant's Proposal for the Contract; (3) Exhibit A "Contract Information", and (4) other Exhibits set forth in Exhibit A. If there is any conflict between the RFP and the Consultant's Proposal, the RFP shall prevail. Amendments to the Contract, if any, are set forth in Exhibit A.

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" ("ACCO") shall mean the person designated by the Commissioner to exercise such powers and duties with respect to procurement as are set forth in the Procurement Policy Board Rules.

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

1.5 "Commissioner" or "Agency Head" shall mean the Commissioner of the Department of Design and Construction of the City of New York, his/her successors, or duly authorized representative(s).

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

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

1.8 "Consultant" shall mean the party of the second part hereto, whether a corporation, firm, or individual, or any combination thereof, and its, their, his or her successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in the place of the party of the second part under this Contract.

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

1.10 "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.

1.11 "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.

1.12 "Law(s)" shall mean each and every law, rule, regulation, order or ordinance of any kind whatsoever issued by

any Government Entity, in effect from the date of this Agreement through the conclusion or termination hereof, applicable to or affecting the Project and all employees engaged hereunder.

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

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

1.15 “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.

1.16 "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).

1.17 "Subconsultant" 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 are subject to the prior written approval of the Commissioner.

1.18 “Treasurer” shall mean the Commissioner of the Department of Finance of the City of New York.

ARTICLE 2 Compliance with Laws

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

2.2 The Consultant shall comply with all local, State and Federal laws, rules and regulations applicable to this Agreement and to the services to be performed hereunder.

2.3 The Consultant shall comply with Section 24-216(b) of the Administrative Code of the City of New York and with the New York City Noise Control Code and with all regulations issued pursuant to Section 24-216(b) of the Administrative Code or the Noise Control Code.

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

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. The Consultant agrees to provide, to the satisfaction of the Commissioner, the services set forth in Exhibit A for various Projects, as specified by the Commissioner on a Work Order basis. The services to be provided by the Consultant are set forth in the Specific Requirements (Exhibit B). 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 The terms and conditions applicable to the Work Order Process are set forth in Exhibit B, the Specific Requirements. The Consultant shall provide services in accordance with such Work Order Process.

ARTICLE 5 The Consultant's Personnel

5.1 The terms and conditions applicable to the provision of personnel by the Consultant are set forth in Exhibit B, the Specific Requirements. The Consultant shall provide all required personnel for the performance of services in accordance with such requirements.

ARTICLE 6 Scope of Services

6.1 The terms and conditions applicable to the services to be provided by the Consultant are set forth in Exhibit B, the Specific Requirements. The Consultant shall provide all required services in accordance with such requirements.

ARTICLE 7 Payment Terms and Conditions

7.1 The terms and conditions applicable to payment for services provided by the Consultant are set forth in Exhibit B, the Specific Requirements.

7.2 Executory Only: This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Agreement and no liability or account thereof shall be incurred beyond the amount of such monies. 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 monies for the purpose of this Agreement.

7.3 Prompt Payment: The prompt payment provisions of the PPB Rules in effect at the time of the solicitation for this Contract shall be applicable to payments made under this Contract. The provisions require the payment to contractors of interest on payments made after the required payment date, except as set forth in the PPB Rules. The Consultant must submit a proper invoice to receive payment. Determination of interest due shall be made in accordance with the PPB Rules and General Municipal Law 13-a. If the Consultant is paid interest, the proportionate share of that interest shall be forwarded by the Consultant to its Subconsultant.

7.4 Acceptance of Final Payment: The acceptance by the Consultant or its assignees of the final payment under this contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release to the City from any and all claims of and liability to the Consultant, of which the Consultant 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.

7.5 Electronic Funds Transfer: In accordance with Section 6-107.1 of the New York City Administrative Code, the Consultant 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 Consultant shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" (available at http://www.nyc.gov/dof) in order to provide the Commissioner of Finance with information necessary for the Consultant 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 Consultant shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Consultant to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

7.5.1 The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

ARTICLE 8 Time Provisions

8.1 Time provisions applicable to the Contract are set forth in Exhibit B, the Specific Requirements.

ARTICLE 9 Ownership of Documents

9.1 Any and all material, records or documents prepared by or for the Consultant pursuant to this Contract, including, but not limited to, all documents set forth in Exhibit B, all reports, notes, designs, drawings, tracings, specifications, estimates, schedules, charts, graphs, maps, photographs, shall be the property of the City. During the term of this Contract and at any time within seven years thereafter, 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 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.

9.2 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 10 Patented and Proprietary Items

10.1 The Consultant shall not, without the prior written approval of the Commissioner, specify for the Project, or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.

10.2 The Consultant shall be liable to and hereby agrees to defend, indemnify and hold harmless the City against all claims against the City for infringement of any copyright or patent rights of systems, graphs, charts, designs, drawings or specifications furnished by the Consultant in the performance of this Contract.

ARTICLE 11 Insurance

11.1 Required Insurance: From the date the Consultant is first ordered to commence work and throughout the term of this Contract, the Consultant shall effect and maintain, and shall cause each Subconsultant to effect and maintain, the types and amounts of insurance set forth below. The Consultant shall include in all its contracts with Subconsultants a requirement that they effect and maintain the types and amounts of insurance set forth below.

11.1.1 Comprehensive General Liability Insurance: The Consultant shall provide a policy of comprehensive general liability insurance in the minimum amount of $1,000,000 per occurrence (combined single limit for bodily injury and property damage), $2,000,000 aggregate. Such policy shall be in the Consultant's name and shall name the City of New York as additional insured thereunder. Such policy shall protect the Consultant and the City of New York from claims for property damage and/or bodily injury, including accidental death, which may arise from operations under this Contract, whether such operations are performed by the Consultant or anyone directly or indirectly employed by him/her. The coverage provided must be "occurrence" based; "claims made" coverage will not be accepted. The general liability insurance policy provided shall include the following endorsements:

(a) The City of New York, together with its officials and employees, is an Additional Insured under this policy.
(b) Notice under the Policy to the Additional Insureds shall be addressed to the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, N. Y. 11101.
(c) Notice of Accident shall be given to the Company by the Insured within one hundred twenty (120) days after notice of such accident has been sent to the Commissioner of the Department of Design and Construction.
(d) Notice of Claim shall be given to the Company within one hundred twenty (120) days after such notice shall be filed with the Comptroller of the City of New York.

(e) Notice of Claim to the Company by the Insured of an accident or claim on the site shall constitute notice by the City to the Company.
(f) Notice of Cancellation of Policy as set forth in Article 11.2.4 below.
(g) The presence of representatives of the City at the Site shall not invalidate this policy.

11.1.2 Professional Liability Insurance: The Consultant shall provide Professional Liability Insurance covering as insured the Consultant in the minimum amount of $1,000,000 per claim, $3,000,000 aggregate. Subconsultants performing professional services shall also provide such coverage in the minimum amount of $1,000,000 per claim, $3,000,000 aggregate. The professional liability insurance policy(s) provided shall include the endorsement set forth in Article 11.2.4 below.

11.1.3 Worker's Compensation Insurance: The Consultant shall provide Worker's Compensation Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

11.1.4 Employers Liability Insurance: The Consultant shall provide Employers Liability Insurance in the minimum amount of $1,000,000 per occurrence. Such policy shall provide compensation due to bodily injury by accident or disease sustained by any employee of the insured arising out of or in the course of his/her employment by the insured.

11.2 General Requirements for Insurance Policies

11.2.1 All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations.

11.2.2 All required Insurance policies shall be in a form acceptable to the City and shall contain no exclusions or endorsements which are not acceptable to the City.

11.2.3 The omission of any endorsements or clauses required by this Article will be considered cause for rejection of the policy.

11.2.4 All required policies shall be endorsed to provide as follows: "This policy shall not be canceled, terminated, modified or changed by the Insurance Company unless at least thirty (30) Days prior written notice is sent to the Named Insured by Certified Mail and also sent by Registered Mail to both the Commissioner and to Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, New York 10007."

11.2.5 The Consultant shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the City of New York is an insured under the policy.

11.2.6 In his sole discretion, the Commissioner may, subject to the approval of the Comptroller and the Law Department, accept letters of credit and/or custodial accounts in lieu of required Insurance.

11.3 Proof of Insurance

11.3.1 On or before the commencement of work pursuant to this Contract, the Consultant shall submit, and shall cause each Subconsultant to submit, to the Commissioner two certificates of Insurance for all policies required under this contract, together with originals of all endorsements required hereunder.

11.3.2 Certificates confirming renewals of Insurance shall be submitted not less than thirty (30) days prior to the expiration date of coverage until all operations under this Contract have been completed.

11.3.3 The Consultant shall be responsible for providing continuous insurance coverage as required by this contract and shall be authorized to provide services hereunder only during the effective period of all required coverage.

11.3.4 The Consultant shall promptly notify the Commissioner of any accidents causing bodily injury or property damage arising in the course of operations under this Contract.

11.3.5 Pursuant to Sections 57 and 220 of the New York State Workers' Compensation Law, the Consultant has submitted proof of workers' compensation and disability benefits coverage to the Department.

ARTICLE 12 Indemnification

12.1 If persons or property of the City, or of others sustain loss, damage or injury resulting, either directly or indirectly from the acts, conduct, omissions, negligence, carelessness or lack of good faith of the Consultant or its officers, agents, employees, or any person, firm, company, agent or others engaged by the Consultant hereunder, in their performance of this Agreement, or from his or their failure to comply with any of the provisions of this Contract or of law, the Consultant shall indemnify and hold the City harmless from any and all claims and judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason thereof.

12.2 The Consultant shall indemnify and hold harmless the Commissioner and the City, each officer, agent and employee of the Commissioner and the City, against all claims against any of them for bodily injury or wrongful death or property damage arising out of the negligent performance of services, including professional services, or caused by any error, omission or negligent act of the Consultant or anyone employed by the Consultant, in the performance of this Contract.

12.3 The provisions of this Article shall not be deemed to create any right of action in favor of third parties against the Consultant or the City.

12.4 The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Contract.

12.5 In the event that any City property is lost or damaged, except for normal wear and tear, then the City shall have the right to withhold further payments hereunder for the purpose of set off, in sufficient sums to cover such loss or damage.

ARTICLE 13 Consultant Independent Contractor

13.1 The relationship of the Consultant to the City shall be that of independent contractor, and the Consultant shall have no authority to bind the City in any way with third parties.

13.2 Nothing contained herein shall be deemed to give any third party any claim or right of action against the City or the Consultant beyond such as may otherwise exist without regard to this Contract.

ARTICLE 14 Suspension or Termination of Performance

14.1 Suspension of Performance: The Commissioner may at any time, and for any reason, direct the Consultant to stop work under this Contract for a period of time. Such direction shall be in writing and shall specify the period during which work shall be stopped. The Consultant shall resume work upon the date specified in such direction, or upon such other date as the Commissioner may thereafter specify in writing. The period during which work shall have been stopped shall be deemed added to the time for performance. Stoppage of work under this Article shall not give rise to any claim against the City.

14.2 Termination Without Cause: The Commissioner may at any time, and for any reason, terminate this contract by written notice to the Consultant specifying the termination date, which shall be not less than seven (7) days from the date such notice is given. In the event of such termination, the Consultant shall be paid such amount as shall compensate him for the portion of the work satisfactorily performed prior to the termination date. Such amount shall be fixed by the Commissioner, after consultation with the Consultant, and shall be subject to audit by the Comptroller. Termination under this Section shall not give rise to any claim against the Commissioner or the City for damages or for compensation in addition to that provided hereunder.

14.3 Termination for Cause: In the event that: (1) the Consultant shall not for any reason or through any cause, have completed performance within the time fixed for performance hereunder; or (2) Any representation or warranty made hereunder shall prove to be untrue in any material respect; or (3) grounds for cancellation of the contract shall arise; or (4) the Consultant shall otherwise be in default hereunder; or (5) the Commissioner shall give the Consultant written notice that in his opinion the conduct of the Consultant is such that the interests of the City are likely to be impaired or prejudiced, stating the facts upon which such opinion is based; then the Commissioner may, upon written notice to the Consultant, immediately terminate this contract for cause. Upon such termination, the Consultant shall be entitled to payment of such amount, to be determined by the Commissioner and subject to audit by the Comptroller, as shall fairly compensate him for the work satisfactorily performed to the termination date, provided, however, that (1) no allowance shall be included for termination expenses; and (2) the Commissioner shall deduct from such amount and from any amount due and payable to the Consultant to the termination date, but withheld or not paid, the total amount of additional expenses incurred by the City in order to satisfactorily complete the work required to be performed by the Consultant under this contract including the expense of engaging another architect or engineer for this purpose. If such additional expense shall exceed the amounts otherwise due and payable to the Consultant hereunder, the Consultant shall pay the City the full amount of such excess expense incurred by the City. No amount shall be paid to the Consultant under this Article until the work required to be performed under this contract has been satisfactorily completed by others.

ARTICLE 15 - Resolution of Disputes

1. All disputes between the City and the Contractor of the kind delineated in this Article that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this article and the PPB Rules. This procedure for resolving disputes of the kind delineated herein shall be the exclusive means of resolving such disputes.

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

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

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

3. During such time as any dispute is being presented, heard, and considered pursuant to this Article, the Contract terms shall remain in force and effect and the Contractor shall continue to perform Work as directed by the ACCO or the Engineer. Failure of the Contractor to continue Work as directed shall constitute a waiver by the Contractor of its claim.

4. Presentation of Dispute to Commissioner.

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

Commissioner, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

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

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

(d) Finality of Commissioner Decision. The Commissioner's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Article. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Commissioner.

5. Presentation of Dispute to the Comptroller. Before any dispute may be brought by Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

(a) Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Commissioner, the Contractor shall submit to the Comptroller and to the Commissioner a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the decision of the Commissioner, and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.

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

(c) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested

by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

(d) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

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

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

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

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

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

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

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

(c) Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel,

the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on it own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

(d) CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a written decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

(e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the Corporation Counsel, the Comptroller, the CCPO, and the PPB. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.

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

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

ARTICLE 16 Consultant's Report Information

16.1 A copy of each report submitted by the Consultant to any City official or to any officer, employee, agent or representative of a City department, agency, commission or body or to any corporation, association or entity whose expenses are paid in whole or in part from the City treasury shall be furnished to the Commissioner of the department to which such report was submitted or, if not a City department, then to the chief controlling officer or officers of such other office or entity. A copy of such report shall also be furnished to the Director of the Mayor's Office of Construction for matters related to construction or to the Director of the Mayor's Office of Operations for all other matters.

ARTICLE 17 Contract Changes

17.1 Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Consultants deviating from the requirements of the Contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract. Work so ordered must be performed by the Consultant.

17.2 Contract changes will be made only for work necessary to complete the work included in the original scope of the contract, and for non-material changes to the scope of the contract. Changes are not permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the Agency Chief Contracting Officer.

17.3 The Consultant may be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the Consultant may be entitled to an extension of time for performance.

17.4 Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification.

17.5 All payments for change orders are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller. If the audits reveal that the Consultant's costs for the change order work were inaccurately stated during negotiations, the agency shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price of the change order. This remedy is not exclusive and in addition to all other rights and remedies of the City.

ARTICLE 18 Accounting Records

18.1 The Consultant shall maintain complete, detailed and accurate cost and accounting records , in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred under this Contract. During the term of this Contract and at any time within seven years thereafter, the Consultant shall make such records available to the City or its authorized representatives for review and audit at such place or places as may be designated by the Commissioner. In the event the Commissioner authorizes the Consultant to retain the services of Subconsultants for which the Consultant will be entitled to reimbursement hereunder, the Consultant agrees to include in all its contracts with Subconsultants a requirement that they maintain complete, detailed and accurate cost and accounting records as to all their costs relating to the services and materials furnished by them under such contracts and that during the term of this Contract and at any time within seven years thereafter, if required by the Commissioner, they will make such records available to the City or its authorized representatives for review and audit at such places as may be designated by the Commissioner.

18.2 In the event all or any part of such records are not maintained by the Consultant or its Subconsultants, or made available to the City as provided, herein, any item not supported by reason of the insufficiency or unavailability of such records shall at the election of the Commissioner or the Comptroller, be disallowed and, if payment therefor has already been made, the Consultant, upon demand, shall refund to the City the amounts so disallowed. Payments to the Consultant or approval by the Commissioner of any application for payment submitted by the Consultant, shall in no way affect the Consultant's obligation hereunder or the right of the City to obtain a refund of any payment to the Consultant which is in excess of that to which it was lawfully entitled.

ARTICLE 19 Audit and Examination

19.1 This Contract and all payments hereunder shall be subject to audit and examination by the Engineering Audit Officer of DDC and post-audit by the Comptroller of the City in accordance with Law.

ARTICLE 20 Monies Withheld

20.1 When the Commissioner shall have reasonable grounds for believing that: (1) the Consultant will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Consultant or the City arising out of the negligence of the Consultant or the Consultant's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Consultant, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

ARTICLE 21 Assignments

21.1 The Consultant shall not assign, transfer, convey or otherwise dispose of this Contract, or his right to execute it, or his right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this contract, unless the previous written consent of the Commissioner shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of

such consent to any further or other assignments.

21.2 Such assignment, transfer, or conveyance shall not be valid until filed in the office of the Department of Design and Construction and of the Treasurer with the written consent of the Commissioner endorsed thereon or attached thereto.

21.3 Failure to obtain the previous written consent of the Commissioner to such an assignment, transfer or conveyance, shall justify, at the option of the Commissioner, the revocation and annulment of this Contract. The City shall thereupon be relieved and discharged from any further liability and obligation to the Consultant, his assignees or transfers, and the Consultant and his assignees shall forfeit and lose all monies theretofore earned under the Contract, except so much as may be required to pay the Consultant's employees; provided, however, that nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Consultant for the benefit of creditors made pursuant to the statutes of the State of New York.

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

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

ARTICLE 22 Consultant's Performance

22.1 The Consultant shall be liable to the City for all losses, expenses and damage caused by the failure of the Consultant properly to perform its obligations under this Agreement and the Consultant shall not be entitled to any compensation for services or reimbursement for costs or expenses with respect to any such obligations not properly performed by it hereunder.

ARTICLE 23 Claims - Limitation of Action

23.1 No action shall be maintained by the Consultant, his successors or assigns, against the City on any claim based upon or arising out of this Contract unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder in the office of the Comptroller, or within six (6) months of the termination or conclusion of this contract, or within six (6) months after the accrual of the cause of action, whichever is earliest.

ARTICLE 24 No Claim Against Officer, Agents or Employees

24.1 The Consultant agrees to not make any claim against any officer, agent or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

24.2 The Consultant shall require each Subconsultant to the Consultant to agree in his contract not to make any claim against the City, its officers, agents or employees, by reason of such contract, or any acts or omissions of the Consultant.

24.3 Nothing in this contract shall be construed to give any person other than the City and the Consultant any legal or equitable right, remedy or claim under this contract; but it shall be held to be for the sole and exclusive benefit of the City and the Consultant.

ARTICLE 25 Notices

25.1 Except as otherwise provided herein, any notice, approval, acceptance, request, bill, demand or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally or deposited in a U.S. mail box in a postage-prepaid envelope, addressed to the other party. Either party may at any time change such address by delivering or mailing, as aforesaid, to the other party a notice stating the change and the changed address.

ARTICLE 26 Investigations

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

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

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

26.1.3 The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon no less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

26.1.4 If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 26.3 below without the City incurring any penalty or damages for delay or otherwise.

26.2 The penalties which may attach a final determination by the commissioner or agency head may include but shall not exceed:

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

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

26.3 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs 26.3.1 and 26.3.2 below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs 26.3.3 and 26.3.4 below in addition to any other information which may be relevant and appropriate;

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

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

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

26.3.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 26.2 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 26.1.3 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.

26.4 Definitions Used in this Article

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

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

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

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

26.5 In addition to and not withstanding any other provision of this agreement the Commissioner or Agency Head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event consultant fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the consultant, or affecting the performance of this contract.

ARTICLE 27 Unlawful Provisions

27.1 If this contract contains any unlawful provisions, not an essential part of the contract and which appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall upon the application of either party be stricken from the contract without affecting the binding force of the contract as it shall remain after omitting such provision.

ARTICLE 28 Modification

28.1 This Contract may be modified from time to time in a writing signed by both parties in order to carry out and complete more fully and perfectly the services agreed to be performed under this Contract; provided, however, in no event shall such modification exceed the cost limitation approved by the Bureau of the Budget.

ARTICLE 29 Errors

29.1 If this Contract contains any errors, inconsistencies, ambiguities or discrepancies, including typographical errors, the Consultant shall request a clarification of same by writing to the Commissioner whose decision shall be binding upon the parties.

ARTICLE 30 Representations, Warranties and Affirmations

30.1 Procurement of Agreement: The Consultant represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Consultant further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Consultant makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

30.1.1 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder and the Consultant shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

30.2 Conflict of Interest: The Consultant 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 would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Consultant represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

30.3 Fair Practices: The Consultant and each person signing on behalf of the Consultant represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

30.3.1 The prices in this contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any competition;

30.3.2 Unless otherwise required by law, the prices which have been quoted in this contract and on the proposal submitted by the Consultant have not been knowingly disclosed by the Consultant prior to the proposal opening, directly or indirectly, to any competitor; and

30.3.3 No attempt has been made or will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

30.3.4 The fact that the Consultant (1) has published price lists, rates, or tariffs covering items being procured, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to other customers at the same prices being bid, does not, in itself, constitute a disclosure within the meaning of the above.

30.4 Affirmations: The Consultant affirms and declares that it 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 Consultant to receive public contracts.

ARTICLE 31 No Discrimination

31.1 As required by New York State Labor Law Section 220 (e), the parties hereto agree as follows:

31.1.1 That in the hiring of employees for performance of work under this contract or any subcontract hereunder neither the Consultant, subcontractor, nor any person acting on behalf of such Consultant or subcontractors shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

31.1.2 That neither the Consultant, subcontractor, or any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color or national origin;

31.1.3 That there may be deducted from the amount payable to the Consultant by the City under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract; and

31.1.4 That this contract may be canceled or terminated by the City and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section of the contract.

31.1.5 The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

31.2 As required by New York City Administrative Code §6-108

31.2.1. 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.

31.2.2 It shall be unlawful for any person or any servant, agent, or employee of any person, described in subdivision 31.2.1 above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

31.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract.

31.2.4 Any person, or the employee manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

ARTICLE 32 Equal Employment Opportunity

32.1 This contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O.50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the Consultant agrees that:

32.1.1 The Consultant will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

32.1.2 When it subcontracts, the Consultant will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status;

32.1.3 The Consultant will state in all solicitations or advertisements for employees placed by or on behalf of the Consultant that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship, or that it is an equal employment opportunity employer;

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

32.1.5 The Consultant will furnish all information and reports including an Employment Report before the award of the contract which are required by E. O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("DLS"), and will permit access to its books, records and accounts by DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

32.2.1 disapproval of the Consultant;
32.2.2 suspension or termination of the contract;
32.2.3 declaring the Consultant in default; or
32.2.4 in lieu of any of the foregoing sanctions, Director may impose an employment program.

32.3 The Consultant agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of $50,000.00 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 Consultant 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.

32.4 The Consultant further agrees that it will refrain from entering into any contract or contract modification subject to E. O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E. O. 50 and the rules and regulations promulgated thereunder.

ARTICLE 33 All Prior Written or Oral Agreements Excluded

33.1 The written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 34 Head Notes and Marginal Notations

34.1 Notations in the margins and headnotes are not part of the contract and are for reference purposes only. They in no way define, limit or describe scope or intent of the article or section of the Agreement nor in any way affect this Agreement.

ARTICLE 35 Dust Hazards

35.1 Should a harmful dust hazard be created in performing the work of this contract, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the State of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard, by the Consultant. Failure to comply with this provision after notice shall make this contract void.

ARTICLE 36 Participation in an International Boycott

36.1 The Consultant agrees that neither the Consultant nor any substantially-owned affiliated company has participated, is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

36.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Consultant or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.

36.3 The Consultant shall comply in all respect, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

ARTICLE 37 Effective and Binding

37.1 This contract shall neither be binding nor effective unless:

37.1.1 Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975 in the event the Executive Order requires such approval; and

37.1.2 Certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and

37.1.3 Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.

37.1.4 It has been authorized by the Mayor, and the Comptroller shall have endorsed his certificate, that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this agreement.

37.2 The requirements of this section of the contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this contract to be effective and for the expenditure of City funds.

ARTICLE 38 Choice of Law, Consent to Jurisdiction and Venue

38.1 This Contract shall be deemed to be executed in the City of New York, regardless of the domicile of the Consultant, and shall be governed by and construed in accordance with the laws of the State of New York.

38.2 The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, the Consultant agrees:

38.2.1 If the City initiates any action against the Consultant in Federal Court or in New York State Court, service or process may be made on the Consultant, either in person, wherever such Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Contract, or to such other address as the Consultant may provide to the City in writing; and

38.2.2 With respect to any action between the City and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (1) to move to dismiss on grounds of forum non conveniens, (2) to remove to Federal Court; and (3) to move for a change of venue to a New York State Court outside New York County.

38.2.3 With respect to any action between the City and the Consultant in Federal Court located in New York City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

38.2.4 If the Consultant commences any action against the City in a court located other than in the City and State or New York, upon request of the City, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action is initially brought

will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

38.3 If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 39 Waiver

39.1 Waiver by the City of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of the Contract unless and until the same be agreed to in writing by the Commissioner.

ARTICLE 40 All Defenses Reserved

40.1 Each and every defense, right and remedy that the City has under this Contract is not exclusive and it is in addition to and concurrent with all other defenses, right and remedies which the City has under this Contract and which the City otherwise has, will have, or may have under law, equity, or otherwise.

ARTICLE 41 MacBride Principles Provisions

41.1 Notice to all Prospective Contractors: Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of work place opportunity.

41.2 Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

41.3 Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

41.4 In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

41.5 In accordance with section 6-115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

41.6 For purposes of this section, the following terms shall have the following meanings: "MacBride Principles"

shall mean those principles relating to nondiscrimination in employment and freedom of work place opportunity which require employers doing business in Northern Ireland to:

41.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
41.6.2 take steps to promote adequate security for the protection of employees from under represented religious groups both at the work place and while traveling to and from work;
41.6.3 ban provocative religious or political emblems from the work place;
41.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
41.6.5 establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
41.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
41.6.7 develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
41.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
41.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

41.7 The contractor agrees that the covenants and representations in Paragraph 42.5 above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirement contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

ARTICLE 42 Vendex Questionnaires

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

42.2 Submission: Vendex Questionnaires must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9th Floor, New York, New York 10007. In addition, the Consultant must submit a Confirmation of Vendex Compliance to the Department.

42.3 Obtaining Forms: Vendex Questionnaires, as well as detailed instructions, may be obtained at www.nyc.gov/vendex. The Consultant may also obtain Vendex forms and instructions by contacting the ACCO or the contact person for this contract.

ARTICLE 43 Ultra Low Sulfur Diesel Fuel

Ultra Low Sulfur Diesel Fuel: In accordance with the provision of Section 24-163.3 of the New York City Administrative Code, the Contractor specifically agrees as follows:

I. Definitions: For the purpose of this Article, the following definitions apply:

A. "Contractor" means any person or entity that enters into a Public Works Contract with a City agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such Public Works Contract.

B. "Lower Manhattan" means the area of New York County consisting of the area to the south of and within Fourteenth Street.

C. "Motor Vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

D. "Nonroad Engine" means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

E. "Nonroad Vehicle" means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

F. "Public Works Contract" means a contract with a City agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a City agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a City agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

G. "Ultra Low Sulfur Diesel Fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

II. Ultra Low Sulfur Diesel Fuel

A. All Contractors shall use Ultra Low Sulfur Diesel Fuel in diesel-powered Nonroad Vehicles in the performance of this contract.

B. Notwithstanding the requirements of paragraph A, Contractors may use diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this Part II, where the Commissioner of the New York City Department of Environmental Protection ("DEP Commissioner") has issued a determination that a sufficient quantity of Ultra Low Sulfur Diesel Fuel is not available to meet the needs of City agencies and Contractors. Any determination made pursuant to this subdivision shall expire after six months unless renewed.

C. Contractors shall not be required to comply with this Part II where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Contractor in its fulfillment of the

requirements of this contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of this Part II shall be in full force and effect unless the agency renews the finding in writing and such renewal is approved by the DEP Commissioner.

D. Contractors may check on determinations and approvals issued by the DEP Commissioner pursuant to Section 24-163.3 of the Administrative Code, if any, at www.nyc.gov/dep or by contacting the Department issuing this solicitation.

E. The requirements of this Part II do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

F. The requirements of this Part II do not apply to Public Works Contracts entered into or renewed prior to June 19, 2004.

III. BEST AVAILABLE TECHNOLOGY

A. All Contractors shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this contract. For determinations of best available technology for each type of diesel-powered Nonroad Vehicle, Contractors shall comply with the regulations of the City Department of Environmental Protection, as and when adopted, Chapter 14 of Title 15 of the Rules of the City of New York (RCNY). The Contractor shall fully document all steps in the best available technology selection process and shall furnish such documentation to the Department or the DEP Commissioner upon request. The Contractor shall retain all documentation generated in the best available technology selection process for as long as the selected best available technology is in use.

B. No Contractor shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered Nonroad Vehicle in accordance with the provisions of this Part III within three years of having first utilized such technology for such vehicle.

C. This Part III shall not apply to any vehicle used to satisfy the requirements of a specific Public Works Contract for fewer than twenty calendar days.

D. The Contractor shall not be required to comply with this Part III with respect to a diesel-powered Nonroad Vehicle under the following circumstances:

1. Where the agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.
2. Where the DEP Commissioner has issued a written waiver based upon the Contractor having demonstrated to the DEP Commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.
3. In determining which technology to use for the purposes of subsections (D)(1) and (D)(2) above, Contractor shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.
4. Contractors shall submit requests for a finding or a waiver pursuant to this subsection (D) in writing to the DEP Commissioner, with a copy to the ACCO of the Department issuing the solicitation. Any finding or waiver made or issued pursuant to subsections (D)(1) and (D)(2) above shall expire after one hundred eighty days, at which time the requirements of subsection A shall be in full force and effect unless the agency renews the finding, in writing, and the DEP Commissioner approves such finding, in writing, or the DEP Commissioner renews the waiver, in writing.

E. The requirements of this Part III do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

IV. Section 24-163 of the Administrative Code. Contractors shall comply with Section 24-163 of the New York City Administrative Code related to the idling of the engines of motor vehicles while parking.

V. COMPLIANCE

A. Contractor's compliance with these provisions may be independently monitored. If it is determined that the Contractor has failed to comply with any provision of this rider, any costs associated with any independent monitoring incurred by the City shall be reimbursed by the Contractor.

B. Any Contractor who violates any provision of this Article, except as provided in subsection (C) below, shall be liable for a civil penalty between the amounts of one thousand and ten thousand dollars, in addition to twice the amount of money saved by such Contractor for failure to comply with this Article.

C. No Contractor shall make a false claim with respect to the provisions of this Article to a City agency. Where a Contractor has been found to have done so, such Contractor shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such Contractor in association with having made such false claim.

VI. REPORTING

A. For all Public Works Contracts covered by this Article, the Contractor shall report to the Department the following information:

1. The total number of diesel-powered Nonroad Vehicles used to fulfill the requirements of this Public Works Contract;
2. The number of such Nonroad Vehicles that were powered by Ultra Low Sulfur Diesel Fuel;
3. The number of such Nonroad Vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology;
4. The number of such Nonroad Vehicles that utilized such other authorized technology in accordance with Part III, including a breakdown by vehicle model and the type of technology used for each such vehicle;
5. The locations where such Nonroad Vehicles were used; and
6. Where a determination is in effect pursuant to Part II.B or II.C, detailed information concerning the Contractor's efforts to obtain Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million.

B. The Contractor shall submit the information required by Paragraph A at the completion of work under the Public Works Contract and on a yearly basis no later than August 1 throughout the term of the Public Works Contract. The yearly report shall cover work performed the preceding fiscal year (July 1- June 30).

<u>ARTICLE 44 – Ultra Low Sulfur Diesel Fuel – Coordinated Construction Act for Lower Manhattan</u>

In accordance with the Coordinated Construction Act for Lower Manhattan, as amended:

I. DEFINITIONS: For purposes of this Article, the following definitions apply:

A. "Lower Manhattan" means the area to the south of and within the following lines: a line beginning at a point where the United States pierhead line in the Hudson river as it exists now or may be extended would intersect with the southerly line of West Houston street in the borough of Manhattan extended, thence easterly along the southerly side of West Houston street to the southerly side of Houston street, thence easterly along the southerly side of Houston street to the southerly side of East Houston street, thence northeasterly along the southerly side of East Houston street to the point where it would intersect with the United States pierhead line in the East river as it exists now or may be extended, including tax lots within or immediately adjacent thereto.

B. “Lower Manhattan Redevelopment Project” means any project in Lower Manhattan that is funded in whole or in part with federal or State funding, or any project intended to improve transportation between Lower Manhattan and the two air terminals in the City of New York known as LaGuardia Airport and John F. Kennedy International Airport, or between Lower Manhattan and the air terminal in Newark known as Newark Liberty International Airport, and that is funded in whole or in part with federal funding.

C. “Nonroad Engine” means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

D. “Nonroad Vehicle” means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this terms shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

E. “Ultra Low Sulfur Diesel Fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

II. REQUIREMENTS: Contractors and subcontractors are required to use only Ultra Low Sulfur Diesel Fuel to power the diesel-powered Nonroad Vehicles with engine horsepower (HP) rating of 50 HP and above used on a Lower Manhattan Redevelopment Project and, where practicable, to reduce the emission of pollutants by retrofitting such Nonroad Vehicles with oxidation catalysts, particulate filters, or technology that achieves lowest particulate matter emissions.

ARTICLE 45 – Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

NOTICE TO ALL PROSPECTIVE CONTRACTORS

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the 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 made pursuant to Local Law 129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise (“M/WBE”) program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in the Subcontractor Utilization Plan, and are detailed below.

The Contractor must comply with all applicable M/WBE requirements for this Contract.

Article I, Part A, below, sets forth provisions related to the participation goals for construction 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 AND PROFESSIONAL SERVICES CONTRACTS

1. The Target Subcontracting Percentage applicable to this Contract is set forth in the Subcontractor Utilization Plan (Part I) included in this Contract [see First Page, line (1)]. (The Subcontractor Utilization Plan is included in the

Request for Proposals.)

The "Target Subcontracting Percentage" is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of business award to one or more subcontractors for amounts under $1 million for construction and professional services.

A prospective contractor may seek a full or partial pre-award waiver of the Target Subcontracting Percentage in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the Target Subcontracting Percentage, a prospective contractor must complete the Subcontractor Utilization Plan (Part III), and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at poped@ddc.nyc.gov or via facsimile at (718) 391-1885. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The Subcontractor Participation Goals established for this Contract are set forth in the Subcontractor Utilization Plan (Part I) included in this Contract [see First Page, line (2) and/or line (3)].

The Subcontractor Participation Goals represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under $1 million.

3. If Subcontractor Participation Goals have been established for this Contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under $1 million, Contractor shall be subject to the Subcontractor Participation Goals, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If Subcontractor 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 Subcontractor Utilization Plan (Part II) (see Second and Third Pages) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under $1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under $1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the Target Subcontracting Percentage, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the Target Subcontracting Percentage in accordance with Local Law 129 and Part A, Section 10 below.

THE BIDDER/PROPOSER MUST FULLY COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN (PART II) INCLUDED IN THE RFP. BIDS/PROPOSALS WHICH DO NOT INCLUDE A COMPLETED SUBCONTRACTOR UTILIZATION PLAN (PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRCTING PERCENTAGE IS GRANTED (SUBCONTRACTOR UTILIZATION PLAN, PART III). IN THE EVENT THAT THE SUBCONTRACTOR UTILIZATION PLAN INDICATES THAT THE BIDDER/PROPOSER DOES NOT INTEND TO AWARD THE TARGET SUBCONTRACTING PERCENTAGE, THE BID/PROPOSAL WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS THE AGENCY HAS GRANTED A WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE (SUBCONTRACTOR UTILIZATION PLAN, PART III).

5. Where a Subcontractor 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 multi-year contracts, such list shall also be submitted every year thereafter. 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. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/getcertified, by emailing DSBS at MWBE@sbs.nyc.gov, by calling the DSBS certification hotline at (212) 513-6311, 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 (as indicated above) in order to seek certification.

7. Where a Subcontractor 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 paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor pursuant to such plan as well as 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 paid to subcontractors (including subcontractors that are not MBEs or WBEs); 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 hired pursuant to such plan, 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 Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section 11 below.

9. Where a Subcontractor Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

10. Pre-award waiver of Target Subcontracting Percentage. Agency may grant a full or partial waiver of the Target Subcontracting Percentage to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, 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 for under one million dollars represented by the Target Subcontracting Percentage. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.

11. Modification of Subcontractor Utilization Plan. A Contractor may request a modification of its Subcontractor Utilization Plan (Subcontractor Participation Goals) after award of this Contract. The Agency may grant such request if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Subcontractor Participation Goals. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(a) 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;
(b) The Contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;
(c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBE's that their interest in the contract was solicited;
(d) 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 contractor utilization plan, and for which the Contractor claims an inability to retain MBE's or WBE's;
(e) 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;
(f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;
(g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
(h) 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 WBE's.

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

12. If Subcontractor Participation Goals have been established for 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 a Subcontractor 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 Subcontractor Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

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

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, 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 M/WBE's to meet the required Subcontractor 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 Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering 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 this Section 6-129, including, but not limited any Subcontractor 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) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, 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) exercise 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) take any other appropriate remedy.

4. Whenever Agency has reason to believe that an MBE 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), 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.

5. 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 or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

6. The Contractor's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the 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 Consultant.

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

CONSULTANT:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

_____
Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY CORPORATION

State of _____ County of _____ ss:

On this ____ day of _____, _____ before me personally came _____, who being by me duly sworn, did depose and say that he/she resides in the City of _____ that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his name thereto by like order.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

_____
Notary Public or Commissioner of Deeds

EXHIBIT A

CONTRACT INFORMATION

- Services: Comprehensive environmental services for various capital projects, as specified by the Commissioner on a Work Order basis.

- Borough(s): City Wide – All Five Boroughs

- Total Not to Exceed Amount: $2,000,000

- Contract Time Frame:

  - Contract Term: 1095 consecutive calendar days
  - Extension of Contract Term: 365 consecutive calendar days
  - Renewal of Contract Term: duration: 730 consecutive calendar days
    increase: up to $1,000,000

- Contract Executive: To be inserted after selection of the Consultant

- Testing Laboratory: To be inserted after selection of the Consultant

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

- Exhibits:

Exhibit A	Contract Information
Exhibit B	Specific Requirements
Exhibit C	Required Titles and All Inclusive Hourly Rates
Exhibit D	Minimum Requirements Per Title
Exhibit E	Testing Services and Unit Prices
Exhibit F	M/WBE Subcontractor Utilization Plan

EXHIBIT B

SPECIFIC REQUIREMENTS

(1) GENERAL

1.1 Summary: 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 these Specific Requirements and in accordance with all laws, rules, regulations, and requirements applicable to the work.

1.2 Location of Services: The Consultant's services shall be provided 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 in other Boroughs.

1.3 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.

1.4 Performance of Services by Consultant's Own Employees: The Consultant agrees to provide all required personnel for the performance of services hereunder through its own employees and/or through its Subconsultants set forth in Exhibit A, unless otherwise approved by the Commissioner. The Consultant further agrees that the minimum amount of services to be performed by its own employees shall be at least seventy percent (70%) of the total contract price.

(2) WORK ORDER PROCESS

2.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, comprehensive environmental 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 services the Consultant shall be required to provide are set forth in this Exhibit. The Consultant shall not perform services hereunder until the Commissioner has issued a Work Order as set forth below.

2.2 Issuance of Work Orders: 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. As indicated in Section 3 of this Exhibit, the Consultant's Staffing Plan must be established and approved by the Commissioner prior to the commencement of services.

2.2.1 Project(s) for which services are required
2.2.2 Services to be performed by the Consultant
2.2.3 Documents provided by the Commissioner
2.2.4 Time frame for completion of the required services
2.2.5 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.

2.3 Maximum Price for Services: As indicated in Section 5 of this Exhibit, the amount of the Allowance for Environmental Services set forth in the Work Order shall constitute the maximum price to be paid to the Consultant for providing the environmental services specified therein.

2.4 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.

2.5 Reallocation of Allowance Amounts: 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.

2.6 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.

2.7 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.

2.8 Work by Others: In the event there is a need for environmental services, the Commissioner reserves the right not to issue a Work Order to the Consultant and to have the services performed by another Consultant(s), or by City employees, if the Commissioner, in his sole opinion, determines that the Consultant may be unable to satisfactorily provide the required services in a timely fashion.

(3) CONSULTANT'S PERSONNEL

3.1 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide all personnel necessary and required for performance of comprehensive environmental services for various projects in accordance with the Work Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Sub-consultants 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. The Consultant further agrees that the minimum amount of services to be performed by its own employees shall be at least seventy percent (70%) of the total contract price.

3.2 Contract Executive: The Contract Executive, identified in Exhibit A, shall serve as the Consultant's principal representative with respect to its obligation 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.

It is the intent of the City to secure the personal services of the individual identified as the Contract Executive in Exhibit A. Accordingly, the Consultant agrees to provide such individual as Contract Executive for the entire duration of the Contract. Failure by the Consultant to do so will be considered a material breach of the Contract and grounds for termination for cause. Replacement of such individual will only be permitted in the following circumstances: (1) if the designated individual dies or is no longer in the employ of the Consultant, or (2) if the City fails to direct the Consultant to commence services within nine months of the date on which the Consultant submitted its technical proposal.

3.3 Staffing Requirements: Staffing requirements for personnel have been established by the Commissioner and are set forth in Exhibit C. Such staffing requirements specify the titles of personnel which the Consultant may be required to provide, through its own employees and/or through its Subconsultants.

3.3.1 Requirements Per Title: Personnel provided by the Consultant and/or its Subconsultants must satisfy the minimum requirements for the title in question, as set forth in Exhibit D. The Consultant shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that

personnel provided hereunder comply with the requirements per title. In exceptional circumstances, the Commissioner, in his sole and absolute discretion, may modify the requirements per title.

3.4 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.

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

(a) List of required titles
(b) Specific individual for each title
(c) All Inclusive Hourly Rate for each specified title, as set forth in Exhibit C
(d) Total estimated hours and total estimated amount for each title
(e) Total estimated amount for all titles

3.4.2 Payment Limitation: The specific personnel identified in the approved Staffing Plan shall be considered Assigned Personnel or Assigned Employees for the purpose of the Consultant's entitlement to payment for services performed by such personnel. The Consultant shall not be entitled to payment for any personnel not assigned to the Project and not included in the approved Staffing Plan.

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

3.4.4 Consultant's Proposed Staffing Plan: Within three (3) business days of a written request from the Commissioner, the Consultant shall submit a proposed Staffing Plan for the Project specified in the Work Order. Such proposed Staffing Plan shall include the information set forth above. With respect to specific proposed personnel, the Consultant shall submit the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications. The Consultant shall submit the following with respect to all specified personnel: (1) total estimated hours; (2) total estimated amount(s), and (3) applicable All Inclusive Hourly Rate(s), in accordance with Exhibit C.

3.4.5 Review and Approval of Staffing Plan: The Commissioner shall review the Consultant's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of his review of the proposed Staffing Plan, the Commissioner shall determine whether each individual proposed by the Consultant to perform services meets the requirements for the title in question, including the requisite number of years of experience, as well as technical and professional qualifications. With respect to the proposed Staffing Plan, the Commissioner shall also determine: (1) whether the personnel proposed by the Consultant are necessary for the provision of the required services, and (2) the All Inclusive Hourly Rates applicable to all specified personnel, in accordance with Exhibit C. The Consultant shall revise the proposed Staffing Plan as directed, until the same is approved in writing by the Commissioner.

3.4.6 Replacement of Personnel: No substitutions for approved personnel shall be permitted unless approved 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. In addition, at the Commissioner's request at any time, the Consultant shall remove any personnel and substitute another employee of the Consultant or Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his sole discretion.

3.4.7 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.

3.5 Subconsultants: The Consultant shall engage such Subconsultants as may be necessary for the performance of all required services. The Consultant specifically agrees to engage those Subconsultants identified in its Proposal for the Contract and set forth in Exhibit A, unless otherwise approved by the Commissioner. Failure by the Consultant to provide the Subconsultants set forth in Exhibit A shall be grounds for termination for cause hereunder. 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.

3.5.1 Approval: Subconsultants are subject to the prior written approval of the Commissioner; provided, however, no provision of this Contract shall be construed as constituting an agreement between the Commissioner and any Subconsultant.

3.5.2 Replacement Subconsultants: No substitution for any Subconsultant shall be permitted unless approved by the Commissioner. Any proposed replacement Subconsultant must possess qualifications and experience substantially similar to those of the Subconsultant being replaced and is subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the 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.

3.5.3 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 this Exhibit. 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.

3.5.4 Subcontracts: The Consultant shall inform all Subconsultants engaged in performing services hereunder fully and completely of all terms and conditions of this Contract relating either directly or indirectly to the services to be performed. The Consultant shall stipulate in all subcontracts with its Subconsultants that all services performed and materials furnished thereunder shall strictly comply with the requirements of this Contract. If requested by the Commissioner, the Consultant shall furnish copies of subcontracts with its Subconsultants.

3.6 Employees of the Consultant: The Consultant is solely responsible for the work and deportment of all its personnel and its Subconsultants. These are employees of the Consultant or its Subconsultant and not of the City.

(4) ENVIRONMENTAL SERVICES

4.1 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.

4.1.1 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 regulations, and (2) DDC standards and procedures.

4.1.2 Environmental contaminants shall include, without limitation, the following: asbestos containing materials, lead-based paint, lead dust, mold or other biological substances.

4.2 Abbreviations: The following abbreviations are used throughout the Specific Requirements.

- American Industrial Hygiene Association (AIHA)
- American Society of Testing Materials (ASTM)
- Certified Industrial Hygienist (CIH)
- Certified Safety Professional (CSP)
- Environmental Laboratory Accreditation Program (ELAP)
- Fire Department of New York (FDNY)
- National Lead Laboratory Accreditation Program (NLLAP)
- National Voluntary Laboratory Accreditation Program (NVLAP)
- New York City Department of Environmental Protection (DEP)
- New York State Department of Environmental Conservation (NYS-DEC)
- New York State Department of Health (NYS-DOH)
- New York State Department of Labor (NYSDOL)
- National Institute of Occupational Health and Safety (NIOSH)
- Occupational Safety and Health Administration (OSHA)
- United States Environmental Protection Agency (USEPA)

4.3 Services for the Inspection and Assessment of Structures

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

4.3.2 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.

4.4 Services for the Inspection and Assessment of Subsurface Conditions

4.4.1 General: The Consultant shall provide all environmental services necessary to study, identify and characterize environmental contaminants that may be disturbed or released during subsurface construction activities.

4.4.2 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 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.

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

4.4.4 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

4.5 Sampling Services / Laboratory Testing Services

4.5.1 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 E and any other tests and/or probes specified in the Work Order. Payment for tests listed in Exhibit E shall be on a unit price basis. Other tests and/or probes shall be paid for as a Reimbursable Service. Payment for environmental services, including the collection of samples, in connection with testing shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit C. Prior to performing sampling and/or testing services, the Consultant shall submit a Sampling Plan for approval by the Commissioner.

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

(a) The Consultant must ensure that all services are provided in accordance with all laws, rules, regulations, and requirements applicable to the work. The Consultant must utilize the most current procedure and/or practice mandated by law, or accepted as the professional standard in the environmental industry.
(b) The Consultant must ensure that all services are performed by licensed or certified technicians / inspectors / investigators, as required by regulatory agencies having jurisdiction for the applicable test procedure.
(c) The Consultant must follow safe work practices and protocols applicable to the work.

4.5.3 Laboratory: The Consultant shall provide testing services through the laboratory set forth in Exhibit A, or such other laboratory as approved by the Commissioner. Any laboratory providing services hereunder must maintain all current laboratory certificates from ELAP, NLLAP, NVLAP, any applicable Federal, State, or Local certifications and certifications established by AIHA or NIOSH, such as the Proficiency Analytical Testing (PAT) programs.

4.5.4 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.

4.5.5 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.

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

sampler's initials.

4.5.7 Test Reports: In conjunction with laboratory testing services, the Consultant shall provide a report summarizing the results of each test performed. The Test Report shall be sent to the City by facsimile within 24 hours of the test date. The Test Report shall, at a minimum, include the items set forth below.

(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.

4.6 Design Services

4.6.1 General: The Consultant shall provide all design services necessary for the abatement and/or remediation 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.

(a) The FINAL design documents, including all charts, drawings, tables, and photographs, shall be approved, ordered modified, or rejected by the Commissioner. Upon approval of the FINAL design documents, the Consultant shall submit original drawings and specifications ready to be reproduced as printed bid documents.
(b) An Acceptance Letter shall be issued to the Consultant upon approval of the FINAL design document(s).
(c) The Consultant shall review shop drawings submitted by contractors when ordered, prepare all supplementary drawings that may be necessary for the enlargement and clarification of the drawings and shall examine and approve all materials samples.

4.6.2 Architect or Engineer of Record: All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect or Engineer of Record, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.

4.6.3 Sources: The Consultant shall prepare design documents using information from various sources, including the Consultant's survey report; survey reports and other information furnished by another consultant(s), and/or 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.

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

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

4.7 Construction Related Services

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

(a) Develop schedules, work methods, and standard operating procedures.
(b) Provide project supervision / management and act as the on-site representative and/or the Resident Engineer for the Commissioner.
(c) Perform inspection, engineering or scientific services to ensure overall quality of work.
(d) Monitor and direct the progress of a contractor or other consultant(s).
(e) Provide interpretation and/or clarification of design documents, regulations, standards, etc.
(f) Review and evaluate change orders, claims, cost estimates and requests for extra work by contractors.
(g) Review and evaluate shop drawings, schedules, field records, submittals, filings, materials, programs, procedures, variances, etc.
(h) Conduct environmental testing and analysis as required by applicable rules and regulations or as directed by the Commissioner.

4.8 Consulting Services

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

4.8.2 Environmental Site Assessments: The Consultant shall provide services for the environmental assessment of various sites, including without limitation the following:

(a) Phase I Environmental Site Assessments consistent with the most recent version of ASTM standard.
(b) Structured environmental analysis in accordance with the most recent City Environmental Quality Review (C.E.Q.R.) Technical Manual.
(c) Environmental Assessment Statements (EAS), Scoping Reports and/or Environmental Impact Statements (EIS), either in full or in conjunction with other City resources.
(d) Infrastructure Corridor Environmental Assessments in accordance with guidance and protocols supplied by the Commissioner.

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

4.8.4 Evaluation of Construction Hazards: The Consultant shall provide inspection, and assessment services to ascertain the presence of hazards created by the means and methods of construction. The Consultant shall also assess the level of compliance with applicable construction safety standards, including, but without limit to, OSHA and New York City Department of Buildings Subchapter 19[C26-1900 to C26-1903] and Reference Standard 19.

4.9 Deliverables

4.9.1 General: The Consultant shall prepare all deliverables in a format and quantity that complies with

requirements set forth in the last article of this Exhibit.

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

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

(b) DRAFT reports shall be delivered within twenty-five (25) consecutive calendar days after issuance of the Work Order and shall be approved, rejected completely, or ordered to be modified by the Commissioner. Once approved, the Consultant shall prepare a "FINAL" report.

(c) The FINAL report shall be delivered within forty (40) consecutive calendar days (ccd's) after the issuance of the Work Order. The Consultant shall post the Final Report to the DDC FTP site and transmit the number of copies specified in the Work Order.

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

4.9.4 Environmental Survey Reports

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

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

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

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

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

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

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

(b) Phase I Environmental Site 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.

(c) Phase II Environmental Site 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 (ccd's) after receipt. The Consultant shall be provided with a written list of all necessary modifications. The Consultant shall make all changes and deliver the FINAL Report within three (3) ccd's.

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

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

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

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

(a) DEP ACP forms 5, 7, 8 and / or 9
(b) NYSDOL Notifications
(c) USEPA National Emissions Standard for Hazardous Air Pollutants Notifications.

4.9.7 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.

4.10 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.

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

4.10.2 After proper disposal, the Consultant shall submit to the Engineer a copy of the waste manifest documents, when submitting invoices for work performed.

4.10.3 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 E shall be in accordance with the unit prices set forth therein.

4.11 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project, as set forth below. The Consultant shall provide such Reimbursable Services, if so directed in writing by the Commissioner. The Consultant shall provide such Reimbursable Services through entities approved by the Commissioner, and shall utilize the method of procurement and form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with the terms and conditions of payment set forth in this Exhibit. 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.

4.11.1 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, (2) the Consultant's home office, or (3) the home of the Assigned Employee. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.

(a) Reimbursement for long distance travel 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.
(b) The Consultant shall not be reimbursed for any time the Assigned Employee spends commuting or traveling in connection with services hereunder, including long distance travel.
(c) Expenses for long distance travel in excess of the reimbursement provided for herein shall be deemed included in the All Inclusive Hourly Rates.

4.11.2 testing services, other than the testing services set forth in Exhibit E.

4.11.3 printing of documents, deliverables and/or reports in excess of the requirements set forth in the last article of this Exhibit.

4.11.4 any other services, determined by the Commissioner to be necessary for the Project

4.12 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 services set forth below. All costs for such services are deemed included in payments to the Consultant as set forth in this Exhibit.

4.12.1 Transportation other than long distance travel, as set forth above

4.12.2 Long distance travel which is excess of that for which reimbursement is provided, as set forth above

4.12.3 Provision of the items set forth below. The equipment specified below is required for all personnel performing services hereunder.

(a) Communications equipment, including without limitation cellular telephones and nationwide beepers, for all personnel performing services hereunder. The telephone and beeper numbers of all such personnel shall be submitted to the Commissioner.
(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) Safety equipment as required by City, State and/or Federal requirements.
(e) Health and safety plans or other documents required under City, State and/or Federal law for environmental investigations.
(f) Fees for any and all permits or licenses required by Federal, State, and/or local regulatory agencies.

4.12.4 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 submits 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.

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

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

(b) 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.

(c) 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:

(1) Field notebooks or field data sheets
(2) Field equipment calibration / maintenance logs
(3) Chain-of-custody records
(4) Field Standard Operating Procedures (SOP's)
(5) Laboratory QA manuals
(6) Laboratory SOP's
(7) Laboratory procedures

(8) Laboratory data reports
(9) Instrument printouts
(10) Laboratory equipment maintenance logs
(11) Laboratory calibration records
(12) Results of inspections conducted by regulatory agencies
(13) Corrective action documentation

(5) PAYMENT TERMS AND CONDITIONS

5.1 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.

5.2 Guaranteed Minimum: The City guarantees that for the entire period of time the Contract is in effect (i.e., throughout the term of the Contract, plus any extension and/or renewal thereof) it will issue Work Orders to the Consultant, the cumulative total of which shall be at least $5,000. The City has no obligation to order services in excess of the guaranteed minimum amount specified herein, and no action for damages or for loss of profits shall accrue to the Consultant by reason thereof.

5.3 Work Orders: Work Orders issued hereunder shall specify an overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed Amount shall be further 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. 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.

5.3.1 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.

5.3.2 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 Contractor, reallocate such specific allowance amounts.

5.4 Payment for Environmental Services: Each Work Order issued hereunder shall specify an allowance amount for payment for environmental services performed by the Consultant. The Consultant shall be entitled to payment for personnel performing such services that 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 any personnel not included in the approved Staffing Plan.

5.4.1 Maximum Price for Services: The amount of the Allowance for Environmental Services set forth in the Work Order shall constitute the maximum price to be paid to the Consultant for providing the environmental services specified therein. The Consultant shall not be entitled to payment in excess of such amount, 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.

5.4.2 Information from 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 personnel for the performance of services hereunder and All Inclusive Hourly Rates for such personnel. The specific personnel set forth in the Staffing Plan shall be considered Assigned Employees for the purpose of payment hereunder.

5.4.3 All Inclusive Hourly Rates: The All Inclusive Hourly Rates for specific personnel set forth in the Staffing Plan shall be in accordance with Exhibit C. Such All Inclusive Hourly Rates shall apply to all hours during which an Assigned Employee performs services for the Project, including overtime

hours. No increase in such rates shall be provided for services performed during overtime hours. Such All Inclusive Hourly Rates shall be deemed to include the items set forth below.

(a) All expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project
(b) All expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties
(c) All expenses related to overhead and any anticipated profit
(d) All expenses in connection with transportation and travel, as set forth below

(1) Expenses for ordinary transportation, i.e., other than long distance travel
(2) Expenses for long distance travel in excess of the reimbursement provided for herein
(3) Expenses for time personnel spend commuting or traveling, including long distance travel, in excess of the reimbursement provided for herein

(e) All expenses in connection with providing the items set forth below. The equipment specified below is required for all personnel performing services hereunder.

(1) Communications equipment, including without limitation cellular telephones and nationwide beepers, for all personnel performing services hereunder. The telephone and beeper numbers of all such personnel shall be submitted to the Commissioner.
(2) Hand tools, sample media, containers and other supplies for collecting samples of hazardous materials.
(3) Digital camera capable of recording images in indoor/outdoor applications.
(4) Safety equipment as required by City, State or Federal requirements.
(5) Health and safety plans or other documents required under City, State or Federal law for environmental investigations.
(6) Fees for any and all permits or licenses required by Federal, State, or local regulatory agencies.

5.4.4 Amount of Payment: For any week during which an Assigned Employee 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) All Inclusive Hourly Rate applicable to the Assigned Employee
(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services hereunder. This total number of hours may include overtime hours if the Commissioner directed the Consultant in advance in writing to have the Assigned Employee perform services during overtime hours. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spends traveling or commuting; (2) any overtime hours, unless authorized in advance in writing; (3) any non-billable hours, as defined below, and (4) any hours during which the Assigned Employee performs services for any other project.
(c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed hereunder. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of indirect administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

5.4.5 Payment for Services in Connection with Testing: The Consultant shall be entitled to payment for environmental services, including the collection of samples, in connection with the provision of laboratory testing services. Payment for such environmental services shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit C.

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

5.4.7 Overtime: The Commissioner may authorize the Consultant in advance in writing to have an Assigned Employee(s) perform services during overtime hours. Overtime hours shall be defined as any hours in excess of eight (8) hours per day, Monday through Friday. Payment for services performed during overtime hours shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit C. The Consultant shall not be entitled to any increase in such rates for services performed during overtime hours.

5.4.8 Requisitions: For payment for services performed by an Assigned Employee, the Consultant shall submit the documentation set forth in this Exhibit.

5.4.9 Increases: If the term of the Contract is renewed, the All Inclusive Hourly Rates set forth in Exhibit C shall be subject to an increase at the beginning of the renewal term of the Contract, subject to the limitations set forth herein. 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. Any increase in the All Inclusive Hourly Rates shall be based on the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"). 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. The All Inclusive Hourly Rates shall not be subject to an increase during the second year of the renewal term of the Contract.

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

5.5.1 Unit Prices: Unit prices for Laboratory Testing Services are set forth in Exhibit E. Such unit prices shall be deemed to include the expenses set forth in Exhibit E.

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

5.5.3 Requisitions: For payment for laboratory testing services, the Consultant shall submit the documentation set forth in this Exhibit.

5.5.4 Increases: If the term of the Contract is renewed, the Unit Prices for Testing Services set forth in Exhibit E shall be subject to an increase at the beginning of the renewal term of the Contract, subject to the limitations set forth herein. Any increase in the Unit Prices shall be applied on a prospective basis only and shall have no impact on prices paid to date. Any increase in the Unit Prices shall be based on the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"). 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. The Unit Prices shall not be subject to an increase during the second year of the renewal term of the Contract.

5.6 Payment for Reimbursable Services

5.6.1 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. Reimbursable Services shall be as defined in this Exhibit. 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.

5.6.2 With respect to Reimbursable Services, the Consultant shall utilize the method of procurement and form of payment directed by the Commissioner.

5.6.3 Payment for Reimbursable Services, except for long distance travel as set forth below, shall be the actual and reasonable cost incurred by the Consultant for such services.

5.6.4 The Consultant shall be entitled to a mark-up of 5% for its overhead and profit with respect to Reimbursable Services; provided, however, the Consultant shall NOT be entitled to any mark-up with respect to long distance travel.

5.6.5 Payment for long distance travel, as set forth below, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses." The Consultant shall NOT be entitled to any mark-up with respect to long distance travel expenses.

(a) Long distance travel is 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, or (3) the home of Assigned Employee.

(b) The Consultant shall not be reimbursed for any time the Assigned Employee spends commuting or traveling in connection with services hereunder, including long distance travel.

(c) Expenses for long distance travel in excess of the reimbursement provided for herein shall be deemed included in the All Inclusive Hourly Rates.

5.6.6 Requisitions: For payment for Reimbursable Services, the Consultant shall submit the documentation set forth in this Exhibit.

5.7 Requisitions for Payment Per Completed Work Order

5.7.1 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.

5.7.2 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 payment for environmental services, the Consultant shall submit the documentation set forth below.

(1) Name, title and work location of the Assigned Employee, as set forth above
(2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement
(3) All Inclusive Hourly Rate applicable to the Assigned Employee
(4) Number of hours worked each day by the Assigned Employee for the week(s) in question
(5) Detailed time sheets completed by the Assigned Employee for the week(s) in

question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for the Project, (2) actual hours during which the employee performed services for other projects, (3) non-billable hours, as defined above, (4) actual hours, if any, during which the Assigned Employee performed services for the Project for which the Consultant is not entitled to compensation, and (5) any overtime hours.

(6) Commissioner authorization for services during overtime 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 E.

(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

(d) Payment for Reimbursable Services: For payment for Reimbursable Services, the Consultant shall submit the documentation set forth below.

(1) Copy of the Commissioner's directive authorizing the Reimbursable Service(s)
(2) Receipted bills or any other data required by the Commissioner

5.7.3 Payment Contingent Upon Satisfactory Progress: All payments 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.

5.7.4 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 by filed with the Comptroller, with a copy thereof available to the Consultant if requested.

(6) TIME PROVISIONS

6.1 Term of Contract: This Contract shall commence as of the date of the advice of award and shall remain in effect for the period of time set forth in Exhibit A.

6.2 Extension of Contract: 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.

6.3 Renewal of Contract: 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.

6.4 Continuation of Contract for Payment Purposes Only: In the event (1) the Consultant's services are required with respect to a Project, (2) a Work Order for such 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 such Project extends beyond the term of the Contract, the Contract shall remain in effect FOR PAYMENT PURPOSES ONLY through the time frame for completion of such Project, as set forth in the Work Order or any Supplementary Work Order required to complete the Project.

6.4.1 For the purpose of this section, 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 set forth in Paragraph 6.1; (2) the extended term of the Contract set forth in Paragraph 6.2, or (3) the renewal term of the

Contract set forth in Paragraph 6.3.

6.5 Impact on Rates / Unit Prices: During any extension and/or renewal of the term of the Contract, the All Inclusive Hourly Rates set forth in Exhibit C and the Unit Prices set forth in Exhibit E, shall be subject to increases, as set forth in Article 5 of this Exhibit.

(7) REQUIREMENTS FOR DELIVERABLES AND SUBMISSIONS

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

- Consultant Name & Project Manager
- DDC Project Name & FMS ID Number
- BEGS Project Manager & Work Order Letter / Task Number
- Nature / Type of Submission (Survey, Inspection, etc.) & Phase (Draft, etc.)
- Date of Submission – Transmittal

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

Deliverable	Draft Submission	Final Submission
Survey / Assessment	Original plus one copy Electronic media	Original (Unbound) plus five bound copies Electronic FTP Upload
Inspection Report / Test Results	Original plus one copy Electronic media	Original (Unbound) plus five bound copies Electronic FTP Upload
Preliminary Design Submittal	Original plus one copy Electronic media	Original (Unbound) plus five bound copies Electronic FTP Upload
Final Design Submittal	Original plus one copy Electronic media	Original (Unbound) plus five bound copies Original mylar prints plus Electronic FTP Upload
Construction Services / Closeout Report	Original plus one copy Electronic media	Original (Unbound) plus five bound copies Electronic FTP Upload

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

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

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

Submission	Format
Text Reports	.doc - MS-Word 2000®
Tables / Spreadsheets	.xls - MS-Excel 2000®
Presentations	.ppt – MS-PowerPoint 2000®
Drawings, sketches	.dwg - Auto-CAD 2002® (use of X-REF's is prohibited)
Digital Photos	.jpeg – MS-Photo Editor®
Other components or Scanned documents	.pdf – Adobe 6.0® or .tiff – TWAIN® compliant.

7.4 Packaging

- 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

- Electronic media (CD-ROM) must be delivered in plastic jewel cases, clearly labeled on both the case and the disk with the Consultant's Name, DDC Project Name & FMS-ID Number and the Type & Date of Submission.

EXHIBIT C

REQUIRED TITLES AND ALL INCLUSIVE HOURLY RATES

TITLES: Staffing requirements are set forth below. Such staffing requirements specify the titles of personnel which the Consultant may be required to provide, through its own employees and/or through its Subconsultants.

ALL INCLUSIVE HOURLY RATES: All Inclusive Hourly Rates are deemed to include all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project. The expenses deemed included in such All Inclusive Hourly Rates are set forth in the Specific Requirements. The All Inclusive Hourly Rates set forth below shall apply to all hours during which an Assigned Employee performs services for the Project, including overtime hours. No increase in such rates shall be provided for services performed during overtime (premium) hours.

TITLE	ALL INCLUSIVE HOURLY RATE
Contract Executive	_____
Project Manager	_____
Certified Industrial Hygienist (CIH)	_____
Certified Safety Professional (CSP)	_____
Project Designer	_____
Project Engineer / Architect / Scientist	_____
CADD Operator	_____
Inspector / Investigator	_____
Project Monitor	_____
Environmental Technician / Industrial Hygienist	_____

EXHIBIT D

MINIMUM REQUIREMENTS PER TITLE

TITLE	MINIMUM REQUIREMENTS			SPECIFIC EXPERIENCE
	YEARS EXPERIENCE	EDUCATION	LICENSE/ CERTIFICATION	
Contract Executive	15 years in field of expertise; 5 years in Environmental Engineering or Science	BS in Engineering, Science or Architecture	PE or RA in New York; or CIH 5 years	Construction Management and/or construction services
Project Manager	10 years experience in field of expertise; 5 years in environmental field	BS in Engineering, Science or Architecture	N/A	Project Management and Construction Management; Must be able to prepare technical documents; strong verbal skills
Certified Industrial Hygienist	10 years	BS in Engineering, Science or Architecture or a related field	CIH – American Board of Industrial Hygiene	IAQ, mold remediation, asbestos and lead background
Certified Safety Professional	10 years	BS in Engineering, Science or Architecture or a related field	CSP - Board of Certified Safety Professionals	Construction safety
Project Designer	8 years in field of expertise; 5 years in environmental design	BS in Engineering, Science or Architecture	NYS DOL - Project Designer for asbestos work	
Project Engineer / Architect / Scientist	6 years in field of expertise including construction, Codes, life safety	BS in Engineering, Science or Architecture		Interpret construction drawings and specifications; familiar with standards, Codes, etc.
CADD Operator	5 years construction design	2 years of college-level education		Development of environmental remediation drawings, sketches, and details; must be proficient in latest version of CADD
Inspector / Investigator	4 years in environmental science	2 years of college-level education	NYSDOL Inspector; NYC DEP Investigator; USEPA Lead Inspector	Various environmental projects involving Asbestos & Lead abatement

TITLE	MINIMUM REQUIREMENTS			SPECIFIC EXPERIENCE
	YEARS EXPERIENCE	EDUCATION	LICENSE/ CERTIFICATION	
Project Monitor	2 years in environmental science	2 years of college-level education	NYSDOL Project Monitor and all licenses for the specific hazard of the project.	
Environmental Technician / Industrial Hygienist	2 years in environmental science	2 years of college-level education	NYSDOL Air Monitoring Technician and all licenses for the specific hazard of the project	HAZWOPER

EXHIBIT E

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.

(1) all expenses incurred by the Consultant and/or its Subconsultant(s) in connection with the performance of the test, including without limitation, expenses for equipment, transportation, handling, calibration, set up, consumable material, operator labor, maintenance, cleaning, insurance
(2) all expenses related to providing reports of test results
(3) all expenses related to management, oversight and quality control procedures
(4) all expenses related to overhead and any anticipated profit

Payment for Environmental Services: The Consultant shall be entitled to payment for environmental services performed in connection with testing services. Payment for such environmental services shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit C.

Test Reports: For all tests performed, the Consultant shall provide a report summarizing the results of each test performed. The Test Report shall be sent to the City by facsimile within 24 hours of the test date. The Test Report shall, at a minimum, include the items set forth below.

(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.

Increases in Unit Prices: If the term of the Contract is renewed, the Unit Prices for Testing Services set forth in Exhibit E shall be subject to an increase at the beginning of the renewal term of the Contract, subject to the limitations set forth herein. Any increase in the Unit Prices shall be applied on a prospective basis only and shall have no impact on prices paid to date. Any increase in the Unit Prices shall be based on the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"). 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. The Unit Prices shall not be subject to an increase during the second year of the renewal term of the Contract.

TESTING SERVICES

TEST	TEST METHOD	TURN-AROUND-TIME	UNIT	UNIT PRICE
		ASBESTOS		
PLM Analysis – Friable ACM	Bulk	1-day	per test	_____
PLM Analysis – Friable ACM	Bulk	4-hour	per test	_____
PLM Analysis – NOB ACM	Bulk	2-day	per test	_____
TEM Analysis – Friable ACM	Bulk	2-day	per test	_____
TEM Analysis – NOB ACM	Bulk	2-day	per test	_____
PCM Analysis – ACM	Air	1-day	per test	_____
PCM Analysis – ACM	Air	4-hour	per test	_____
TEM Analysis – ACM	Air	1-day	per test	_____
		LEAD PAINT & DUST		
Lead Paint Analysis	Bulk	2-day	per test	_____
Lead Paint Analysis	Wipe	2-day	per test	_____
Lead in Air Sample Analysis	Air	2-day	per test	_____

TESTING SERVICES

TEST	TEST METHOD	TURN-AROUND-TIME	UNIT	UNIT PRICE
Lead in Soil Sample Analysis	Bulk	2-day	per test	_____
Lead in Water Sample Analysis	Water	2-day	per test	_____
XRF Test Apparatus – Lead	Surface	N/A	per diem	_____
INDOOR AIR QUALITY (IAQ)				
Microbial Analysis Total & Respirable Dust	Air	10-day	per test	_____
Microbial Analysis	Air	10-day	per test	_____
Microbial Analysis	Wipe	10-day	per test	_____
Real Time Analyzer (Temp., RH, CO, CO_2)	Air	N/A	per diem	_____
Colorimetric chemical detector tubes including pump	Air	N/A	per 10 tests	_____
SOIL/WATER/AIR/OTHER – CHARACTERIZATION				
Total Petroleum Hydrocarbons Diesel Range Organics Gasoline Range Organics (TPHC-DRO/GRO)	EPA 8015B	2-day	per test	_____
Target Compound List Volatile Organic Compounds +MTBE, TBA, Xylenes (TCL VOC)	EPA 8260B/624	2-day	per test	_____
Target Compound List Base Neutral / Acid Extractables Semi-Volatile Organic Compounds (TCL-BNAE SVOC)	EPA 8270C/625	5-day	per test	_____

TESTING SERVICES

TEST	TEST METHOD	TURN-AROUND-TIME	UNIT	UNIT PRICE
New York STARS List Volatile Organic Compounds (STARS-VOC)	EPA 8021B/8260	5-day	per test	_____
New York STARS List Base Neutrals Semi-Volatile Organic Compounds (STARS-SVOC)	EPA 8270C/625	5-day	per test	_____
Polynuclear Aromatic Hydrocarbons (PAH)	EPA 8270C/625	5-day	per test	_____
Polychlorinated Biphenyls (PCB)	EPA 8082/608	5-day	per test	_____
Target Compound List Pesticides (TCL-Pest)	EPA 8081A/608	5-day	per test	_____
Target Compound List Herbicides (TCL-Herb)	EPA 8151A/608	5-day	per test	_____
Target Analyte List Metals (TAL-Metals)	EPA 6010/6020/ 200.8 7000 Series	5-day	per test	_____
Priority Pollutant Metals (PP-Metals)	EPA 7000 Series	5-day	per test	_____
RCRA 8 Metals	EPA 6010/6020/ 200.8 7000 Series	5-day	per test	_____
TCLP Metals (RCRA 8)	EPA 1311 3010A/ 6010B	5-day	per test	_____
Individual Total Metal via ICP/MS, ICP, Flame AA	EPA 6010/6020/2 00.8 7000Series	5-day	per test	_____
Toxicity Characteristic Leaching Procedure for Lead only (TCLP Lead)	EPA 1311 7000 Series/6020	5-day	per test	_____

TESTING SERVICES

TEST	TEST METHOD	TURN-AROUND-TIME	UNIT	UNIT PRICE
TCL/TAL Suite (Includes: TCL-VOC, TCL-BNAE, TAL Metals, PCB, TCL Pest, Total Cyanide)	EPA 8260B/624, 8270C/625, 7000Series 6010/6020/200.8, 8082/608, 8081A/608, 9010B/335.2	5-day	per test	_____
Phenols	EPA 9066/420.2	5-day	per test	_____
Total Cyanide	EPA 9010A/9012A/9014/335.2	5-day	per test	_____
Full Toxicity Characteristic Leaching Procedure (Full TCLP) (Includes: TCLP VOCs, TCLP BNAE, TCLP Metals, TCLP Pests, TCLP Herbs, and TCLP Extractions)	EPA 1311 8260B, 8270C, 7000 Series/ 6020, 8081, 8151A, 624, 625, 200.8, 608	5-day	per test	_____
RCRA Characteristics (Includes: Reactivity, Ignitability, Corrosivity, and Paint Filter Test)	EPA 7.3.4.2/ 7.3.3.2 1030/1010 9040B/ 150.1 9095	5-day	per test	_____
TCLP Waste Class (Includes: Full TCLP, PCB, TPHC-DRO/GRO, and RCRA Characteristics)	As above	5-day	per test	_____
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, < 65 Parts Per Trillion MDL PCBs, Total Suspended	Non polar Material by 1664 PCBs by 608 with MDL < 65 ppt All others as above	5-day	per test	_____

TESTING SERVICES

TEST	TEST METHOD	TURN-AROUND-TIME	UNIT	UNIT PRICE
Solids, Carbonaceous Oxygen Demand, Chloride, Total Nitrogen, Total Solids)				
Soil Gas VOC Analysis	TO-15 (SUMMA Canister)	5-day	per test	_____
Flame Ionization Detector (FID)	Direct Read	N/A	per diem	_____
Photo Ionization Detector (PID)	Direct Read	N/A	per diem	_____
Multiple Gas Monitor (% LEL, % O_2, H_2S, CO)	Direct Read	N/A	per diem	_____
Mercury Vapor Analyzer	Direct Read	N/A	per diem	_____
4.05 Landfill Gas Monitor (Methane, %LEL, Carbon Dioxide)	Direct Read	N/A	per diem	_____
4.06 Multiple Water Analyzer (pH, Conductivity, Temperature, Dissolved Oxygen, Salinity, Turbidity)	Direct Read	N/A	per diem	_____
4.07 Oil-Water Interface Probe	Direct Read	N/A	per diem	_____
4.08 Radiation Meter (Alpha, Beta, Gamma)	Direct Read	N/A	per diem	_____
4.09 Global Positioning System	Direct Read	N/A	per diem	_____

EXHIBIT F

M/WBE SUBCONTRACTOR UTILIZATION PLAN

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