



**REQUEST  
FOR  
PROPOSALS**

**NEW YORK CITY DEPARTMENT OF  
DESIGN + CONSTRUCTION**

# RFP



**PIN**

**PROJECT**

**SUBMISSION DEADLINE**

**MICHAEL R. BLOOMBERG**  
Mayor

**DAVID J. BURNEY, FAIA**  
Commissioner

**ERIC MACFARLANE, PE**  
Deputy Commissioner  
Division of Infrastructures

**DEPARTMENT OF DESIGN AND CONSTRUCTION**

**REQUEST FOR PROPOSALS**

**REQUIREMENTS CONTRACT**

**ENGINEERING DESIGN AND RELATED SERVICES**

**FOR RETAINING WALLS - CITYWIDE**

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## PREFACE

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

### SECTION I. TIMETABLE

#### A. RFP Issuance

Submission Deadline: The proposer shall deliver, on or before 4:00PM on May 4, 2010, 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 5 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 Policy Board Rules.

John Katsorhis (718) 391-2263  
Professional Contracts Section  
Department of Design and Construction  
30-30 Thomson Avenue, 4<sup>th</sup> Floor (Entrance on 30<sup>th</sup> Place)  
Long Island City, NY 11101  
e-mail: katsorhjo@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 30<sup>th</sup> 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, 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 or by email, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website. 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 four weeks of submission deadline.
- b. Complete Registration: Approximately three months from date of consultant selection.
- c. Commence Work: Upon receipt of written Advice of Award.

**SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS****A. General:**

The New York City Department of Design and Construction (DDC), Division of Infrastructure, intends to enter into a requirements contract with an appropriately qualified firm, in order to have engineering design and related services performed in a timely manner for retaining wall projects. The New York City Department of Transportation (DOT) has identified several retaining walls that require inspection, monitoring, temporary stabilization (either as a response to an emergency situation and/or non-emergency situation) as well as reconstruction. Retaining wall structures may include sea walls, bulkheads, waterfront structures, underwater structures, step streets, etc. The existing retaining walls may be of various types (i.e. gravity walls, cantilever walls, countrefort walls, buttress walls, etc) and materials (i.e. stone, masonry, un-reinforced concrete, reinforced concrete, soldier beam & lagging, etc.). The existing retaining walls may have deficiencies such as structural deterioration, unsafe and collapsed or otherwise damaged and/or deteriorated conditions, etc.

The selected firm must have, and maintain throughout the entire duration of the contract, a main office that is located within 75 miles of DDC headquarters at 30-30 Thomson Avenue, Long Island City, New York 11101.

**B. Background and Objectives:**

The contract that is the subject of this RFP is a Requirements Contract, i.e., contract which will be used on an as-needed basis. When the need for services arises in connection with a specific project, the Commissioner will issue a Task Order to the Consultant.

**C. Joint Ventures and Other Consultant Relationships**

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

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

**SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS****A. Scope of Services:**

The Consultant shall provide, to the satisfaction of the Commissioner, all engineering design and related services necessary and required for the project, in accordance with the task orders pursuant to Article 4 of the attached contract. The types of services the Consultant may be required to provide shall include without limitation: (1) Emergency Rapid Response Services; (2) Non-emergency Rapid Response Services; (3) Engineering Design Services; and (4) Construction Support Services. Such services are described in detail in the Specific Requirements (Exhibit F to the attached Contract). The actual services to be provided by the Consultant for a specific project shall be specified in the Task Order. The Consultant shall provide such services through its own employees and/or through its Subconsultants.

**B. Contract Provisions:**

The services to be provided by the Consultant and all standards of performance applicable to the required work are set forth in the form of contract, attached hereto and incorporated herein as part of this RFP. Any firm awarded a contract as a result of this RFP will be required to sign this form of contract. The proposer is advised to carefully review the contract in its entirety before submitting a proposal.

- (1) Contract Term: The term of the contract shall commence as of the date of the Advice of Award and shall remain in effect for 1,095 consecutive calendar days. At the Commissioner's sole option, the term of the contract may be (a) renewed for 730 ccds for up to \$2,000,000, and/or (b) extended for 365 ccds.
- (2) Total Not to Exceed Amount: The total value of all Task Orders that may be issued pursuant to the contract shall not exceed \$5,000,000 for the base term of contract and an additional \$2,000,000 for the renewal term.

**C. Task Order Process:**

The Task Order process is set forth in Article 4 of the attached contract. The Consultant shall not perform services under the contract until the Commissioner has issued a Task Order in accordance with Article 4.

**D. Consultant's Personnel:**

The terms and conditions regarding the Consultant's obligation to provide personnel for the performance of services for the project are set forth in Article 5 of the attached contract. The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required engineering design and related services for the project in accordance with Task Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Subconsultants.

**E. Insurance:**

The consultant and all subconsultants performing services for this contract must provide the types and amounts of insurance specified in Article 11 of the attached contract. The Proposer is advised to carefully review such insurance requirements.

F. Payment Provisions:

The terms and conditions regarding payment to the consultant are set forth in Article 7 of the attached contract. Payment for all required services shall be on a time card basis in accordance with All Inclusive Hourly Rates for specified titles.

G. Participation by Disadvantaged Business Enterprises in Federal Aid Projects

Task orders issued pursuant to the contract may include "Federal Aid Projects". For such projects, DDC will be receiving funds from the Federal Highway Administration ("FHWA"). Prior to issuing the Task Order, DDC will notify the consultant in writing if funding for the project is being provided by FHWA. Any project funded by FHWA is subject to the Disadvantaged Business Enterprise Program (DBE). Any project that is subject to the DBE program will not be subject to the M/WBE requirements described in this RFP.

The DBE program is a federally regulated program that is administered by the New York State Department of Transportation (NYSDOT). If the consultant is notified by DDC that funding for the project is being provided by FHWA, it will be required to submit a DBE Participation form. For information purposes only, such form is included as Attachment 10 to this RFP. An explanation of the federal regulations for the DBE Program can be found at the United States Department of Transportation's Web site at <http://osdbu.dot.gov/DBEProgram/index.cfm>.

H. Participation by Minority Owned and Women Owned Business 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-Owned Business Enterprise (M/WBE) program, except that MWBE requirements shall not apply if the Task Order involves a Federal Aid Project, as described in Section G above. Please refer to Attachment 9 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 a Subcontractor Utilization Plan. If a partial waiver has been granted, the proposer shall include the signed waiver form in the envelope with its Subcontractor Utilization Plan.

**Note: As fully explained in Attachment 9, if you are planning to request a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be considered.**

I. Compliance with Local Law 34 of 2007:

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

**SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL****A. Proposal Subdivision Instructions:**

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with not 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.htm>). Pages should be paginated. The proposal will be evaluated on the basis of its content, not its length. Failure to comply with any of these instructions will not make the proposal non-responsive. Submit proposal in a clearly labeled, sealed package as follows:

1. Technical Proposal (one original and 5 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus completed forms 254 and 255 for Proposer and its subconsultants. (These forms are available at the following website: <http://www.nyc.gov/html/ddc/html/otherfrm.html>)
2. Fee Proposal (One original): **To be submitted ONLY upon request.** Fee proposal shall include all elements requested in the Subsection D below. Forms for the submission of Fee proposal are included as Attachment 4 of the RFP.

**B. Technical Proposal (one original and 5 copies):**

The Technical Proposal shall contain the information described below.

1. Cover Letter: Submit a maximum of three pages, indicating the company name and address, and the name, address and telephone number of the person authorized to represent the firm. ***(Be sure to refer to the proper DDC project number and title).***
2. Experience of Firm & Subconsultants: Submit Attachment 2, identifying by name the proposed subconsultant(s). Submit the following for the proposer and each subconsultant:
  - (a) Provide an overview of the firm.
  - (b) Include a thorough description of three (3) Retaining Wall design projects completed within the last five years, which demonstrate the firm's ability to provide quality engineering services for Retaining Walls. In addition to Retaining Walls, the projects may include other components, such as streets, roadways, urban streetscape, sewers, water mains private utilities and other structures.

If the proposer is a joint venture, delineate the Lead Consultant for this contract and the areas of technical responsibilities of each joint venture partner.

**3. Technical Approach:**

Respond to the items listed below. The proposer's response shall be limited to **four (4)** pages.

- (a) Describe the proposer's methodology for resolving important technical and administrative issues which may arise in connection with Retaining Wall projects.
- (b) Describe the proposer's methodology for tracking and maintaining project's budget and schedule.
- (c) Describe the proposer's own technical approach and design procedures to complete a project. For the purpose of this item, the proposer shall assume that these technical approach and design procedures are in connection with a typical Retaining Wall project. (These tasks are described in the Specific Requirements section of the attached contract; however, the proposer's submission should reflect its own approach to accomplishing the tasks.)

4. Personnel:

For each title of **KEY** personnel listed in Attachment 3, the proposer shall identify the individuals it will provide, throughout the term of the contract, to perform the required services. The proposer may identify multiple individuals for each title; provided, however, it may only identify those individuals it has the ability to provide.

For all proposed Personnel, the proposer must submit the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications. Any proposed Personnel provided by the Consultant and/or Subconsultant must satisfy the minimum requirements per title set forth in Exhibit D to the attached contract. All personnel performing services for any Project(s) assigned to the Consultant under the contract must be approved in advance by the Commissioner.

5. Firm's Capability:

Describe the following: (1) the firm's ability to provide personnel for required engineering services for various projects, (2) the firm's ability to provide sufficient personnel in the event of multiple Task Orders, (3) The firm's current and anticipated workload (using Attachment 6 included in this RFP).

Performance Evaluation(s)

(a) Proposers with prior relevant NYC experience

Provide the firm's record of **relevant** design experience for the past ten years with DDC and other City of New York governmental departments, agencies, etc., including the contract number, project name, scope of work, duration, value of the construction project and value of the Proposer's contract. Include the respective City of New York's Agency Final Rating for performance of each contract and calendar date of rating.

(b) Proposers without relevant NYC experience

- State for the record that the proposer does not have relevant New York City experience.

- Provide indicators of the quality of the experience described in the proposal, including performance evaluations issued by comparable entities responsible for the development and maintenance of urban infrastructure assets.

6. Statement of Understanding:

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

7. Acknowledgement of Addenda:

The Acknowledgement of Addenda form (Attachment 7) 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.

C. Proposal Package Contents ("Checklist"):

The Proposal Package should consist of the following THREE packages (***Be sure to refer to the proper DDC project number and title:***):

1. Technical Proposal (1 original and 5 copies):  
Sealed envelope, clearly marked as "Technical Proposal", including
  - Statement of Understanding (Attachment 1)
  - Identification of Subconsultants (Attachment 2)
  - Identification of Key Personnel (Attachment 3)
  - Current Workload Disclosure (Attachment 6)
  - Acknowledgement of Addenda (Attachment 7)
2. Subcontractor Utilization Plan (1 original): (Attachment 9)  
Sealed envelope, clearly marked as "Subcontractor Utilization Plan".
3. Doing Business Data Form (Attachment 11)  
Sealed envelope clearly marked as "Doing Business Data Form" containing a completed Doing Business Data Form.

D. Fee Proposal:

A form for the submission of the Fee Proposal is included as Attachment 4 of the RFP. Upon written notification, the proposer must submit the fee proposal in a separate clearly labeled, sealed package within ten (10) business days of such notice. The proposer must complete the fee proposal as per instructions on Attachment.

**SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**

A. Selection Process:

This is a Quality Based Selection (QBS) project. A DDC evaluation committee will review, evaluate and score all technical proposals pursuant to the criteria described below. This evaluation will determine each proposer’s technical score. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their proposals, after which their initial technical scores may be re-evaluated. Proposers will be ranked in accordance with their technical scores. The ranking will be submitted to the Executive Consultant selection Committee (ECSC), who will certify the results and authorize fee negotiations to commence with the highest ranked firm. DDC will attempt to negotiate fair and reasonable All Inclusive Hourly Rates (applicable to the three year base term of the Contact) with the highest ranked firm. If negotiations are not successful, DDC will enter into negotiations with the next highest ranked firm. The firm whose proposal is determined to be most advantageous to the City will be awarded the Contract.

B. Proposal Evaluation Criteria:

The Technical Proposal evaluation criteria are as follows:

- a. Firm’s Capability: (Weight 20%)
- b. Experience of the Firm & Subconsultants: (Weight 20%)
- c. Personnel – Qualifications and Experience: (Weight 30%)
- d. Technical Approach: (Weight 30%)

C. Basis of Award:

DDC 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 RFP and successful negotiation of an appropriated fee. Such fee negotiation shall commence upon written notification and shall conclude not more than thirty days after receipt of the fee proposal.

D. Supply and Service Employment Report:

Upon selection, each successful proposer will be required to submit one original copy of the Department of Small Business Services Supply and Service Employment Report, a copy of which can be downloaded from <http://www.nyc.gov/html/ddc/html/otherfrm.html>. Upon written notification, the proposer must submit the Service and Supply Report within ten days of such notification.

E. VENDEX:

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

The proposer is advised that VENDEX Questionnaires and procedures have changed. See [www.nyc.gov/vendex](http://www.nyc.gov/vendex) to download the new VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact DDC's VENDEX Unit at 718-391-1845.

1. Submission:

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

2. Requirement:

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

F. Contract Finalization:

Upon selection, each 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;
7. May conduct discussions with offerers submitting acceptable proposals, award may be made without any discussion;
8. Terminate negotiations with a selected Proposer and select the next most responsive Proposer, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable time of the commencement of negotiations as determined by the Commissioner;
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. A 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 Engineer and the City has no financial obligation to sub-consultants and sub-contractors. 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. 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 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.

5. 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, 10th Floor, New York, NY 10007; the telephone number is (212) 669-2323. 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.
6. 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](http://www.nyc.gov/ppb).
7. 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/Certificates of No Charge 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.

8. 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.
9. 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.
10. 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 design requirement 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

\_\_\_\_\_  
E-Mail Address

**ATTACHMENT 2**

**IDENTIFICATION OF SUBCONSULTANTS**

The Proposer must identify by name the Subconsultants it will provide throughout the term of the Contract for the services set forth below. If the Proposer intends to perform any of the services listed below with its own employees, it shall so indicate by inserting the words "In House".

Structural Engineering Services: \_\_\_\_\_

Architectural Design Services: \_\_\_\_\_

Electrical Design Services: \_\_\_\_\_

Geotechnical Engineering Services: \_\_\_\_\_

Civil Engineering Services: \_\_\_\_\_

Landscape Architectural Design Services \_\_\_\_\_

Urban Design services: \_\_\_\_\_

Topographic Survey Services: \_\_\_\_\_

Environmental Engineering Services: \_\_\_\_\_

Hazmat Services: \_\_\_\_\_

Traffic/Transportation Engineering Services: \_\_\_\_\_

Marine Engineering Services: \_\_\_\_\_

Tree Consulting/Arborist Services: \_\_\_\_\_

**ATTACHMENT 3**

**IDENTIFICATION OF KEY PERSONNEL**

For each title listed below, the proposer shall identify the individuals it will provide, throughout the term of the contract, to perform the required services. Such individuals may be employees of the proposer or its subconsultant. The proposer may identify multiple individuals for each title; provided, however, it may only identify those individuals it or its subconsultant(s) has the ability to provide.

For all proposed key Personnel, the proposer must submit the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications. Any proposed Personnel provided by the Consultant and/or Subconsultant must satisfy the minimum requirements set forth in Exhibit D to the attached Contract. All personnel performing services for any Task Order assigned to the Consultant under the Contract must be approved in advance by the Commissioner.

**KEY PERSONNEL:**

Project Manager  
Senior Structural Engineer  
Senior Project Architect / Designer  
Senior Electrical Engineer  
Senior Geotechnical Engineer  
Senior Civil Engineer  
Senior Landscape Architect  
Senior Urban Design/Planner  
Surveyor (R.L.S.)  
Senior Environmental Engineer  
Certified Industrial Hygienist  
Senior Traffic/Transportation Engineer  
Senior Structural (Marine/Waterfront) Engineer  
Diving Inspector / Engineer  
Arborist / Forester

**ATTACHMENT 4**

**TITLES AND ALL INCLUSIVE HOURLY RATES**

**Submission:** If requested in writing by DDC, the proposer shall submit Attachment 4, plus the back up material described below, in a clearly marked, sealed envelope. Submission shall be within ten business days of notice by DDC.

**Negotiation:** DDC will attempt to negotiate with the short listed proposer fair and reasonable All Inclusive Hourly Rates that are applicable to the three year base term of the Contact. If negotiations are not successful, DDC will enter into negotiations with the next highest ranked firm. All Inclusive Hourly Rates negotiated with the proposer for specified titles will be included in the Contract. Payment for all required services shall be on a time card basis in accordance with such All Inclusive Hourly Rates.

**Increase in Rates:** In the event the term of the contract is renewed or extended, the All Inclusive Hourly Rates will be increased in accordance with the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). Such increase is provided for in Article 7 of the attached contract.

\*\*\*\*\*

The proposer shall submit the following:

- (1) Proposed Rates: Titles of personnel are listed below. Minimum requirements per title are listed in Attachment 5. For each title listed below, the proposer shall submit a Proposed All Inclusive Hourly Rate. Such All Inclusive Hourly Rates shall apply to the Three Year base term of the contract.
- (2) Back Up Material: The proposer shall submit the back up material described below.
  - Salary Information: The proposer shall submit salary information for all individuals it intends to provide for the titles listed on the next page. Such individuals must meet the minimum qualification requirements per title, set forth in Attachment 5. Such individuals may be employees of the proposer or its subconsultants. Specifically, the proposer shall submit each individual's Actual Direct Salary Rate per Hour, as defined below.
    - An individual's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) all payments for services performed during overtime hours (as defined in the attached contract); (2) all employer payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) all employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) all costs for any and all other fringe and/or supplemental benefits.
    - To compute an individual's actual annual direct salary per hour, the individual's actual annual direct salary, as defined above, shall be divided by 2080.

**ATTACHMENT 4 (continued)**

- **Multiplier:** The proposer shall submit its latest Audited Multiplier for Overhead, including the date of the audit and the government agency which has accepted or approved the Audited Multiplier for Overhead for payment purposes. If the proposer does not have an Audited Multiplier for Overhead which has been accepted or approved by a government agency, it shall submit Financial Statements detailing Overhead expenses for the two most recent fiscal years. Such Financial Statements must have been audited by an independent auditor licensed to practice as a certified public accountant (CPA). Each such financial Statement public accountant (CPA). Each such Financial Statement must include the auditor’s standard report.

The proposer shall submit the same Multiplier information for each subconsultant identified in its Technical Proposal (Attachment 2).

- **Payroll Register:** The proposer shall submit its Payroll Register for the last pay period of the previous year showing the cumulative details of yearly compensation for each proposed staff member. In addition, the proposer shall also submit the Payroll Register for the most recent pay period for each proposed project staff member showing the current and paid to-date detailed compensation for such staff. Similar payroll data shall be submitted for each subconsultant identified in the Technical Proposal (Attachment 2).

\*\*\*\*\*

**All Inclusive Hourly Rates:** Titles of personnel are listed below. Minimum requirements per title are listed in Attachment 5. For each title listed below, the proposer shall submit a Proposed All Inclusive Hourly Rate. Such All Inclusive Hourly Rates shall apply to the Three Year base term of the contract.

**STRUCTURAL ENGINEERING DESIGN SERVICES**

TITLE	ALL INCLUSIVE HOURLY RATE
Project Manager	_____
Senior Structural Engineer	_____
Junior Structural Engineer	_____
Senior Engineering Drafter/CADD Operator	_____
Junior Engineering Drafter/CADD Operator	_____

**ARCHITECTURAL DESIGN SERVICES**

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Project Architect/Designer	_____
Junior Project Architect/Designer	_____
Senior Architectural Drafter/CADD Operator	_____
Junior Architectural Drafter/CADD Operator	_____

**ELECTRICAL DESIGN SERVICES**

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Electrical Engineer	_____
Junior Electrical Engineer	_____
Drafter/CADD Operator	_____

**ATTACHMENT 4 (continued)**

**GEOTECHNICAL ENGINEERING DESIGN SERVICES**

**TITLE ALL INCLUSIVE HOURLY RATE**

Senior Geotechnical Engineer \_\_\_\_\_  
Junior Geotechnical Engineer \_\_\_\_\_  
Drafter/CADD Operator \_\_\_\_\_

**CIVIL ENGINEERING DESIGN SERVICES**

**TITLE ALL INCLUSIVE HOURLY RATE**

Senior Civil Engineer \_\_\_\_\_  
Junior Civil Engineer \_\_\_\_\_  
Drafter/CADD Operator \_\_\_\_\_

**LANDSCAPE ARCHITECTURAL DESIGN SERVICES**

**TITLE ALL INCLUSIVE HOURLY RATE**

Senior Landscape Architect \_\_\_\_\_  
Junior Landscape Architect \_\_\_\_\_  
Drafter/CADD Operator \_\_\_\_\_

**URBAN DESIGN/PLANNING SERVICES**

**TITLE ALL INCLUSIVE HOURLY RATE**

Senior Urban Designer/Planner \_\_\_\_\_  
Junior Urban Designer/Planner \_\_\_\_\_  
Drafter/CADD Operator \_\_\_\_\_

**TOPOGRAPHIC SURVEY SERVICES**

**TITLE ALL INCLUSIVE HOURLY RATE**

Surveyor \_\_\_\_\_  
Party Chief \_\_\_\_\_  
Instrument Person \_\_\_\_\_  
Rod Person \_\_\_\_\_  
Senior Drafter/CADD Operator \_\_\_\_\_  
Junior Drafter/CADD Operator \_\_\_\_\_

**ENVIRONMENTAL ENGINEERING / HAZMAT SERVICES**

**TITLE ALL INCLUSIVE HOURLY RATE**

Senior Environmental Engineer \_\_\_\_\_  
Junior Environmental Engineer \_\_\_\_\_  
Technician / Inspector \_\_\_\_\_  
Monitor \_\_\_\_\_  
Certified Industrial Hygienist \_\_\_\_\_  
Drafter/CADD Operator \_\_\_\_\_

**ATTACHMENT 4 (continued)**

**MARINE ENGINEERING SERVICES**

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Structural (Marine/waterfront) Engineer	_____
Junior Structural (Marine/waterfront) Engineer	_____
Diving Inspector / Engineer	_____

**TRAFFIC/TRANSPORTATION ENGINEERING SERVICES**

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Traffic/Transportation Engineer	_____
Junior Traffic/Transportation Engineer	_____
Drafter/CADD Operator	_____

**TREE CONSULTING SERVICES**

TITLE	ALL INCLUSIVE HOURLY RATE
Arborist / Forester	_____

\*\*\*\*\*

**TITLES AND ALL INCLUSIVE HOURLY RATES**

Back Up Material: In addition to the above, the proposer shall submit the back up material described on the previous pages.

**Affirmation:** By signing in the space provided below, the proposer affirms that all back up material provided as part of this Attachment 4 is true and accurate in all respects.

\_\_\_\_\_  
Name of Proposer

By: \_\_\_\_\_  
Signature of Partner or Corporate Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm

\_\_\_\_\_  
EIN#

**ATTACHMENT 5****MINIMUM REQUIREMENTS PER TITLE**

**Minimum Requirements Per Title:** Any personnel provided by the Consultant and/or its Subconsultants must satisfy the Minimum Requirements Per Title set forth below.

**NOTE:** Various titles listed below are preceded by an asterisk. Such titles are titles of Key Personnel. After selection of the Consultant, DDC will revise the Minimum Requirements for such titles to reflect the actual qualifications of the individuals identified by the Consultant in its Proposal as Key Personnel.

TITLE	REQUIREMENTS PER TITLE		
	Number of Years of Experience	ASCE or NICET Grade	Professional License or Certification
<b>STRUCTURAL ENGINEERING SERVICES</b>			
* Project Manager	10	ASCE VI	Professional License
* Senior Structural Engineer	7	ASCE V	Professional License
Junior Structural Engineer	3	ASCE II	
Senior Engineering Drafter/CADD Operator	5	N III	
Junior Engineering Drafter/CADD Operator	2	N II	
<b>ARCHITECTURAL DESIGN SERVICES</b>			
* Senior Project Architect/Designer	7		Professional License
Junior Project Architect/Designer	3		
Senior Architectural Drafter/CADD Operator	5	N III	
Junior Architectural Drafter/CADD Operator	2	N II	
<b>ELECTRICAL DESIGN SERVICES</b>			
* Senior Electrical Engineer	7	ASCE V	Professional License
Junior Electrical Engineer	3		
Drafter/CADD Operator	2	N II	
<b>GEOTECHNICAL ENGINEERING SERVICES</b>			
* Senior Geotechnical Engineer	7	ASCE V	Professional License
Junior Geotechnical Engineer	3	ASCE II	
<b>CIVIL ENGINEERING SERVICES</b>			
* Senior Civil Engineer	7	ASCE VI	Professional License
Junior Civil Engineer	3	ASCE II	
Drafter/CADD Operator	2	N II	
<b>LANDSCAPE ARCHITECTURAL DESIGN SERVICES</b>			
* Senior Landscape Architect	7		Professional License
Junior Landscape Architect	3		
Drafter/CADD Operator	2	N II	
<b>URBAN DESIGN/PLANNING SERVICES</b>			
* Senior Urban Designer/Planner	7		Professional License
Junior Urban Designer/Planner	3		
Drafter/CADD Operator	2	N II	
<b>TOPOGRAPHIC SURVEY SERVICES</b>			
* Surveyor	7		Professional License
Party Chief	5	N III	
Instrument Person	3	N II	
Rod Person	1	N I	
Senior Drafter/CADD Operator	3	N III	
Junior Drafter/CADD Operator	2	N II	

**ATTACHMENT 5 (Continued)****MINIMUM REQUIREMENTS PER TITLE**

TITLE	REQUIREMENTS PER TITLE		
	Number of Years of Experience	ASCE or NICET Grade	Professional License or Certification
<b>ENVIRONMENTAL ENGINEERING/HAZMAT SERVICES</b>			
* Senior Environmental Engineer	5		Licensed by N.Y.S. Dept. of Labor
Junior Environmental Engineer	3		
Technician / Inspector	3		Licensed by N.Y.S. Dept. of Labor & NYC DEP
Monitor	3		Licensed by N.Y.S. Dept. of Labor See Note 5
* Certified Industrial Hygienist Drafter/CADD Operator	2	N II	
<b>MARINE ENGINEERING SERVICES</b>			
* Senior Structural (Marine/waterfront) Engineer	7	ASCE VI / NICET VIII A	Professional License
Junior Structural (Marine/waterfront) Engineer	3	ASCE V	Professional License
* Diving Inspector / Engineer	5		Professional License
<b>TRAFFIC/TRANSPORTATION ENGINEERING SERVICES</b>			
* Senior Traffic/Transportation Engineer	7	ASCE V	Professional License
Junior Traffic/Transportation Engineer	3	ASCE III	
Drafter/CADD Operator	2	N II	
<b>TREE CONSULTING SERVICES</b>			
* Arborist / Forester	5		See Note 4

**Notes:**

- (1) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the American Society of Civil Engineers (ASCE). The applicable requirements for the title in question shall be the most current requirements promulgated by the ASCE for that title as of the date on which the Consultant submitted its Proposal for the Contract.
- (2) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the National Institute For Certification In Engineering Technologies (NICET). The applicable requirements for the title in question shall be the most current requirements promulgated by the NICET for that title as of the date on which the Consultant submitted its Proposal for the Contract.
- (3) If a title requires a professional license, such license must be issued by the State of New York.
- (4) The minimum requirements for the specified title of Arborist/Forester shall be the requirements established by the New York City Department of Parks and Recreation, as set forth below.
  - (a) Associate degree in forestry, arboriculture, horticulture, or related plant science field, and five years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

**ATTACHMENT 5 (Continued)**

- (b) B.S. in forestry, arboriculture, horticulture, or related plant science field, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
  - (c) M.S. in forestry, arboriculture, horticulture, or related plant science field, and one year of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
  - (d) Arborist certification from the N.Y.S. Arborists/International Society of Arboriculture Chapter, Inc., and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
  - (e) Other state arborist certification recognized by the International Society of Arboriculture or the National Arborist Association, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction.
- (5) The minimum requirements for the specified title of Certified Industrial Hygienist (CIH) shall be the requirements set forth below:
- (a) **Certified Industrial Hygienist (CIH)** - shall possess a CIH license granted by the American Board of Industrial Hygiene (ABIH) for at least five (5) years. An advanced degree (M.S., M.E., and PhD) in science or engineering is preferred. This individual will demonstrate at least fifteen (15) years of experience in this field of expertise with not less than 5 years practical experience in the environmental engineering / science fields.
  - (b) **Duties:** The CIH will act as the lead and provide expert opinion on matters of industrial hygiene, site safety, and environmental compliance. This individual will review and interpret data, author environmental reports and site specific health and safety plans; and shall be responsible for all aspects, including execution and monitoring, of the health and safety program.
- (6) No Payment for Principal: 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) the principal is qualified to perform services in accordance with one of the titles set forth above, and (2) the principal is included in the approved Staffing Plan for such title.

**ATTACHMENT 6**

**CURRENT WORKLOAD DISCLOSURE**

The proposer and his/her Subconsultant(s) providing services on this project must complete a separate Current Workload Disclosure form. The values shown *shall not* include: (1) amount owed to Subconsultants and Subcontractors, or, (2) amount owed for rental/purchase of equipment.

PROJECT ID: _____	FIRM NAME _____
PROJECT DESCRIPTION _____	CONTACT PERSON _____
_____	PHONE ( ) _____
_____	FIRM ADDRESS: _____
_____	_____
_____	_____
_____	_____

NUMBER OF FIRM'S PERSONNEL

ADMIN. \_\_\_\_\_ TECH. \_\_\_\_\_ TOTAL \_\_\_\_\_  
The figures MUST agree with SF255, Number 4

<b>I- Firm's Total uncompleted Workload with NYCDDC/NYCDOT (From RFP-22)</b>	\$ _____
<b>II-Firm's Total uncompleted Workload with Other City and State Agencies (From RFP-23)</b>	\$ _____
<b>Total Workload</b>	<b>\$ _____</b>

CERTIFICATION

*By signing in the space provided below, the proposer certifies that the dollar amounts set forth on this Attachment are true and accurate in all respects.*

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Partner or Corporate Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**ATTACHMENT 6 (Continued)**

**CURRENT WORKLOAD WITH NYCDDC/NYCDOT**      *Date:* \_\_\_\_\_

FIRM NAME: \_\_\_\_\_

List **ALL** projects for which the firm currently has contracts with NYCDDC/NYCDOT and those for which the firm has been officially selected. These shall be categorized as indicated below (Design & Construction Support Services and Other).

Client Name/ Project Name	Contract #	Type of Work	Uncompleted Portion of Work (\$000)	Percent complete to date (%)
<b>DESIGN &amp; Construction Support Services:</b> For Street Reconstruction Projects includes Preliminary Design, Final Design and Total Design				
Design Subtotal			\$	
<b>DESIGN &amp; Construction Support Services:</b> For Bridges and Retaining Walls Projects.				
Design Subtotal			\$	
<b>OTHER:</b> Includes Traffic Engineering and Planning Services, Traffic Engineering & Safety, Environmental Engineering, Sub-surface exploration, Utility Engineering, Topographic Survey, Urban Design/Landscape Architecture, Value Engineering and other engineering design services.				
Other Subtotal			\$	
<b>I- Firm's Total Workload with NYCDDC/NYCDOT</b>			\$	

**ATTACHMENT 6 (Continued)**

CURRENT WORKLOAD WITH OTHER CITY & STATE AGENCIES			<i>Date:</i>	
FIRM NAME: _____				
List <b>ALL</b> projects for which the firm currently has contracts with other above agencies and those for which the firm has been officially selected. These shall be categorized as indicated below (Design & Construction Support Services and Other).				
Client Name/ Project Name	Contract #	Type of Work	Uncompleted Portion of Work (\$000)	Percent complete to date (%)
<b>DESIGN &amp; Construction Support Services:</b> Includes Preliminary Design, Final Design and Total Design				
<b>Design Subtotal</b>			\$	
<b>DESIGN &amp; Construction Support Services:</b> For Bridges and Retaining Walls Projects.				
<b>Design Subtotal</b>			\$	
<b>OTHER:</b> Includes Traffic Engineering and Planning Services, Traffic Engineering & Safety, Environmental Engineering, Sub-surface exploration, Utility Engineering, Topographic Survey, Urban Design/Landscape Architecture, Value Engineering and other engineering design services.				
<b>Other Subtotal</b>			\$	
<b>II- Firm's Total Workload with Other City and State Agencies</b>			\$	

**ATTACHMENT 7**

**ACKNOWLEDGEMENT OF ADDENDA**

<b>TITLE OF THE REQUEST FOR PROPOSALS:</b> HWDRWALLF, ENGINEERING DESIGN AND RELATED SERVICES FOR RETAINING WALLS - CITYWIDE	<b>PIN:</b> 8502010RQ0002P
<b>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</b>	
<p><u>    </u> Part I</p> <p>Listed below are the dates of issue for each Addendum received in connection with this RFP.</p> <p>Addendum # 1, dated _____</p> <p>Addendum # 2, dated _____</p> <p>Addendum # 3, dated _____</p> <p>Addendum # 4, dated _____</p> <p>Addendum # 5, dated _____</p> <p>Addendum # 6, dated _____</p> <p>Addendum # 7, dated _____</p> <p>Addendum # 8, dated _____</p> <p>Addendum # 9, dated _____</p> <p>Addendum #10, dated _____</p>	
<p><u>    </u> Part II</p> <p>No Addendum was received in connection with this RFP.</p>	
<p>Proposer Name</p>	
<p>Proposer's Authorized Representative:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>Date: _____</p>	

**ATTACHMENT 8**

**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, 9<sup>th</sup> 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 9****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".

**Federal Aid Projects:**

MWBE requirements shall not apply if the Task Order involves a Federal Aid Project, as described in Section III G of the RFP.

**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 the Article of the Contract entitled "Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement" (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 complete the Subcontractor Utilization Plan (Part II) set forth on the following pages. Subcontractor Utilization Plans which do not include the required affirmations (on Page 2) 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 City determines that the proposer has submitted a Subcontractor Utilization Plan where the required affirmations are completed but other aspects of the Plan are not complete, or contain a copy or computation error that is at odds with the affirmation, the proposer will be notified by the Agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a completed plan to the Agency. Failure to do so will result in a determination that the Proposal is non-responsive. Receipt of notification is defined as the date notice is emailed or faxed (if the proposer has provided an email address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

## **NOTICE TO ALL PROSPECTIVE CONTRACTORS**

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

#### **ARTICLE I. M/WBE PROGRAM**

Local Law No. 129 of 2005 added 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

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the date and time the bids or proposals are due, in writing to the Agency by e-mail at [poped@ddc.nyc.gov](mailto:poped@ddc.nyc.gov) or via facsimile at (718) 391-1866. 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 COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). SUBCONTRACTOR UTILIZATION PLANS WHICH DO NOT INCLUDE THE REQUIRED AFFIRMATIONS 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 CITY DETERMINES THAT VENDOR HAS SUBMITTED A SUBCONTRACTOR UTILIZATION PLAN WHERE THE REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE AFFIRMATION, THE VENDOR WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED PLAN TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE VENDOR HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.**

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. **PLEASE NOTE: If this Contract**

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is a public works project subject to GML §101(5), i.e., a contract valued at or below \$3M (for projects in New York City) where the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any of the Wicks trades, regardless of what point in the life of the contract such subcontracts will occur, at the time of bid submission. 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/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7<sup>th</sup> floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311.

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

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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. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5), i.e., a contract valued at or below \$3M (for projects in New York City) where the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its Subcontractor Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's Subcontractor Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **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 this Contract is for an indefinite quantity of construction or professional services or is a requirements type contract and the Contractor has submitted a Subcontractor Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Subcontractor**

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

13. If **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

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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.



## THE CITY OF NEW YORK

**SCHEDULE B – Subcontractor Utilization Plan – Part I: Agency’s Target**

This page to be completed by contracting agency

**Contract Overview**

**Pin #** 8502010RQ0002P **FMS Project ID#:** HWDRWALLF  
**Project Title** Requirements Contract for Engineering Design and Related Services for Retaining Walls, Citywide  
**Contracting Agency** Department of Design and Construction  
**Agency Address** 30-30 Thomson Avenue **City** Long Island City **State** NY **Zip Code** 11101  
**Contact Person** James A. Cerasoli **Title** Deputy Director  
**Telephone #** (718) 391-1549 **Email** cerasoli@ddc.nyc.gov

**Project Description** (attach additional pages if necessary)

Requirements Contract for Engineering Design and Related Services for Retaining Walls.

**(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.

20%**Subcontractor Participation Goals**

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

Group	Construction	Professional Services
Black American	%	20 %
Hispanic American	%	15 %
Asian American	%	No Goal
Caucasian Female	No Goal	25 %
<b>Total Participation Goals</b>	<b>(2) %</b>	<b>(3) 60%</b>

## SCHEDULE B – 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. AFFIRMATIONS; Bidder/proposer must check the applicable boxes below, affirming compliance with M/WBE requirements.**

Bidder/proposer  AFFIRMS or  DOES NOT AFFIRM [statement below]

It is a material term of the contract to be awarded that, with respect to the total amount of the contract to be awarded, bidder/proposer will award one or more subcontracts for amounts under one million dollars, sufficient to meet or exceed the Target Subcontracting Percentage (as set forth in Part I) unless it obtains a full or partial waiver thereof, and it will award subcontracts sufficient to meet or exceed the Total Participation Goals (as set forth in Part I) unless such goals are modified by the Agency.

- Bidder/proposer  AFFIRMS that it intends to meet or exceed the Target Subcontracting Percentage (as set forth in Part I); or
- AFFIRMS that it has obtained a full/partial pre-award waiver of the Target Subcontracting Percentage (as set forth in Part I) and intends to award the modified Target Subcontracting Percentage, if any; or
- DOES NOT AFFIRM

### 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. This category does not include standard services which may be associated with construction projects but which do not constitute construction, such as trucking, site protection, site security, site surveying, soil testing, extermination, and maintenance/operations.
- 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  Professional Services  Other

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

**NOTE: The "Calculated Target Subcontracting Percentage" MUST equal or exceed the Target Subcontracting Percentage listed by the agency on Page 1, Line (1).**

**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.

	<b>Construction</b>	<b>Professional Services</b>
<b>Subcontracts under \$1M by Industry</b> \$ _____	\$ _____	\$ _____
<b>c.</b> For Construction enter percentage from line (2) from Page 1.		
For Professional Services enter percentage from line (3) from Page 1.		
<b>Total Participation Goals</b> x _____ %	x _____ %	x _____ %
<b>d. Value of Total Participation Goals</b> \$ _____	\$ _____	\$ _____

**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 and Required Affirmations**

*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; 4) agree and affirm that it is a material term of this contract that the Vendor will award subcontract(s) sufficient to meet the Target Subcontracting Percentage, unless a waiver is obtained, and the Vendor will award subcontract(s) sufficient to meet the Total Participation Goals unless such goals are modified by the Agency; and 5) agree and affirm, if awarded this contract the Vendor intends to make all reasonable, good faith efforts to meet the Target Subcontracting Percentage, or If the Vendor has obtained a waiver, the Vendor intends to meet the modified Target Subcontracting Percentage, if any, and the Vendor intends to solicit and obtain the participation of M/WBEs so as to meet the Total Participation Goals unless modified by the Agency.*

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Title** \_\_\_\_\_



**ATTACHMENT 10**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

PIN: 8502010RQ0002P

PROJECT NAME: Requirements Contract for Engineering  
Design and Related Services for Retaining  
Walls, Citywide

PROJECT NO.: \_\_\_\_\_ CONSULTANT: \_\_\_\_\_

Participation by DBE Sub-consultants:  Is being proposed

Participation by DBE Sub-consultants:  Is not being proposed

If being proposed, attach the following:

1. Name(s) and Address(es) of proposed DBE firms.
2. Percentage(s) of assigned participation.
3. NYS DBE Certification(s)\*.

\* An approved letter from the New York State Department of Transportation Office of Equal Opportunity Development and Compliance is required as proof of DBE certification for any DBE prime or sub consultant. The certification must be in effect on the RFP response date.

For further information go to: <https://www.nysdot.gov/main/business-center/civil-rights/dbe>

# ATTACHMENT 11

## DOING BUSINESS DATA FORM

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

#### **What is the purpose of this *Data Form*?**

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

#### **Why have I received this *Data Form*?**

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

#### **What entities will be included in the *Doing Business Database*?**

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

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

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

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

#### **I provided some of this information on the VENDEX Questionnaire; do I have to provide it again?**

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

#### **My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the *Data Form* be completed?**

A joint venture that does not yet exist must submit *Data Forms* from each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.



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

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

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

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

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

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

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

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

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

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

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

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

Contributions to City Council candidates are limited to \$250 per election cycle; \$320 to Borough President candidates; and \$400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at [www.nyccfb.info](http://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](mailto:DoingBusiness@cityhall.nyc.gov).



## Doing Business Data Form

To be completed by the City Agency prior to distribution	
Agency: DDC	Transaction ID: 8502010RQ0002P
Check One:	Transaction Type (check one):
<input checked="" type="checkbox"/> Proposal	<input type="checkbox"/> Concession <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise <input type="checkbox"/> Grant <input type="checkbox"/> Pension Investment Contract

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

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

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

### Section 1: Entity Information

Entity Name: \_\_\_\_\_

Entity EIN/TIN: \_\_\_\_\_

#### Entity Filing Status (select one):

- Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- Change from previous Data Form dated \_\_\_\_\_. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- No Change from previous Data Form dated \_\_\_\_\_. *Skip to the bottom of the last page.*

Entity is a Non-Profit:  Yes  No

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone : \_\_\_\_\_ Fax : \_\_\_\_\_

E-mail: \_\_\_\_\_

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

**Section 2: Principal Officers**

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

**Chief Executive Officer (CEO) or equivalent officer** This position does not exist

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

 This person replaced former CEO: \_\_\_\_\_ on date: \_\_\_\_\_**Chief Financial Officer (CFO) or equivalent officer** This position does not exist

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

 This person replaced former CFO: \_\_\_\_\_ on date: \_\_\_\_\_**Chief Operating Officer (COO) or equivalent officer** This position does not exist

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

 This person replaced former COO: \_\_\_\_\_ on date: \_\_\_\_\_

**Section 3: Principal Owners**

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

**There are no owners listed because (select one):**

- The entity is not-for-profit
- There are no individual owners
- No individual owner holds 10% or more shares in the entity
- Other (explain): \_\_\_\_\_

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

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Section 4: Senior Managers**

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

**Senior Managers:**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

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

Home Address: \_\_\_\_\_

**Remove the following previously-reported Senior Managers:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Certification**

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

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Entity Name: \_\_\_\_\_

Title: \_\_\_\_\_ Work Phone #: \_\_\_\_\_

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

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



**THE CITY OF NEW YORK**  
**DEPARTMENT OF DESIGN AND CONSTRUCTION**  
**DIVISION OF INFRASTRUCTURE**  
**30-30 THOMSON AVENUE**  
**LONG ISLAND CITY, NEW YORK, NEW YORK 11101**  
**REQUIREMENTS CONTRACT FOR**  
**ENGINEERING DESIGN AND RELATED SERVICES**  
**FOR RETAINING WALLS**

**BOROUGH:** City Wide – All Five Boroughs

**FMS NUMBER:** HWDRWALLF

**REGISTRATION NUMBER:** \_\_\_\_\_

**PIN NUMBER:** 8502010RQ0002P

**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 engineering design and related services performed on a requirements basis for various infrastructure construction projects, 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 ("RFP"); (2) the Consultant's Proposal for the Contract, and (3) the Exhibits set forth below. In the event of any conflict between the Specific Requirements and any other component, the Specific Requirements shall prevail.

Exhibit A	Contract Information
Exhibit B	Subconsultants and Key Personnel
Exhibit C	Staffing Requirements: Titles and All Inclusive Hourly Rates
Exhibit D	Minimum Requirements Per Title
Exhibit E	M/WBE Subcontractor Utilization Plan
Exhibit F	Specific Requirements
Exhibit G	DDC's High Performance Infrastructure Guidelines (October 2005). These Guidelines can be downloaded from DDC's website at <a href="http://www.nyc.gov/html/ddc/downloads/pdf/hpig.pdf">http://www.nyc.gov/html/ddc/downloads/pdf/hpig.pdf</a>
Exhibit H	Requirements for Federal Aid Projects
Exhibit I	NYSDOT Procedures for Locally-Administered Federal Aid Projects (available at <a href="https://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects">https://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects</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 Assistant Commissioner 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 "Drawings" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.

1.12 "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.

1.13 "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.

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

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

1.16 "Project" shall mean the Project, or portion thereof, for which engineering design and related services are required, as specified by the Commissioner on a Task Order basis. The services the Consultant may be required to provide for the Project are set forth in Article 6. Pursuant to this Contract, the Consultant shall be required to provide services for Retaining Wall Projects. Retaining Wall structures may include sea walls, bulkheads, waterfront structures, underwater structures, step streets, etc. The existing retaining walls may be of various types (i.e. gravity walls, cantilever walls, countertop walls, buttress walls, etc) and materials (i.e. stone, masonry, un-reinforced concrete, reinforced concrete, soldier beam & lagging, etc.). The existing Retaining Walls may have deficiencies such as structural deterioration, unsafe and collapsed or otherwise damaged and/or deteriorated conditions, etc.

1.17 "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).

1.18 "Shop Drawing" shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.

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

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

1.21 "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.

1.22 "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 specified herein, and the Consultant agrees to so serve. The Consultant agrees to provide, to the satisfaction of the Commissioner, all engineering design and related services necessary and required for the Project, as set forth in this Contract. 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 Task Order Process

4.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, engineering design and related services in accordance with the Task Order process outlined below. The Consultant’s services shall be provided with respect to the Project specified in the Task Order. The Consultant shall not perform services hereunder until the Commissioner has issued a Task Order.

4.2 Issuance of Task Orders: Throughout the term of the Contract, as the need arises for engineering design and related services, the Commissioner shall issue a Task Order to the Consultant. The Commissioner may issue separate and/or supplementary Task Orders to the Consultant for the performance of services for different phases or portions of the Project, or for the performance of any portion or component of the services set forth in Article 6.2. Each Task Order issued hereunder shall specify the items set forth below:

- 4.2.1 Description of the Project for which services are required
- 4.2.2 Services to be performed by the Consultant
- 4.2.3 Requirements for scheduling and/or phasing of the services
- 4.2.4 Time frame for the completion of services
- 4.2.5 Overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed Amount shall be broken down into an Allowance for Staffing Expenses, and, if applicable, an Allowance for Reimbursable Services.

4.3 Supplementary Task Orders: In the event of any changes to the Task Order, the Commissioner shall issue a Supplementary Task Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Task Order issued by the Commissioner.

4.4 Reallocation of Allowance Amounts: Notwithstanding the specific amount allocated for allowances, as set forth in Task Orders issued hereunder, the Commissioner may, by issuance of a Supplementary Task Order to the Consultant, reallocate such specific allowance amounts; provided, however, a Supplementary Task Order is not required if the change in allowance amounts is due to a distribution of the contingency amount. Such change in allowance amount(s) shall be accompanied by a written directive to the Consultant.

4.5 Conflicts: In the event of any conflict between a Task Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the services to be performed, the provisions of the Task Order shall take precedence over Article 6 of this Contract.

4.6 No Right to Reject a Task Order: In the event the Consultant submits a Proposal for a specific Project and is selected to provide services for the Project, the Consultant shall have no right to reject a Task Order issued for the Project or to decline to perform services pursuant thereto. Accordingly, any rejection of a Task Order by the Consultant, either expressly made or implied by conduct, shall constitute a material breach of this Contract.

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

## ARTICLE 5 The Consultant's Personnel

5.1 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required engineering design and related services for the Project in accordance with Task Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Subconsultants, as set forth in Exhibit B, unless otherwise approved by the Commissioner. The Consultant specifically agrees that its employees, agents and Subconsultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

5.2 Key Personnel: Individuals who will provide services as Key Personnel are named in Exhibit B. These individuals were identified by the Consultant in its Proposal for the Contract. For any Projects assigned to the Consultant hereunder, the Consultant specifically agrees to provide, for the entire duration of the Project, the individuals identified in Exhibit B as Key Personnel. Failure by the Consultant to provide as Key Personnel the individuals identified in Exhibit B shall be grounds for termination for cause in accordance with Article 14.

5.2.1 Replacement: No substitutions for Key Personnel shall be permitted unless approved by the Commissioner. Any proposed replacement for Key Personnel must possess qualifications substantially similar to those of the Key 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 Key Personnel or other personnel and substitute another employee of the Consultant or its Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his sole discretion.

5.3 Staffing Requirements: Staffing Requirements 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, and the All Inclusive Hourly Rate per title. If any additional titles of personnel are required for the Project, the Task Order shall specify: (1) additional required titles, (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. Such additional titles and rates specified in the Task Order shall be deemed included in Exhibit C.

5.3.1 Requirements Per Title: Personnel provided by the Consultant and/or its Subconsultants must satisfy the minimum requirements for the title in question 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.

5.4 Staffing Plan: A Staffing Plan shall be established for the Project specified in the Task Order. Such Staffing Plan must be approved by the Commissioner prior to commencement of the Consultant's services.

5.4.1 Contents: The contents of the Staffing Plan are set forth below. Such Staffing Plan shall include only those personnel necessary for performance of the required services.

- (a) Key Personnel: Required titles and specific individual for each title, identified in Exhibit B
- (b) Other Personnel: Required titles and specific individual for each title

- (c) All Inclusive Hourly Rate for each specified individual. The individual's All Inclusive Hourly Rate shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the individual meets the qualification requirements.
- (d) Total estimated hours and amount per title
- (e) Total estimated amount for all required personnel

5.4.2 Payment Limitations: Payment to the Consultant is subject to the limitations set forth below.

- (a) Inclusion in Staffing Plan: The Consultant shall not be entitled to payment for any personnel not included in the approved Staffing Plan. 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.
- (b) Principal: 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) the principal is qualified to perform services in accordance with one of the titles set forth in Exhibit D (other than the title "Principal"), and (2) the principal is included in the approved Staffing Plan for such title.

5.4.3 Proposed Staffing Plan: Within the time frame directed by the Commissioner, the Consultant shall submit a proposed Staffing Plan for the Project. Such proposed Staffing Plan shall include the items set forth above. With respect to each proposed individual, the Consultant shall provide: (1) the individual's resume, as well as any other information detailing his/her technical qualifications and expertise, and (2) the title for which the individual meets the qualification requirements, as set forth in Exhibit D.

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

5.4.5 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 for the Project. The Consultant shall increase or decrease the specified personnel, as directed by the Commissioner.

5.5 Subconsultants: The Consultant shall engage such Subconsultants as may be necessary for the performance of all required services for the Project. The Consultant specifically agrees to engage those Subconsultants identified in its Proposal for the Contract and set forth in Exhibit B, unless otherwise approved by the Commissioner. Failure by the Consultant to provide the Subconsultants set forth in Exhibit B shall be grounds for termination for cause in accordance with Article 14. The Consultant shall be responsible for the performance of services by all its Subconsultants, including maintenance of schedules, correlation of their work and resolution of all differences between them.

5.5.1 Approval: All 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.

5.5.2 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.

5.5.3 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 Article 7. The Consultant shall pay its Subconsultants the full amount due them from their proportionate share of the

requisition, as paid by the City. The Consultant shall make such payment not later than seven (7) calendar days after receipt of payment from the City.

5.5.4 Subcontracts: The Consultant shall inform all Subconsultants engaged for this Project 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.

5.6 Employees of the Consultant: The Consultant is solely responsible for the work and department of all its personnel and its Subconsultants. These are employees of the Consultant or its Subconsultant(s) and not of the City.

## ARTICLE 6 Scope of Services

6.1 General Description of Services: The Consultant shall provide, to the satisfaction of the Commissioner, all engineering design and related services necessary and required for the Project, in accordance with Task Orders issued by the Commissioner. The services the Consultant may be required to provide shall include without limitation the services set forth in this Article 6. The Consultant shall provide such services through its own employees and/or through its Subconsultants.

6.1.1 For each Project for which services are required, the Commissioner shall issue a Task Order. The Task Order shall include a Project Specific Scope of Work, describing the Project and the services to be performed by the Consultant.

6.1.2 The Commissioner may issue separate and/or supplementary Task Orders to the Consultant for the performance of services for different phases of the Project, or for the performance of any portion or component of the services set forth in this Article 6.

6.2 Types of Services: The engineering design and related services to be provided by the Consultant, either through its own employees or through its Subconsultants, shall include all necessary and usual components and/or services in connection with design services for the Retaining Wall projects, as described in the Specific Requirements (Exhibit F).

6.3 Submission and Approval of Deliverables: The Consultant shall submit all required deliverables in accordance with the time frames specified in the Task Order. All required deliverables, including cost estimates, are subject to review and written approval by the Commissioner. All design documents are subject to approval by all regulatory agencies whose approval of the design is required, including without limitation, (1) the New York City Departments of Transportation, Environmental Protection, and Parks; (2) the Landmark's Preservation Commission; (3) the Public Design Commission, and (4) the New York State Departments of Transportation and Environmental Conservation.

## 6.4 Provisions Regarding Engineering Design and Related Services

6.4.1 Criteria for Services: All required engineering design and related services shall be in accordance with the following: (1) the Specific Requirements, (2) the Task Order, and (3) all applicable local, state and federal laws, rules and regulations, including without limitation, AASHTO Standard Specifications for Highway Bridges, the New York City Building Code and the Americans With Disabilities Act.

6.4.2 Engineer of Record: All original drawings shall bear all required stamps of approval, including the seal and signature of the 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 Project.

6.4.3 Tropical Hardwoods: In accordance with Section 165 of the New York State Finance Law, design documents prepared by the Consultant shall not specify the use of tropical hardwoods, as defined in Section 165 of the State Finance Law, except as such use is permitted by the foregoing provision of law.

6.5 Additional Professional Services: The Consultant may be directed in writing by the Commissioner to provide Additional Professional Services for the Project. The Consultant shall provide such Additional Professional Services, if so directed. The Consultant shall provide such services through its own professional employees or through its Subconsultants,

as directed in writing by the Commissioner. Additional Professional Services shall be services which the Commissioner determines are required for the Project and are in addition to or outside of the necessary and usual services set forth in this Article 6.

6.6 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. If so directed, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$5,000. Payment for Reimbursable Services shall be in accordance with Article 7.

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

- (a) Subcontractor services for borings, rock cores, excavation of test pits and/or hazmat services
- (b) Laboratory services for soil or rock classification or other necessary testing or analysis
- (c) Printing of design documents, except for printing performed in the Consultant's office
- (d) Long distance travel. In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant's home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (e) Filing fees and related application fees for New York City agencies
- (f) Fees for street opening permits
- (g) Arboricultural services. Arboricultural services shall be in accordance with standards and requirements of the New York City Department of Parks and Recreation ("DPR") for tree planting, protection and preservation.
- (h) Bulk postage for Mass Mailings No.1 and No.2, Encroachment Notices, Cut and Fill Consent Notices, and requests for permission to enter private property, including certified mail with return receipts.
- (i) Any other services, determined by the Commissioner to be necessary for the Project

6.7 Non-reimbursable Services: Throughout the Project and regardless of whether specified in any Task 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 Article 7 hereof.

6.7.1 The Consultant shall, when requested by the Commissioner, provide overnight delivery of the following Project documents: (1) design documents; (2) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (3) change orders; (4) documents with respect to payment, and (5) any other critical communications and/or documents.

6.7.2 The Consultant shall provide the items set forth below for all personnel performing services.

- (a) transportation, including transportation to the Project site, as well as parking and tolls. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (b) all necessary CAD or computer usage time
- (c) all necessary office supplies and/or tools
- (d) communications equipment and service, including without limitation cellular telephones and beepers, for all personnel assigned to the Project. The telephone and beeper numbers of all personnel assigned to the Project shall be submitted to the Commissioner.
- (e) hard hats

6.8 Assistance to Commissioner: Should any claim be made or any action brought against the Commissioner or the City of New York relating to the design of the Project, the Consultant shall diligently render to the City without additional compensation any and all assistance which may be requested by the Commissioner.

## 6.9 Provisions Regarding Changes to the Design Documents

### 6.9.1 Changes Not Involving Scope:

- (a) The Consultant shall revise and correct, without additional compensation therefore, any and all design documents until the same shall be accepted by the Commissioner and by all other agencies whose approval is required by law.
- (b) Should any substantial change, other than a change in Project scope, make it necessary for the Consultant to change design documents after approval of the preliminary or final design documents, the Commissioner shall direct such change in writing. Such change shall constitute an Additional Professional Service.

6.9.2 Decrease in Scope: The Commissioner shall have the right to reduce the scope of the services of the Consultant hereunder, at any time and for any reason, upon written notice to the Consultant, specifying the nature and extent of such reduction. In such event, the Consultant shall be paid, in accordance with the payment terms set forth in Article 7, for services already performed prior to receipt of written notification of such reduction in scope, as determined by the Commissioner. Any services performed by the Consultant to revise the design documents as a result of the reduction in the scope of the Project shall constitute an Additional Professional Service.

6.9.3 Changes through Fault of Consultant: In the event that any change is required to the design documents because of defects of design or unworkability of details, or because of any other fault or errors of the Consultant, no additional compensation shall be paid to the Consultant for making such changes.

## ARTICLE 7 Payment Terms and Conditions

### 7.1 General

7.1.1 Total Payments: Total payments for all services performed and all expenses incurred pursuant to this Agreement shall not exceed the amount set forth in Exhibit A; provided, however, such amount may be increased in the event the term of the Contract is renewed.

7.1.2 Guaranteed Minimum: In the event the Consultant is not issued any Task Orders hereunder and the Consultant has, throughout the term of the Contract, submitted reasonable Proposals for specific Projects, the City agrees to pay, and the Consultant agrees to accept, a minimum fee of \$2,500. The Consultant further agrees that under such circumstances, it has no action for damages or for loss of profits against the City.

7.1.3 Task Orders: Task 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 broken down into an Allowance for Staffing Expenses, and, if applicable, an Allowance for Reimbursable Services. In the event the allowance amounts set forth in the Task 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.

7.1.4 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Task Orders issued hereunder, the Commissioner may, by issuance of a Supplementary Task Order to the Consultant, reallocate such specific allowance amounts; provided, however, a Supplementary Task Order is not required if the change in allowance amounts is due to a distribution of the contingency amount. Such change in allowance amount(s) shall be accomplished by a written directive to the Consultant.

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

### 7.2 Payment for Staffing Expenses

7.2.1 Allowance: The Task Order shall specify an Allowance for Staffing Expenses. Such allowance is established for payment of the Consultant's staffing expenses for those personnel who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner (the "Assigned Personnel" or the "Assigned Employee"). The Consultant shall not be entitled to payment for staffing expenses for: (1) any Principal(s), and (2) any personnel not included in the approved Staffing Plan.

7.2.2 Maximum Price: The amount of the Allowance for Staffing Expenses shall be based on the total estimated amount for all required personnel set forth in the approved Staffing Plan. Such Allowance amount shall constitute the maximum price to be paid to the Consultant for providing the required staffing for the Project. The Consultant shall not be entitled to payment in excess of the Allowance 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.

7.2.3 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 items set forth below.

- (a) Required Personnel: The personnel specified in the Staffing Plan shall be considered Assigned Employees for the purpose of payment in accordance with this Article.
- (b) All Inclusive Hourly Rates: An All Inclusive Hourly Rate for each Assigned Employee is set forth in the Staffing Plan. Such All Inclusive Hourly Rate shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the Assigned Employee meets the qualification requirements. Such All Inclusive Hourly Rate shall apply to all hours during which an Assigned Employee performs services for the Project, including non-regular business hours. No increase in such rate shall be provided for services performed during non-regular business hours. Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project, (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead, and (4) any anticipated profit.

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

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

7.2.5 No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. The Consultant shall be entitled to payment for a principal's time performing actual services for the Project if the following criteria are met: (1) such principal is qualified to perform services for the Project 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.

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

7.2.7 Increases: The All Inclusive Hourly Rates set forth in Exhibit C shall apply to the three year base term of the Contract. If the base term of the Contract is renewed and/or extended, the All Inclusive Hourly Rates shall be subject to increases at the following times: at the beginning of each year of the renewal term, and at the beginning of the extended term of the Contract, subject to the limitations set forth below.

- (a) Any increase in the All Inclusive Hourly Rates shall be based on the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index").
- (b) Any increase in the All Inclusive Hourly Rates shall be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**. If, for the prior year, the Index showed an increase, the All Inclusive Hourly Rates shall be increased. If, for the prior year, the Index declined or showed no increase, the All Inclusive Hourly Rates shall remain unchanged.
- (c) Any increase in the All Inclusive Hourly Rates shall be applied on a prospective basis only and shall have no impact on rates paid to date.

### 7.3 Payment for Reimbursable Services

7.3.1 Allowance: In the event the Commissioner directs the Consultant to provide Reimbursable Services, the provisions set forth below shall apply. In such case, the Task Order shall specify an Allowance for Reimbursable Services. Reimbursable Services shall be as defined in Article 6. 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.

7.3.2 Procurement: With respect to Reimbursable Services, the Consultant shall utilize the method of procurement directed by the Commissioner. If so directed by the Commissioner, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$5,000.

7.3.3 Form of Payment: With respect to Reimbursable Services, the Consultant shall utilize the form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with one of the following methods: (a) lump sum; (b) unit price, or (c) actual cost, except as otherwise provided in Article 7.3.4 below.

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

7.3.5 No Mark Up: The Consultant shall not be entitled to any mark-up for Reimbursable Services.

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

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

### 7.4 Requisitions for Payment

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

- (a) Project Progress Report: The Consultant shall submit a current report indicating (1) the percentage of completion of all required Work for the Project, and (2) the services the Consultant provided during the payment period.
- (b) Staffing Expenses: For any period for which the Consultant is requesting payment for staffing expenses for an Assigned Employee, the Consultant shall submit the documentation set forth below:
  - (1) Assigned Employee's name and title.
  - (2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.
  - (3) All Inclusive Hourly Rate applicable to the Assigned Employee. The All Inclusive Hourly Rate for an Assigned Employee shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the employee meets the qualification requirements.
  - (4) Number of hours per day during which the Assigned Employee actually performed services for the Project.
  - (5) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for the Project, (2) actual hours during which the employee performed services for other projects, (3) non-billable hours, as defined above, (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 non-regular business hours.
  - (6) Applicable only if services were performed during other than regular business hours: Copy of written authorization by Commissioner for such services.
- (c) Reimbursable Services: For any period for which the Consultant is requesting reimbursement for expenses incurred for Reimbursable Services, the Engineer shall submit: (1) a report describing the services the Consultant was directed to provide, and (2) receipted bills or any other data required by the Commissioner.

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

7.5 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. If the Consultant is paid interest, the proportionate share of that interest shall be forwarded by the Consultant to its Subconsultant.

7.6 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, excepting any disputes that are the subject of pending dispute resolution procedures.

7.7 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.

7.7.1 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 Term of Contract: The Contract shall commence as of the date of registration by the Comptroller and shall remain in effect for the period set forth in Exhibit A. At the Commissioner's sole option, the term of this contract may be renewed for the period and for the increased amount set forth in Exhibit A. The Commissioner may, for good and sufficient cause, extend the term of this Contract for a cumulative period not to exceed one year from the date of expiration.

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

#### 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, notes, designs, drawings, CAD files, electronic files, tracings, specifications, estimates, reports, schedules, charts, graphs, maps, and/or 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 an 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 Insured shall be addressed to the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 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 and Disability Benefits Insurance: The Consultant shall provide, and ensure that each Subconsultant provides, Worker's Compensation Insurance and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

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 Contractor 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 not that of an employee of the City. In accordance with such status as independent contractor, the Consultant covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any

department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including, but not limited to, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

13.2 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.

13.3 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 its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
  - (d) CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a written decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
  - (e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the Corporation Counsel, the Comptroller, the CCPO, and the PPB. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
  - (f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with this Article.
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 shall 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 will 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 Moneys 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 moneys. 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 moneys 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 moneys 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 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; moneys 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 moneys, 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 notwithstanding any other provision of this agreement the Commissioner or Agency Head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event 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 Office of Management and 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 the 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 moneys 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, the 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 41.5 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, 9<sup>th</sup> 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](http://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](http://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).

### ARTICLE 44 Ultra Low Sulfur Diesel Fuel – Coordinated Construction Act for Lower Manhattan

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](mailto: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 COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN (PART II) INCLUDED IN THE RFP. SUBCONTRACTOR UTILIZATION PLANS WHICH DO NOT INCLUDE THE REQUIRED AFFIRMATIONS 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 CITY DETERMINES THAT VENDOR HAS SUBMITTED A SUBCONTRACTOR UTILIZATION PLAN WHERE THE REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE AFFIRMATION, THE VENDOR WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED PLAN TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS EMAILED OR FAXED (IF THE VENDOR HAS PROVIDED AN EMAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.**

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](http://www.nyc.gov/getcertified), by emailing DSBS at [MWBE@sbs.nyc.gov](mailto: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, 7<sup>th</sup> 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 Engineer.

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 is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

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

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**EXHIBIT A**

**CONTRACT INFORMATION**

- Division: Division of Infrastructure
- Type of Projects: Engineering Design and Related Services for Retaining Wall Projects
- Total Amount: Not to Exceed: \$5,000,000
- Contract Time Frame:
  - Contract Term: 1095 consecutive calendar days (“ccds”)
  - Renewal of Contract Term: duration: 730 consecutive calendar days  
increase: up to \$2,000,000
  - Extension of Contract Term: duration: 365 consecutive calendar days

\*\*\*\*\*

**EXHIBIT B**

(A) **SUBCONSULTANTS:** The subconsultants listed below were identified by Consultant in its Proposal for the Contract. The Consultant specifically agrees to engage such subconsultants for the Project.

- Structural Engineering Design Services: \_\_\_\_\_
- Architectural Design Services: \_\_\_\_\_
- Electrical Design Services: \_\_\_\_\_
- Geotechnical Engineering Design Services: \_\_\_\_\_
- Civil Engineering Design Services: \_\_\_\_\_
- Landscape Architectural Design Services: \_\_\_\_\_
- Urban Design Services: \_\_\_\_\_
- Topographic Survey Services: \_\_\_\_\_
- Environmental Engineering Services: \_\_\_\_\_
- Hazmat Services: \_\_\_\_\_
- Traffic/Transportation Engineering Services: \_\_\_\_\_
- Tree Consulting/Arborist Services: \_\_\_\_\_
- Marine Engineering Services: \_\_\_\_\_

(B) **KEY PERSONNEL:** The individuals listed below were identified as Key Personnel by the Consultant in its Proposal for the Contract. The Consultant specifically agrees to assign to the Project for its entire duration, the individuals identified below as Key Personnel, unless otherwise approved by the Commissioner.

- Project Manager
- Senior Structural Engineer
- Senior Project Architect / Designer
- Senior Electrical Engineer
- Senior Geotechnical Engineer
- Senior Civil Engineer
- Senior Landscape Architect
- Senior Urban Design/Planner
- Surveyor (R.L.S.)
- Senior Environmental Engineer

Certified Industrial Hygienist

Senior Traffic/Transportation Engineer

Senior Structural (Marine/Waterfront) Engineer

Diving Inspector / Engineer

Arborist / Forester

**EXHIBIT C: LIST OF 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 per title are set for the below. Such All Inclusive Hourly Rates are deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project, (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead, and (4) any anticipated profit.

**ADDITIONAL TITLES / RATES:** If any additional titles of personnel are required for the Project, the Task Order shall specify: (1) additional required titles, (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. Such additional titles and rates specified in the Task Order shall be deemed included in this Exhibit C.

**STRUCTURAL ENGINEERING DESIGN SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Project Manager	_____
Senior Structural Engineer	_____
Junior Structural Engineer	_____
Senior Engineering Drafter/CADD Operator	_____
Junior Engineering Drafter/CADD Operator	_____

**ARCHITECTURAL DESIGN SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Project Architect/Designer	_____
Junior Project Architect/Designer	_____
Senior Architectural Drafter/CADD Operator	_____
Junior Architectural Drafter/CADD Operator	_____

**ELECTRICAL DESIGN SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Electrical Engineer	_____
Junior Electrical Engineer	_____
Drafter/CADD Operator	_____

**GEOTECHNICAL ENGINEERING DESIGN SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Geotechnical Engineer	_____
Junior Geotechnical Engineer	_____
Drafter/CADD Operator	_____

**CIVIL ENGINEERING DESIGN SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Civil Engineer	_____
Junior Civil Engineer	_____
Drafter/CADD Operator	_____

**LANDSCAPE ARCHITECTURAL DESIGN SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Landscape Architect	_____
Junior Landscape Architect	_____
Drafter/CADD Operator	_____

**URBAN DESIGN/PLANNING SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Urban Designer/Planner	_____
Junior Urban Designer/Planner	_____
Drafter/CADD Operator	_____

**TOPOGRAPHIC SURVEY SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Surveyor	_____
Party Chief	_____
Instrument Person	_____
Rod Person	_____
Senior Drafter/CADD Operator	_____
Junior Drafter/CADD Operator	_____

**ENVIRONMENTAL ENGINEERING / HAZMAT SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Environmental Engineer	_____
Junior Environmental Engineer	_____
Technician / Inspector	_____
Monitor	_____
Certified Industrial Hygienist	_____
Drafter/CADD Operator	_____

**MARINE ENGINEERING SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Structural (Marine/waterfront) Engineer	_____
Junior Structural (Marine/waterfront) Engineer	_____
Diving Inspector / Engineer	_____

**TRAFFIC/TRANSPORTATION ENGINEERING SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Senior Traffic/Transportation Engineer	_____
Junior Traffic/Transportation Engineer	_____
Drafter/CADD Operator	_____

**TREE CONSULTING SERVICES**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Arborist / Forester	_____

**EXHIBIT D**

**MINIMUM REQUIREMENTS PER TITLE**

**MINIMUM REQUIREMENTS PER TITLE:** Any personnel provided by the Consultant and/or its Subconsultants must satisfy the Minimum Requirements Per Title set forth below.

**NOTE:** Various titles listed below are preceded by an asterisk. Such titles are titles of Key Personnel. After selection of the Consultant, DDC will revise the Minimum Requirements for such titles to reflect the actual qualifications of the individuals identified by the Consultant as Key Personnel. Such individuals are listed in Exhibit B.

TITLE	REQUIREMENTS PER TITLE		
	Number of Years of Experience	ASCE or NICET Grade	Professional License or Certification
<b>STRUCTURAL ENGINEERING SERVICES</b>			
* Project Manager	10	ASCE VI	Professional License
* Senior Structural Engineer	7	ASCE V	Professional License
Junior Structural Engineer	3	ASCE II	
Senior Engineering Drafter/CADD Operator	5	N III	
Junior Engineering Drafter/CADD Operator	2	N II	
<b>ARCHITECTURAL DESIGN SERVICES</b>			
* Senior Project Architect/Designer	7		Professional License
Junior Project Architect/Designer	3		
Senior Architectural Drafter/CADD Operator	5	N III	
Junior Architectural Drafter/CADD Operator	2	N II	
<b>ELECTRICAL DESIGN SERVICES</b>			
* Senior Electrical Engineer	7	ASCE V	Professional License
Junior Electrical Engineer	3		
Drafter/CADD Operator	2	N II	
<b>GEOTECHNICAL ENGINEERING SERVICES</b>			
* Senior Geotechnical Engineer	7	ASCE V	Professional License
Junior Geotechnical Engineer	3	ASCE II	
Drafter/CADD Operator			
<b>CIVIL ENGINEERING SERVICES</b>			
* Senior Civil Engineer**	7	ASCE VI	Professional License
Junior Civil Engineer	3	ASCE II	
Drafter/CADD Operator	2	N II	
<b>LANDSCAPE ARCHITECTURAL DESIGN SERVICES</b>			
* Senior Landscape Architect	7		Professional License
Junior Landscape Architect	3		
Drafter/CADD Operator	2	N II	
<b>URBAN DESIGN/PLANNING SERVICES</b>			
* Senior Urban Designer/Planner	7		Professional License
Junior Urban Designer/Planner	3		
Drafter/CADD Operator	2	N II	
<b>TOPOGRAPHIC SURVEY SERVICES</b>			
* Surveyor	7		Professional License
Party Chief	5	N III	
Instrument Person	3	N II	
Rod Person	1	N I	
Senior Drafter/CADD Operator	3	N III	
Junior Drafter/CADD Operator	2	N II	

**EXHIBIT D (Continued)**

**MINIMUM REQUIREMENTS PER TITLE**

<b>TITLE</b>	<b>REQUIREMENTS PER TITLE</b>		
	<b>Number of Years of Experience</b>	<b>ASCE or NICET Grade</b>	<b>Professional License or Certification</b>
<b>ENVIRONMENTAL ENGINEERING/HAZMAT SERVICES</b>			
* Senior Environmental Engineer	5		Licensed by N.Y.S. Dept. of Labor
Junior Environmental Engineer	3		
Technician / Inspector	3		Licensed by N.Y.S. Dept. of Labor & NYC DEP
Monitor	3		Licensed by N.Y.S. Dept. of Labor
* Certified Industrial Hygienist			See Note 5
Drafter/CADD Operator	2	N II	
<b>MARINE ENGINEERING SERVICES</b>			
* Senior Structural (Marine/waterfront) Engineer	7	ASCE VI / NICET VIII A	Professional License
Junior Structural (Marine/waterfront) Engineer	3	ASCE V	Professional License
* Diving Inspector / Engineer	5		Professional License
<b>TRAFFIC/TRANSPORTATION ENGINEERING SERVICES</b>			
* Senior Traffic/Transportation Engineer	7	ASCE V	Professional License
Junior Traffic/Transportation Engineer	3	ASCE III	
Drafter/CADD Operator	2	N II	
<b>TREE CONSULTING SERVICES</b>			
* Arborist / Forester	5		See Note 4

**Notes:**

- (1) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the American Society of Civil Engineers (ASCE). The applicable requirements for the title in question shall be the most current requirements promulgated by the ASCE for that title as of the date on which the Consultant submitted its Proposal for the Contract.
- (2) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the National Institute For Certification In Engineering Technologies (NICET). The applicable requirements for the title in question shall be the most current requirements promulgated by the NICET for that title as of the date on which the Consultant submitted its Proposal for the Contract.
- (3) If a title requires a professional license, such license must be issued by the State of New York.
- (4) The minimum requirements for the specified title of Arborist/Forester shall be the requirements established by the New York City Department of Parks and Recreation, as set forth below.
  - (a) Associate degree in forestry, arboriculture, horticulture, or related plant science field, and five years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
  - (b) B.S. in forestry, arboriculture, horticulture, or related plant science field, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

- (c) M.S. in forestry, arboriculture, horticulture, or related plant science field, and one year of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
  - (d) Arborist certification from the N.Y.S. Arborists/International Society of Arboriculture Chapter, Inc., and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
  - (e) Other state arborist certification recognized by the International Society of Arboriculture or the National Arborist Association, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction.
- (5) The minimum requirements for the specified title of Certified Industrial Hygienist (CIH) shall be the requirements set forth below:
- (a) **Certified Industrial Hygienist (CIH)** - shall possess a CIH license granted by the American Board of Industrial Hygiene (ABIH) for at least five (5) years. An advanced degree (M.S., M.E., and PhD) in science or engineering is preferred. This individual will demonstrate at least fifteen (15) years of experience in this field of expertise with not less than 5 years practical experience in the environmental engineering / science fields.
  - (b) **Duties:** The CIH will act as the lead and provide expert opinion on matters of industrial hygiene, site safety, and environmental compliance. This individual will review and interpret data, author environmental reports and site specific health and safety plans; and shall be responsible for all aspects, including execution and monitoring, of the health and safety program.
- (6) No Payment for Principal: 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) the principal is qualified to perform services in accordance with one of the titles set forth in Exhibit D (other than the title "Principal"), and (2) the principal is included in the approved Staffing Plan for such title.

**EXHIBIT E**

**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.

## EXHIBIT F

### SPECIFIC REQUIREMENTS

#### I. PROJECT INTENT

Under this Contract with the New York City Department of Design and Construction (DDC), Division of Infrastructure, the Consultant shall provide engineering design and related services for various retaining wall projects. The NYC Department of Transportation (DOT) has identified several Retaining Walls that require inspection, monitoring, temporary stabilization (either as a response to an emergency situation and/or non-emergency situation), as well as rehabilitation or reconstruction. Retaining Wall structures may include sea walls, bulkheads, waterfront structures, underwater structures, step streets, etc. The existing retaining walls may be of various types (i.e. gravity walls, cantilever walls, countertop walls, buttress walls, etc) and materials (i.e. stone, masonry, un-reinforced concrete, reinforced concrete, precast concrete, sheet pile, etc.). The designs provided hereunder shall contribute to the visual character of the neighborhoods they serve. This is a requirements contract, i.e., a contract which will be used on an as-needed basis. When the need for services arises in connection with a specific project, the Commissioner will issue a Task Order to the Consultant for engineering services. The projects for which the Consultant's services are required may be located in any of the five boroughs of the City of New York. The Task Order Process is described in Article 4 of the Contract.

#### II. SCOPE OF SERVICES

Types of Services: The types of services the Consultant may be required to provide under this contract are: (1) Emergency Rapid Response Services; (2) Non-emergency Rapid Response Services; (3) Engineering Design Services; and (4) Construction Support Services. Such services are summarized below. A more detailed description of the required services is set forth in Section V of these Specific Requirements. The actual services to be provided by the Consultant for a specific project shall be specified in the Task Order.

Staffing Plan: For all services pursuant to this Contract, the Consultant shall be required to submit a Staffing Plan in accordance with Article 5 of the Contract. Such Staffing Plan must indicate the personnel who will perform the services specified in the Task Order. Staffing requirements for personnel 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. Minimum requirements for personnel are set forth in Exhibit D. Personnel provided hereunder must satisfy such minimum requirements.

The Staffing Plan is subject to review and approval by the Commissioner. Such approval must be obtained prior to the commencement of services hereunder, except under the following circumstances. In the case of rapid response services (emergency and non-emergency), approval of the Staffing Plan is not required prior to the commencement of services; however, such approval must be obtained as soon thereafter as possible.

Criteria for Services: All required engineering design and related services shall be in accordance with the following: (1) the Specific Requirements; (2) the Task Order, and (3) all applicable local, state and federal laws, rules and regulations, including without limitation, the following:

- a. AASHTO Standard specifications for Highway Bridges, 17<sup>th</sup> edition, dated 2002, including latest amendments
- b. NYS Department of Transportation Standard Specifications for Highway Bridges (including Blue Pages), including latest amendments
- c. NYSDOT Bridge Manual, Latest Edition
- d. New York City Building Code, etc.
- e. NYCDOT – Standard Specifications for Highway Operations (June 1986) including All addenda to date
- f. NYSDOT Standard Specifications for Construction and Materials, Latest Edition
- g. NYCDEP Water Supply and Sewer Standards
- h. NYCDOT Street Lighting Standards

Abbreviations: Throughout this Exhibit, the following entities are referred to:

New York City Department of Transportation	DOT
New York City Department of Environmental Protection	DEP
New York City Department of Parks and Recreation	DPR
New York State Department of Environmental Conservation	NYSDEC
New York State Department of Transportation	NYSDOT

**1. EMERGENCY RAPID RESPONSE SERVICES:**

Upon notification of an emergency in relation to a collapsed, unsafe, deteriorated or otherwise damaged retaining wall, the Consultant shall respond to the emergency situation and location as directed by the Commissioner. The engineering services the Consultant shall be required to provide are described below.

**A. Initial Response:**

The Consultant shall be notified of the need for emergency rapid response services by telephone, with prompt confirmation by facsimile or e-mail. Within three (3) hours of such notification, the Consultant shall mobilize and report to the site. At such time, the Consultant shall provide engineering personnel with appropriate expertise, as directed by the Commissioner.

**B. Initial Investigation:**

- i. The Consultant shall conduct an Initial Inspection and Condition Assessment survey. The level of initial inspection shall be Rapid Visual Inspection (RVI) as defined by the New York City Building Code. During this inspection, the consultant shall identify conditions which may be potentially hazardous and unsafe to the vehicular and pedestrian traffic, as well as the community in general.
- ii. The Consultant shall recommend immediate measures to contain the hazardous area and to protect the vehicular and pedestrian traffic, as well as the community in general. These measures may include, but are not limited to: lane or roadway closure, traffic detour, coordination with affected utilities, etc.
- iii. The Consultant shall recommend immediate measures that are required to stop (or minimize) further collapse and/or deterioration of the retaining wall.

**C. Temporary Stabilization Measures:**

- i. The Consultant shall recommend temporary stabilization measures. The Consultant shall provide the engineering design for Temporary Stabilization. The design of Temporary Stabilization shall be performed in accordance with the codes and standards listed above. The design shall maintain the stability and integrity of the retaining wall, and shall protect vehicular and pedestrian traffic, as well as the community in general, until such time as permanent repairs and/or reconstruction can be performed.
- ii. Such Temporary Stabilization measures may include, but are not limited to, installing chain link fence, temporary shoring, temporary barriers, placing a temporary buttress or any other temporary structure, temporary drainage to protect the retaining wall and private properties, etc.
- iii. The Consultant shall recommend a sequence of operations, as well as the type(s) of equipment to be used, for the removal of debris, temporary stabilization, transportation of materials and restoration of the area to a clean, safe and usable condition.
- iv. The Consultant shall recommend a Maintenance and Protection of Traffic (MPT) Plan, including detour, lane and/or roadway closure, temporary traffic signs, etc. as required.
- v. The Consultant shall provide Monitoring (inspection and survey) services for the existing retaining wall until permanent and/or replacement retaining wall is constructed and/or

monitoring is no longer needed. Detailed scope and methodology of the monitoring services shall be as directed by the Commissioner and/or as specified in the Task Order.

**D. Follow-Up In-Depth Inspection(s):**

- i. Based on the Rapid Visual Inspection (RVI), the Consultant shall conduct a follow-up in-depth inspection(s) to determine and evaluate the integrity of the retaining wall and/or temporary stabilization within twenty-four hours of the notification. The frequency of the follow-up in-depth inspection shall be as directed by the Commissioner, throughout the duration the temporary stabilization is in place or until the time when the follow-up in-depth inspection is no longer needed. The scope of the follow-up in-depth inspection shall include, but not be limited to, the following:
  - a. All exposed components shall be visually inspected.
  - b. At least 50% of the concrete surface and/or brick/stone/tile facing shall be inspected and sounded with a hammer. Existing condition of concrete, masonry, brick/stone/tile facing, mortar joints, etc. shall be documented.
  - c. Condition of the retained soil, settlement, washout, condition of weep holes and geological condition as well as general drainage of the surrounding area shall be inspected and documented.
  - d. Vertical tilt and/or horizontal movement shall be measured and documented.
  - e. Visual Inspection of the surrounding area, including existing buildings, existing utilities, trees, landscape, etc. shall be documented.
- ii. During the Follow-up in-depth inspection, any flagged condition (potentially hazardous condition related to the structural integrity, safety, etc.) of the wall shall be “Flagged” and immediately reported to DDC and DOT as per the flag reporting procedure. For details see Article V.B.2.c Flagged Condition.
- iii. It is assumed that as-built drawings are not available. The consultant shall obtain the dimensions from the exposed components/elements of the wall. For those dimensions which cannot be physically measured (i.e. the thickness of wall at base, depth of wall/footing below grade, width and thickness of footing, etc.), the Consultant shall determine if such dimensions are necessary and recommend appropriate method(s) of obtaining the same. The Consultant shall recommend additional field investigation, which may include, but not be limited to:
  - a. Obtaining Cores through the wall stem or footing (as required)
  - b. Obtaining Soil Boring
  - c. Excavating test pits

The Consultant shall prepare sketches/drawings for the retaining wall showing all dimensions, either field measured or assumed, and so indicate on the drawings/sketches. These drawings/sketches shall be used for In-depth Inspections, Follow-up In-depth Inspections, etc.

**E. Monitoring Survey And Monitoring Inspection:**

The Consultant shall recommend the need, methods and frequency of (i) monitoring survey and (ii) monitoring inspection required for the retaining wall.

- i. Monitoring Survey: The Consultant shall, at a minimum, perform the following:
  - a. The Consultant shall establish sufficient horizontal and vertical control baseline at the retaining wall site and provide survey and CADD related services to produce the survey plots.
  - b. The Consultant shall establish a minimum of two (2) inter-visible horizontal and vertical control stations at each site such that the survey for the entire retaining wall

within the project limits can be performed. Additional control stations shall be established as conditions warrant.

- c. The Consultant shall recommend and employ most efficient methods of data collection. These methods may include conventional survey, reflectorless total data collection methods, conventional total station data collection methods, optical total station such as High Definition 3D Laser Scanning, etc.
  - d. At each site, assume the North orientation along the longitudinal face of the wall. The vertical control aspect shall be established at 25 feet and relative to the “low point” of the wall. Cross sectional information shall be collected at a 25 feet interval as well as at the “high point” of the wall.
  - e. The Consultant shall collect sufficient data to establish the curbs, top of sidewalks, bottom of sidewalks, cross slopes, longitudinal slopes, visible surface utilities, location and size of existing features (e.g. street light pole, traffic signal pole, etc.), limits of vegetation, location and diameter of the existing trees, plantings as well as necessary spot elevations.
  - f. The Consultant shall provide CADD related services to produce the survey plots. At a minimum, the Consultant shall produce: (a) topographical survey plots of the project site, (b) 2D Planimetric drawings with spot elevations, (c) a 2D cross sectional view through the “high point” of them wall as well as at 25 feet intervals, (d) feature coding of all survey points in NYCDOT standards; and (e) ASCII point listing of all survey points.
- ii. **Monitoring Inspection:** The Consultant shall determine the need, frequency and type of monitoring inspection required to monitor the structural integrity, stability and safety of the retaining wall and the surrounding area. The methods of monitoring inspection may be similar to Rapid Visual Inspection or hands-on in-depth inspection.
  - iii. In the event, the Consultant observes a considerable movement or deterioration during the Monitoring Survey and Monitoring Inspection, the Consultant shall immediately notify the DDC in accordance with the procedures outlined for Flagged Condition in Section V, subsection B, paragraph c.
  - iv. The Consultant shall submit a report at the end of each Monitoring Survey and Monitoring Inspection cycle, signed by a Professional Engineer licensed in the State of New York for Commissioner’s review and approval.

**F. Photographic Record:**

The Consultant shall take sufficient color photographs during Field Survey, Field Inspection, MPT installation and removal, Soil Investigation Program, as well as other activities deemed appropriate by the Consultant and/or the Commissioner. The Consultant shall provide original color photographs in the Design Report (and other reports), as directed by the Commissioner.

**G. Emergency Inspection Report:**

The Consultant shall submit an Emergency Inspection Report to DDC and NYCDOT, as directed by the Commissioner. At a minimum, the Emergency Inspection Report shall include:

- a. The Consultant’s findings during Rapid Visual Inspection and follow-up in-depth inspection, including detailed description and sketches showing the location, type and extent of deterioration. These findings shall be recorded on the forms developed by the New York City Department of Buildings.

- b. The Consultant shall include the details of geotechnical investigation, test pits, concrete cores, etc. (if any) and its findings and results.
- c. The consultant shall include as many photographs as necessary taken during Field Survey, Rapid Visual Inspection, follow-up in-depth inspection(s), MPT installation and removal, Soil Investigation Program, concrete coring and test pit program, etc. in the Emergency Inspection Report.
- d. The Consultant shall include the methodology used for Monitoring Survey and inspection, as well its results, in the Emergency Inspection Report.
- e. The Emergency Inspection Report shall be signed by a Professional Engineer licensed in the State of New York.

**2. NON-EMERGENCY RAPID RESPONSE SERVICES:**

The Consultant shall respond to a non-emergency situation and location in relation to a collapsed, unsafe or otherwise damaged and deteriorated retaining wall, as directed by the Commissioner. The engineering services the Consultant shall be required to provide are described below:

- A. **Initial Response:** The Consultant shall be notified of the need for non-emergency rapid response services by telephone, with prompt confirmation by facsimile or e-mail. Within twenty-four (24) hours of such notification, the Consultant shall mobilize and report to the site. At such time, the Consultant shall provide engineering personnel with appropriate expertise, as directed by the Commissioner.
- B. The Consultant shall be required to provide engineering services in relation to Initial Investigation, Temporary Stabilization Measures, Follow-up In-depth Inspection, Monitoring Survey and Inspection, Photographic Record and preparation of Emergency Inspection Report. For detailed requirements, see Sections B, C, D, E, F and G under Section 1, Emergency Rapid Response Services.

Once the existing collapsed, deteriorated, otherwise damaged or unstable retaining wall is temporarily stabilized, either using Emergency Rapid Response or Non-emergency Rapid Response Services, it concludes the Consultants responsibilities for the Emergency Rapid Response or Non-emergency Rapid Response Services. However, the Consultant shall continue the monitoring survey and monitoring inspection as directed by the Commissioner or until such time when the monitoring is no longer needed. The Consultant may be directed to provide Engineering Design Services for the permanent replacement or reconstruction of any retraining wall in any borough of the City of New York. In that event, the Consultant shall provide Engineering Design Services in accordance with Section 3 below. The Consultant may also be directed to provide Construction Support Services for the reconstruction of any retraining wall in any borough of the City of New York. In that event, the Consultant shall provide Construction Support Services in accordance with Section 4 below.

**3. ENGINEERING DESIGN SERVICES:**

Upon written authorization by the Commissioner, the Consultant shall provide engineering design services for the rehabilitation, reconstruction and/or replacement of the retaining wall. The scope of services shall be described in detail in the Task Order. Engineering design services shall be in accordance with Section III Engineering Design Services of these Specific requirements.

**4. CONSTRUCTION SUPPORT SERVICES:**

Upon written authorization by the Commissioner, the Consultant shall provide construction support services for the rehabilitation, reconstruction and/or replacement of the retaining wall. The scope of services shall be described in detail in the Task Order. Construction Support Services shall be in accordance with Section VI Construction Support Services of these Specific requirements.

**III ENGINEERING DESIGN SERVICES - GENERAL APPROACH:** The scope of services the Consultant shall be required to provide under the Engineering Design Services is set forth below:

A. During the Engineering Design Services Phase, the Consultant shall provide all engineering design services required for: (1) preparation and coordination of all required design documents, including Construction Documents, (2) Bid Analysis, and (3) submission of Final Contract Document Records, including electronic media. The Engineering Design Services Phase is broken down into the following sub-phases:

- a. Schematic Design
- b. Design Development
- c. Construction Documents
- d. Bid Assistance Analysis
- e. Submission of Final Contract Document Records

Payment for all required Engineering Design Services for the Project, as set forth in these Specific Requirements, shall be in accordance with Article 7 of the Contract.

B. The services to be provided by the Consultant include, without limitation, the following:

1. Areas of design services:

- a. Structural Engineering Design, including Marine/Waterfront Engineering Design
- b. Structural (in-depth) inspection, including underwater inspection
- c. Geotechnical Engineering Design
- d. Civil Engineering Design (Drainage Design and Incidental Roadway/Grading)
- e. Architectural Design
- f. Landscape Architectural Design
- g. Electrical Design (including Street Lighting and Traffic Signal Design)
- h. Urban Design Services
- i. Highway Design
- j. Sustainable Design

2. Other Services

- a. Topographical Survey
- b. Utility Coordination and Relocation
- c. Railroad Coordination
- d. Coordination and Meetings as Necessary for Approvals
- e. Environmental Services, including the following:
  1. Environmental Assessment Statement (EAS)
  2. Environmental Impact Statement (EIS)
  3. Uniform Land Use Review Procedure (ULURP) filing
  4. Section 4f Evaluation Report
- f. Hazmat Services

3. Reimbursable Services: Reimbursable Services are services determined by the Commissioner to be necessary for the Project. Please refer to Articles 6 and 7 of the Contract for the payment of Reimbursable Services.

C. The Consultant shall obtain all required approvals. All required design documents, including cost estimates, are subject to review and written approval by the Commissioner. Final design documents are subject to approval by all Federal, State and local agencies having jurisdiction including, without limitation, the following: (1) NYCDOT, (2) NYC Public Design Commission, (3) Landmark Commission, and (4) local Community Boards. With respect to certain projects, other approvals may be required. Such other approvals that may be required include, without limitation, the following: (1) DPR, (2) DEP (Sewers and Water), (3) NYSDEC (Wetlands), (4) NYSDOT, (5) US Coast Guard, (6) Army Core of Engineers. If a project is in the vicinity of a Railroad, affected railroad may have jurisdiction. In that event, approvals will be required from the affected railroad.

If a project requires a Uniform Land Use Review Procedure (ULURP) filing and approval, such professional services shall be considered Reimbursable Services and will be provided at the written direction of the Commissioner. Reimbursable Services are described in Articles 6 and 7 of the Contract.

D. The services to be provided by the Consultant shall include without limitation the services described below.

1. Schematic Design: During the Schematic Design phase, the tasks to be performed by the consultant shall include, without limitation, the tasks described below:

- a. Research and collection of record data (described in Section V)
- b. Site Inspection (described in Section V)
- c. Schematic Design: Initially, the Consultant shall provide at least three distinct alternative schematic design drawings that are appropriate for the local neighborhood and the overall environment. Unless otherwise directed, the Consultant shall investigate at least one rehabilitation alternative. These schematic designs shall be presented to DDC for initial approval. During the schematic design phase, the consultant shall be required to produce as many design drawing alternatives and/or revisions as necessary to obtain the approvals of the agencies having jurisdiction, as well as DDC, before progressing to the Design Development phase. For each alternative, the Consultant shall address the accommodation of pedestrian traffic as well as vehicular traffic in and around the project area. Each alternative shall include, at a minimum:
  1. Use of material for various elements of superstructure and substructure
  2. Overall architectural design
  3. Landscape design and site design
  4. Compliance with ADA
  5. Advantages, disadvantages and construction duration
  6. Maintenance and Protection of Traffic
  7. Cost Estimate

The materials/components used for the schematic design shall be materials that can be readily obtained for maintenance and/or replacement purposes from various sources (i.e., not restricted to a sole source). Whenever possible, standard (reusable) components and materials shall be used. In addition, the specified materials shall be materials that can be maintained at minimal cost.

Upon review and approval of the schematic design by DDC, the Consultant shall make a presentation to DOT and DPR, if required. Upon approval of the schematic design by DDC, DOT and DPR, the Consultant shall make presentations to the Community Board and the Art Commission. The Consultant shall utilize the format required by the Art Commission. Upon final approval of the schematic design by all agencies whose approval is required, the consultant shall proceed to the Design Development phase.

More detailed requirements for this phase are set forth in Section V.

2. Design Development

Upon approval of the schematic design and written authorization by the Commissioner, the consultant shall proceed to the Design Development phase and further develop the approved Schematic Design. During this phase, the Consultant shall perform the tasks and provide the deliverables set forth below.

- a. Retaining Wall Condition Inspection Report(s) (RWCIR): The Consultant shall perform an in-depth inspection and prepare a Retaining Wall Condition Inspection Report (RWCIR) for the retaining wall(s). The purpose of the RWCIR is to record and document the existing condition of the retaining wall(s). The RWCIR shall include, without limitation, a Condition Inspection, schematic plans, cross section and elevation of the existing retaining wall(s). The RWCIR shall include the results of each of the above tasks.

- b. The Consultant shall perform the services set forth in Section V (Detailed Requirements). Such services include, without limitation, submission of the following: (1) Field Survey, (2) Soil Investigation Program, and (3) Geotechnical Foundation Report.
- c. Preliminary Design: The Consultant shall prepare the Preliminary Design, including necessary site design, based on the approved Schematic Design of the retaining wall(s). The Preliminary Design shall include existing and proposed plans, elevations, cross sections and other pertinent details of the retaining wall, including the site design. The Preliminary Design shall show sufficient details to ensure constructability of the proposed scheme, including all existing and proposed utilities, seismic retrofitting and/or seismic design (if required), etc. The Preliminary Design shall also include detailed MPT drawings, detailed Right-of-Way plan and itemized scope of work. The Preliminary Design submission shall also include an up to date itemized cost estimate. The Preliminary Design shall serve as a basis for development of the Construction Documents.
- d. Preliminary Design shall constitute about 50% of the Construction Documents. Upon review and approval of the Preliminary Design by DDC, the consultant shall make a presentation to DOT, other affected agencies and appropriate Community Board(s). Upon approval of the Preliminary Design by DDC, DOT, affected agencies and the Community Board, the Consultant shall make presentations to the Art Commission and obtain its approval. The Consultant shall utilize the format required by the Art Commission. The Consultant shall also schedule and hold an All Agency Conference (or Alignment Meeting) as directed by the Commissioner. Upon approval of the Preliminary Design by all parties involved, the consultant shall proceed to the “Construction Document” phase.

More detailed requirements for this phase are set forth in Section V.

3. Construction Documents (Final Design):

Upon approval of the Preliminary Design and written authorization by the Commissioner, the Consultant shall proceed to Construction Documents (Final Design) phase. The consultant shall prepare the Construction Documents based on the approved Preliminary Design. Construction Documents shall be used for public bidding. During this phase, the Consultant shall perform the tasks and provide the deliverables set forth below.

Advanced Plans Submission: The Advanced Plans Submission shall consist of 90% complete plans including Structural, Architectural, Lighting and Site Design Drawings, 90% complete specification books(s), 90% complete special specifications, and 90% complete itemized estimate(s) for each retaining wall(s). In each instance, 90% complete means equal to 90% of a Construction Documents submission.

- b. All Agency Conference (or Alignment Meeting): The Consultant shall schedule an All Agency Conference (or Alignment Meeting) and provide sets of Advanced Plans to all impacted agencies. The Consultant shall conduct the All Agency Conference to receive comments from all impacted agencies.
- c. Upon review and approval of the Advanced Plans by DDC, the consultant shall make a presentation to DOT, other affected agencies and appropriate Community Board(s) and obtain their concurrence.
- d. Upon approval of the Advanced Plans by DDC, DOT, the Community Board and affected agency, the Consultant shall make presentations to the Art Commission and obtain its final approval. The Consultant shall utilize the format required by the Art Commission.
- e. Plans, Specifications and Estimate (PS&E) Submission: The Consultant shall make a PS&E submission to DDC for each retaining wall project. The PS&E submission shall consist of 100% Plans, 100% Specifications & Final Itemized Cost Estimate.

- f. Construction Documents Submission: Upon review and approval of the PS&E submission by DDC, DOT and other affected parties, the consultant shall submit required Construction Documents to DDC. Construction Documents shall be used for public bidding of the required construction work for the retaining wall project (s).

More detailed requirements for this phase are set forth in Section V.

4. Bid Assistance and Analysis:

During this phase, DDC will advertise and solicit bids from prospective bidders for the reconstruction of the retaining wall project(s). Upon inquiries from the prospective bidders, the Consultant shall provide clarification, and, if directed by the Commissioner, prepare an addendum for public distribution. The Consultant shall attend the Public Bid Opening. After bids are opened, DDC will provide a computerized Bid Tabulation to the Consultant. The Consultant shall review and analyze all bids received for the retaining wall project(s). The Consultant shall provide written recommendations to the Commissioner regarding the responsiveness of the bids received.

During this phase, the Consultant shall prepare Record Drawings, Electronic Media and indexing services for all contract documents in accordance with the latest edition of NYCDOT's "Specifications for the Preparation of Record Drawings and Electronic Media".

5. Submission of Final Contract Documents Records:

During this phase, the Consultant shall deliver Final Contract Documents Records to DDC and/or DOT as directed by the Commissioner.

More detailed requirements for this phase are set forth in Section V.

#### **IV. GENERAL REQUIREMENTS AND PROJECT COORDINATION**

During the Engineering Design Services Phase, the Consultant shall be responsible for providing the services set forth below on a continuous basis.

**A. General:**

1. The Consultant shall perform all design services using English (FPS) units of measurement.
2. The retaining wall shall be designed and constructed within the bounds of its Right of Ways (ROW).
3. The design shall provide for the continuation of vehicular and/or railroad traffic in the vicinity of the project area. Access to private properties must be maintained at all times during construction.
4. The Consultant shall refer to DDC's High Performance Infrastructure Guidelines (October 2005) (Exhibit G), and incorporate the applicable requirements into the design of various components.

**B. Progress Reports:**

1. The Consultant shall prepare and submit a detailed Baseline Progress Report at the Start-up meeting for approval by the Commissioner for the retaining wall project(s). The Baseline Progress Report shall include, but not limited to, Baseline Bar Charts (Schedule), listing of proposed activities, listing of contract drawings showing the estimated percent of completion for each drawing, etc.
2. The Consultant shall prepare and submit a Baseline Bar Chart that is in accordance with the Contract Schedule set forth in the Task Order. The Baseline Bar Chart shall include, but not be limited to, the following: target dates for completion of In-depth Inspection, Field Survey, Concrete Coring, Soil Investigation Programs; submission dates for Draft Retaining Wall Condition Inspection Report, Final Retaining Wall Condition Inspection Report, Draft Preliminary Drawings, Approved Preliminary

Drawings; Advanced Plans; Plans, Specifications & Estimate (PS&E), Construction Documents; ULURP completion date (if required); a detailed listing of all tasks, sub-tasks and milestones; the time necessary to complete the various tasks, sub-tasks and milestones; the interrelationship of milestones; the interrelationship and dependency of the various elements of the Baseline Bar Chart; and the critical path for the retaining wall project(s).

3. DDC shall establish a Monthly Anniversary Date and Reporting Period for the submission of the Monthly Progress Reports. The date of the advice of award (or Notice to Proceed) may be used as the Anniversary Date. The reporting Period shall be from the monthly Anniversary Date to one day prior to the next Anniversary Date.
4. The Consultant shall submit Monthly Progress Report on a monthly "Anniversary Date" basis to the Commissioner for approval, no later than two (2) working days following the close of the reporting period. The Consultant shall submit Monthly Progress Reports up to the completion of the project.
5. In this Monthly Progress Report, the Consultant shall analyze the Project's progress as it relates to the approved Baseline Bar Chart. Additionally, the Monthly Progress Report shall include, but not be limited to, the following: actual time used for each tasks; changes in targeted completion dates for the various tasks; the reasons for any delays in the targeted completion dates; the need and justification for any extensions of time; a narrative description of the work performed during the reporting period; a narrative description of the work projected for the next reporting period; a list of contract drawings showing the estimated percent of completion of each drawing; and a revised work plan which reflects the Project's current status at the end of the instant reporting period. All contract times and extensions of time (if any) shall be indicated.

**C. Meetings and Coordination:**

1. The Consultant shall schedule, coordinate and participate/function as Chairperson at all meetings held during the progress of the contract, including any/all required follow-up meetings and/or actions.
2. The Consultant shall prepare draft and final minutes for all required meetings and conferences. The draft minutes shall be prepared and distributed to the DDC Project Manager, Engineer and affected parties within two (2) business days of the meeting. Upon receiving comments on the draft minutes, the Consultant shall revise the minutes, as appropriate, and shall distribute final minutes of meeting within five (5) business days.
3. The Consultant shall prepare and distribute all necessary correspondence as directed by the Commissioner.

**D. Public and Private Utilities:**

1. Any utility owned and/or maintained by the City of New York or any of its agencies (e.g. watermain, sewer line, street lighting, traffic signals, fire department cables, etc), is defined as Public Utility.
2. Any utility, which is not owned and/or maintained by the City of New York or any of its agencies (e.g. gas main, Con Edison electric lines, telephone lines, fiber- optic lines, cable services, oil-o-static pipelines, etc.), is defined as Private Utility.
3. The consultant shall clearly identify the location and ownership of all utilities, public as well private, existing or proposed, within the project limits.
4. Public Utilities: The Consultant shall provide design services for all items of work required by the Public Utility. At the onset of the Project, the Consultant shall meet with Public Utility to identify the items of work to be included in the design. At a minimum, the work shall include the following items: (1) maintenance of existing utility services during construction, (2) relocation of existing utilities, and (3) installation of new utilities and support.

- a. For all items of work required by the Public Utility, the Consultant shall provide all required design services at each stage of the design (preparation of plans, specifications, construction details, cost estimates, etc.).
5. Private Utilities: Design services for the Private Utilities may be provided in one of the ways set forth below. Design documents (plans and specifications) covering the Private Utility work shall be included by the Consultant in the Construction Documents.
- a. The Consultant may enter into an independent fee agreement with the respective Private Utility to provide all required design services. At the onset of the Project, the Consultant shall meet with Private Utility to identify the items of work to be included in the design. At a minimum, the work shall include the following items: (1) maintenance of existing utility services during construction, (2) relocation of existing utilities, and (3) installation of new utilities and support. For all items of work required by the Private Utility, the Consultant shall provide all required design services at each stage of design (preparation of plans, specifications, construction details, cost estimates, etc.).
  - b. The Private Utility may provide its own design services. In that event, the utility shall provide design documents covering the utility work (plans, specifications, estimates, etc.) and shall submit the same to the Consultant. The Consultant shall review the documents, advise DDC of the impact of the proposed utility work on the project, and recommend whether or not to include the utility work in the project. If DDC approves inclusion of the utility work, the Consultant shall provide services to ensure proper coordination of the work.
6. The Consultant shall obtain timely approval letters from all affected public and private utilities prior to the finalization of the Construction Documents.

**E. Permits:**

1. Permits may be required from the impacted agencies during the design and/or the construction. The impacted agencies include, without limitation: Army Corps of Engineers, Coast Guard, NYSDEC, DPR (for tree removal, planting and tree mitigation requirements), DOT, etc.
2. The Consultant shall obtain all permits necessary for completion of the design. The Consultant shall start the permit application process as early as possible in the design phase to ensure that all required permits are obtained in a timely fashion.
3. The Consultant shall include language in the Construction Documents requiring the contractor to obtain all necessary permits. The Consultant shall clearly identify all permits the contractor is required to obtain for construction of the project.
4. The application fees and permit fees shall be considered Reimbursable Expenses and shall be paid in accordance with Article 7 of this contract.

**F. Environmental Services:**

1. The Consultant shall, through its subconsultant for Environmental Services (or through its own employees if the Consultant has in-house expertise), provide the services specified below. Payments for the services of the Environmental Subconsultant shall be as set forth in Article 7 of the Contract. The Consultant shall be responsible for coordinating the services provided by the Environmental Subconsultant.
2. Services such as preparation of Environmental Impact Statement (EIS), Environmental Assessment Study (EAS), Land Use Assessment (Uniform Land Use Review Procedure (ULURP), Section 4f Evaluation, etc. are considered Environmental services.

**G. Railroads:**

1. If the retaining wall project is located in the vicinity of a railroad, the services to be provided by the Consultant shall include the design and coordination services described below.
2. The Consultant shall provide design services for all items of work required by the Railroad. At the onset of the Project, the Consultant shall meet with Railroad to identify the items of work to be included in the design. At a minimum, the work shall include the following items: (1) maintenance of existing railroad facilities during construction (signal & communication cables, power cables, etc.), (2) relocation and reinstallation of existing facilities, (3) electrification modifications, and (4) installation of new supports.
3. For all items of work required by the railroad, the Consultant shall provide all required design services at each stage of the design (preparation of plans, specifications, construction details, itemized cost estimates, etc.). The Consultant shall include in the Construction Documents parameters specified by the railroad for the design of shielding and/or containment. (The design of shielding and/or containment is to be provided by the contractor.)
4. The Consultant shall enter into an agreement with the railroad known as a “Force Account Agreement.” In accordance with such agreement, the railroad generally provides services in connection with the project, such as the following: (1) flagging services during inspection, field survey, geotechnical investigation program (borings, probes, etc.); (2) services for review and approval of Construction Documents; (3) services for review of the construction schedule, and (4) services to provide an estimate of construction phase expenses, known as “Force Account Estimate”.
5. The items of cost listed below incurred by the Consultant in connection with the Force Account Agreement shall be considered Reimbursable Services in accordance with Article 6 of the Contract.
  - a. The cost of services provided by the railroad under the Force Account Agreement, and
  - b. The cost of insurance (if any) obtained by the Consultant under the Force Account Agreement which is above and beyond the types and amounts of insurance the Consultant is required to provide under Article 11 of the Contract.
  - c. The cost of entry permit fees.
6. The Consultant shall provide administrative services in connection with the Force Account Agreement. Such administrative services shall include without limitation the services set forth below.
  - a. schedule safety training classes prior to performing services on railroad property. Such training classes will be provided by the railroad and must be attended by all employees and agents of the Consultant, its Subconsultants and/or its Subcontractors who will be performing services on railroad property.
  - b. schedule and coordinate flagmen services during activities at the site (inspection, surveying, geotechnical investigation program, etc.)
  - c. keep a record of the flagmen services provided. When flagmen services are provided, the railroad is only entitled to receive payment for the days the flagmen were at the site together with the Consultant.
  - d. review requests for payment from the railroad and provide verification to DDC that the services for which the railroad is requesting payment were actually provided.
  - e. process payments to the railroad pursuant to the Force Account Agreement.
7. The Consultant shall obtain approval letters from affected railroad(s) prior to the finalization of the Construction Documents and shall incorporate all approved work into the Construction Documents.

## V. DETAILED REQUIREMENTS

This section sets forth detailed requirements for each phase described in Section III, General Approach.

### A. Schematic Design – Detailed Requirements:

#### 1. Research and Collection of record data:

- a. The Consultant shall research, assemble and review all available record data (existing plans, specifications, as-built drawings, reports, designs, surveys, maps, maintenance records, traffic counts, alignment maps, construction photographs, accident records, etc) including the latest NYCDOT and NYSDOT Inspection Reports and Retaining Wall Inventory Listing.
- b. The Consultant shall determine the location of such available record data; obtain a copy from the appropriate Agency/Department, put them in chronological order and inventory as per DOT specifications. The Consultant shall submit a copy to the Commissioner.
- c. The Consultant shall review all available record data and coordinate/reconcile this data with the existing conditions of the retaining wall as identified through the Consultant's Condition Inspection and field survey.
- d. The Consultant shall obtain, and become familiar with, all applicable Departmental Design Directives, Standard Details, Administrative Procedural Bulletins and guidelines for the prosecution of the work/services under the various elements of the project. These shall include, but not be limited to, the latest editions (including all amendments) of the following manuals published by the New York City Department of Transportation (NYCDOT), the New York State Department of Transportation (NYSDOT), American Association of State Highway and Transportation Officials (AASHTO) and Federal Highway Administration (FHWA).

NYCDOT Requirements for the Preparation of Engineering Drawings and Documents  
NYCDOT Specifications for the Preparation of Record Drawings and Electronic Media  
NYCDOT Detailed Instructions for the Computerized Indexing of Engineering Drawings and Documents  
NYCDOT Bureau of Highway Operations, June 1986 , including ALL addendums to date  
NYCDOT Street Lighting Standards  
NYCDOT Uniform Land Use Review Procedure  
NYC Specifications for Title Examinations and Reports on Street/Railroad Intersections  
NYC Specifications for Title Examinations and Reports on Privately Owned Tax Lots  
NYCDEP Water Supply and Sewer Standards  
NYSDOT Engineering Bulletins and Engineering Instructions  
NYSDOT Highway Design Manual, Volumes 1 and 2  
NYCDDC Standard Specifications  
NYSDOT Steel Construction Manual  
NYSDOT Geometric Design Policy  
NYSDOT Prestressed Concrete Construction Manual  
NYSDOT Manual of Uniform Traffic Control Devices  
NYSDOT Right of Way Mapping Procedure Manual  
NYSDOT Manual of Administrative Procedure (MAP)  
AASHTO Standard Specifications for Highway Bridges, as amended by NYSDOT (Blue Pages)  
ASTM Standard Specifications  
Uniform Building Code  
New York City Building Code  
Electric Code of the City of New York  
National Electric Code

#### 2. Site Inspection/Access:

- a. Where the plans are not available, the Consultant shall take necessary field measurements of the existing retaining wall as required.
- b. The Consultant shall interview affected parties, including governmental and non-governmental personnel, as directed by the Commissioner, to determine if the project will impact on their activities and to ascertain all existing concerns, issues, problems and programs directly related to the project. The Consultant shall fully coordinate all activities with all Federal/State/City Agencies, public/private utilities or organized groups, which in the opinion of the Commissioner and/or the Consultant are necessary for the development of fully coordinated Construction Documents.
- c. The Consultant shall coordinate all fieldwork required (Field Survey, Retaining Wall Condition Inspection, Soil Investigation, etc.) to minimize the impact on the traveling public and the community.

## **B. Design Development – Detailed Requirements**

During the Design Development phase, the services to be performed by the Consultant shall include without limitation the services described below.

1. **Field Survey:** The Consultant shall perform a Field Survey in accordance with DOT Procedures. A New York State Licensed Land Surveyor shall perform the Field Survey. The Consultant shall determine the survey limits such that it meets the requirements of the Contract and encompasses the limits of the project, including Schematic Design, Design Development and Final Design. The Consultant shall identify the Survey Limits on a Base Plan and submit to the Commissioner for approval. At a minimum, the survey limits shall extend at least 100 feet on either side of the retaining wall in longitudinal direction and 100 feet on either side of the retaining wall fascias in the transverse direction. The survey shall also show all existing surface and underground public and private utilities within the project limits. The Consultant shall prepare and submit the plotted signed and sealed survey drawings to the Commissioner.
2. **Retaining Wall Condition Inspection Report (RWCIR):** The Consultant shall perform a Retaining Wall Condition Inspection in accordance with the NYSDOT and NYCDOT Inspection procedures. The Consultant shall prepare a Retaining Wall Condition Inspection Report (RWCIR) for each retaining wall, in accordance with the latest edition of the NYCDOT Procedures. The purpose of the RWCIR is to record and document the condition of the existing retaining wall. The RWCIR shall include schematic plan, cross section and elevation, to scale, showing general configuration of the existing retaining wall. The RWCIR shall include the following:
  - a. **Preparation for Inspection:**
    - i. The Consultant shall develop and prepare a Maintenance and Protection of Traffic (MPT) plan(s) (addressing vehicular, rail, waterway and pedestrian traffic) for the Retaining Wall Condition Inspection, Field Survey, Soil Investigation Program, etc. The Consultant shall coordinate with the NYCDOT - Office of Construction Mitigation and Coordination (OCMC) and other appropriate parties (Railroad, Coast Guard, etc.) in order to prepare proposed MPT plan(s). The Consultant shall obtain all required approvals, permits and working hours from all affected agencies prior to the commencement of the work. It may be necessary to work off peak hours, nights and weekends.
    - ii. Where the retaining wall project is located in vicinity of Railroad(s), the Consultant shall coordinate with the affected railroad(s). The Consultant shall coordinate and schedule flagmen services during all activities at the site (inspection, surveying, geotechnical investigation program, etc.). The Consultant shall keep a record of the flagmen services provided by the railroad and submit to the Commissioner on a monthly basis.
    - iii. Where the retaining wall is acting as a Marine, Waterfront or bulkhead structure or located in close proximity of water, the Consultant shall determine the requirements for underwater inspection based upon the visual inspection and review of latest available (if any) underwater inspection report.

**b. Performance of Inspection:**

- i. The Consultant shall provide and install necessary traffic controls as per the approved MPT plan and as required/stipulated by OCMC to close those lanes/sections of the roadway needed to perform the Retaining Wall Condition Inspection/Field Survey.
- ii. Where inspection is performed near or under water or over railroad tracks, the Consultant shall set up additional traffic controls as directed by the affected Agency and/or Railroad(s).
- iii. Upon completion of the inspection, all temporary equipment shall be removed and the site left in a neat and orderly manner.
- iv. If required, the Consultant shall perform a detailed underwater diving inspection to access the condition of the retaining wall/waterfront structure/bulkhead in accordance with the New York State Specifications for Diving Inspection of Bridges. The Consultant shall follow all applicable federal/state/local regulations. The diver shall be a New York State licensed Professional Engineer.

**c. Flagged Conditions:**

- i. The Consultant shall immediately inform by telephone the Engineer-in-Charge of Retaining Wall Program of any unsafe and/or flagged conditions found during the course of the in-depth inspection or monitoring inspection.
- ii. Such information shall be communicated immediately by written notification to the NYCDDC Engineer-in-Charge and NYCDDC Director of Retaining Wall Program. Written notification shall include drawings showing the location(s) of the condition(s) and recommended repair and/or support details; photos of the condition(s) and design computations for the affected structural member(s) and proposed repairs.

**d. Traffic Data Review:**

- i. The Consultant shall obtain any available traffic data from NYCDOT. The data shall include, but not be limited to, the daily, as well as hourly, volume of pedestrians and vehicular traffic in each of the travel directions.
- ii. The Consultant shall obtain the functional classification from the NYCDOT to be utilized in determining/analyzing applicable geometric and substandard features.

**e. Substandard Features:**

The Consultant shall prepare a Substandard Features Checklist. At a minimum, the Substandard Features Checklist shall show what the standard features should be and the appropriate reference from which it is obtained, what are the components of the existing features and what action is proposed.

**f. Hazmat Services:**

- i. The Consultant shall, through its subconsultant for Hazmat Services (or through its own employees if the Consultant has in-house expertise), provide investigative and design services in connection with the abatement or removal of Hazardous Materials. Hazmat Services shall be as set forth below. Payments for the services of the Hazmat Subconsultant shall be as set forth in Article 7 of the Contract. The Hazmat Subconsultant's services shall be performed in accordance with all current applicable, Federal, State, and City regulations. The Consultant shall be responsible for coordinating the services provided by the Hazmat Subconsultant.

- ii. Hazardous Materials shall include, without limitation, asbestos containing materials (ACMs), lead-based paint (LBP), contaminated soil, contaminated water and other materials hazardous to the environment.
- iii. Survey / Assessment: The Hazmat Subconsultant shall perform a survey of the Project site to determine the presence and location of Hazardous Materials in the area of the proposed work. The Hazmat Subconsultant shall conduct a sampling and testing program to determine the presence and location of Hazardous Materials. Such sample collection and testing shall be done in accessible and inaccessible areas in the vicinity of the proposed work. The Hazmat Subconsultant shall determine whether any Hazardous Materials present in the area of the proposed work may be disturbed, altered, demolished or affected by such work.
  - a. The Consultant shall retain the services of a qualified contractor to obtain samples, as well as the services of a qualified testing laboratory to perform the tests on the samples. Such services shall be in compliance with all applicable City/State/Federal regulations and requirements. Such services shall be provided at the written direction of the Commissioner, and shall be paid for as Reimbursable Services, as set forth in Article 7 of the Contract.
  - b. The Hazmat Subconsultant shall survey/assess the project site and prepare a report which identifies presence of Hazardous Materials in the area of the proposed work, including type, location, quantity and condition. Such report shall include the following information:
    - 1. A brief description of the services provided
    - 2. An estimate of the cost of the abatement or removal work
    - 3. Sketches showing the approximate locations where samples were collected
    - 4. A summary of all samples, analyses, chain of custody and laboratory certifications
    - 5. Photographs, sketches, drawings, etc. as necessary to document the conditions
    - 6. Annotated plans or annotated sketches indicating areas in the vicinity of the proposed work where Hazardous Materials are present, as well as areas where Hazardous Materials may be impacted by the proposed work.
  - c. The Hazmat Subconsultant shall prepare the Statement(s) of Hazardous Materials in accordance with the latest edition of the NYCDOT Procedures and include it in the Report.
- iv. Design Services: If the Hazmat Subconsultant determines that Hazardous Materials identified in the survey/assessment phase will be impacted by the Project, or as otherwise directed by DDC, the Hazmat Subconsultant shall prepare the required design documents (drawings, specifications and cost estimate) for the abatement or removal of such Hazardous Materials. The design documents prepared by the Hazmat Subconsultant must be fully developed in a format suitable for bidding. The Consultant shall include and coordinate such documents with the design documents for the Project.
- v. The Hazmat Subconsultant shall make all required regulatory filings, unless directed otherwise by DDC.

**g. Plans and Sections of the existing retaining wall structure:**

The Consultant shall prepare schematic plans, elevations and cross sections, to scale, for the existing structure, approach roadways, etc. including all impacted utilities. If existing plans are not available, the Consultant shall take sufficient field measurements to prepare schematic plans, elevations and cross sections of the existing retaining wall. However, detailed measurements and drawings are not required. These sketches shall be included in the In-depth Inspection Report.

**h. Planning Statements:**

The Consultant shall obtain Planning Statements as directed by the Commissioner and in accordance with the latest NYCDOT Procedures. The Consultant shall submit all planning statements to the Commissioner in the form of a report and shall account for and coordinate with current and future projects in the vicinity of the retaining wall project.

**i. Maintenance and Protection of Traffic (MPT) Plans:**

The Consultant shall prepare Maintenance and Protection of Traffic (MPT) Plans for the proposed reconstruction scheme as directed by the Commissioner and in accordance with the latest NYCDOT Procedures. The Consultant shall take into account the impact on pedestrian and vehicular traffic (including railroad and waterway traffic, if any), impact on the community, access and the staging for the reconstruction of the retaining wall project. Access to the Private Properties shall be maintained at all times.

**j. Soil (subsurface) Investigation Program:**

The Consultant shall research, obtain and review all existing geotechnical/subsurface information regarding local geology and seismicity. The Consultant shall determine its adequacy to satisfy the requirements of Preliminary Design and Final Design, including seismic design and foundation design for proposed reconstruction/rehabilitation schemes. If required, the Consultant shall propose additional Soil (subsurface) Investigation Program, in compliance with all applicable City/State/Federal regulations, and obtain approval from the Commissioner, prior to submittal of the Draft RWCIR. The Soil Investigation Program shall consist of (i) Scope of Soil Investigation Program, (ii) Subsurface Field Exploration Program (drilling, test pits, etc.), and, (iii) Preparation of Geotechnical Report. Additional Soil Investigation Program, if required and approved by the Commissioner, shall be as defined below:

**i. Scope of Soil Investigation Program:**

a. The Consultant shall submit the Scope of Soil Investigation Program(s) and related specifications. The Scope of Soil Investigation Program shall include the requirements, specifications and detailed drawings for Subsurface Field Exploration Program. The submittal(s) shall describe the location of borings and test pits (if required), methods of boring and obtaining samples, depths of exploration, purpose and number of samples to be collected and type and number of tests to be performed, etc. The Scope of Soil Investigation Program(s) shall be approved by the Commissioner and shall be used for further "Subsurface Field Exploration Program".

ii. Subsurface Field Exploration Program: Subsurface Field Exploration shall include, but not limited to, taking of soil borings, taking of soil samples, taking of rock cores, installation of water wells, excavation and backfilling of test pits, taking appropriate measurements and documenting existing conditions, etc. as specified in the Soil Investigation Program and as directed by the Commissioner. The Commissioner may: (a) conduct the Subsurface Exploration Program using in-house forces of Technical Support Unit, or (b) assign the responsibilities of conducting Subsurface Field Exploration Program to the Consultant.

a. In the event the Commissioner decides to conduct the Subsurface Exploration Program using in-house forces of Technical Support Unit, the in-house forces of Technical Support Unit shall be responsible to conduct the complete Subsurface Field Exploration Program as per the approved Soil Investigation Program. In-house forces of Technical Support Unit shall also prepare Geotechnical Report as specified in paragraph iii below. The Consultant shall provide field supervision during the entire Subsurface Field Exploration Program.

b. In the event the Commissioner direct the Consultant to perform the Subsurface Field Exploration Program:

- i. The Consultant shall retain the services of a qualified Subsurface Exploration (drilling) contractor to perform soil borings, rock drilling, excavation and backfill of test pits, etc. and to obtain the required soils samples, rock samples, and to conduct on-site testing and install geotechnical instrumentation as necessary.
  - ii. The Consultant shall retain the services of a qualified testing laboratory to perform the specified tests on the samples collected in accordance with the approved Soil Investigation Program.
  - iii. The Consultant shall prepare the Geotechnical Report as described above in paragraph iii below.
  - iv. The cost of Subsurface Exploration (drilling) contractor, Testing Laboratory, etc. shall be paid as Reimbursable Services in accordance with Article 6 of the Contract.
- iii. Geotechnical Report: The findings of the Subsurface Field Exploration shall be compiled and a Geotechnical Report shall be prepared. The Geotechnical Report shall include the Scope of Soil Investigation Program, the results of Subsurface Field Exploration Program, sample log and laboratory test results for geotechnical analysis of various subsurface materials, soil properties, soil analysis, rock properties and rock analysis, evaluations, etc. The Geotechnical Report shall also include the recommendations and/or requirements (design parameters) for Foundation Design and Seismic Design, including, but not limited to, shallow and deep foundation system. The report shall be submitted to the Commissioner for approval.

**k. Seismic Design:**

- i. The Consultant shall design the proposed retaining wall for conformance to seismic requirements as specified in City/State/Federal guidelines and standards.
- ii. If the retaining wall is supporting or protecting a designated “emergency evacuation route”, the retaining wall shall be designed as a “critical” retaining wall.
- iii. The proposed reconstruction alternative for the retaining wall shall include seismic retrofitting as required.

**l. Land Use Assessment:**

- i. The Consultant shall perform the following basic services to determine whether temporary and/or permanent easements, and/or acquisitions, and/or a Uniform Land Use Review Procedure (ULURP) will be required for construction (including staging and access) and maintenance purposes. The Consultant shall also determine if Section 4f procedure (see FHWA Technical Advisory T 6640.8A) and/or Environmental Assessment Study (EAS) and/or Environmental Impact Statement (EIS) is required.
  - a. The collection, research and review of all pertinent data (existing and legal grades, mapped R.O.W. lines, etc.), including need for obtaining of supplemental survey (the limits of which may extend beyond the limits of the project limits), as well as preparation of additional ULURP related drawings (changes to the City map, damage and acquisition drawing, alteration map, etc.).
  - b. The Consultant shall prepare a strip map (R.O.W. map) showing parcels adjacent to retaining wall and approaches, (i.e. alignment, grades, easements, etc.). Each parcel shall be identified by a block & lot number. This strip map shall be submitted to the Commissioner who will conduct the last owner title search. The results of the title search shall be incorporated in the strip map.

- c. For publicly owned parcels, the Consultant shall determine which agency has ownership or jurisdiction. The Consultant shall also determine whether a Section 4f Evaluation (see FHWA Technical Advisory T 6640.8A) is required.
  - d. Prepare R.O.W. plans (strip map) showing legally adopted street lines (as shown on final section and/or the latest alteration maps) existing topography, property lines, highway boundaries, survey monuments, etc. Baselines shall be tied to the retaining wall elements. Property owner's names, addresses and block & lot numbers shall be shown together with existing easements and rights of way and total acreages of property. Identify existing encroachments, if any. All means of access to the property shall be shown.
  - e. The R.O.W. plan and findings of the Land Use Assessment shall be included and discussed in the Report.
- ii. In the event the Consultant determines that the ULURP and/or Section 4f procedure (see FHWA Technical Advisory T 6640.8A) and/or Environmental Assessment Study (EAS) and/or Environmental Impact Statement (EIS) is required, the Consultant shall perform these services at the written direction of the Commissioner.

**m. Original Color Photos:**

The Consultant shall take sufficient color photographs during Field Survey, Retaining Wall Condition Inspection, MPT installation and removal, Soil Investigation Program, Concrete Coring Program, Test Pits Program, as well as other activities deemed appropriate by the Consultant and/or the Commissioner. The Consultant shall provide original color photographs in the of the particular task (and other reports as described in these specific requirements) in accordance with the latest NYCDOT procedures.

**n. Conclusions:**

The Consultant shall include a discussion of any reports which have been previously prepared on the condition of and/or any recommendations proposed for the retaining wall. The Consultant may choose, at its own discretion, to prepare one combined Design Report or separate reports as required by the foregoing sections. In the event, the Consultant prepares separate reports, the submission requirements for all reports shall be the same as Design Report, as described below.

**3. Submission of Design Report:**

**a. Draft Design Report:**

The Consultant shall submit six (6) copies of the Draft Design Report to the Commissioner for review, which shall incorporate all of the above items. The Consultant shall coordinate and resolve all comments form affected agencies and respond/incorporate them into the Final Design Report.

**b. Final Design Report:**

The Consultant shall submit six (6) copies of the Final Design Report to the Commissioner for approval as per Exhibit D, Contract Schedule.

**4. Preliminary Design:**

- a. The Consultant shall prepare the Preliminary Design, based on the approved scheme for either reconstruction or rehabilitation of the retaining wall.
- b. Prior to the commencement of Preliminary Design, the Consultant shall submit proposed design parameters to the Commissioner for review. Such parameters shall include, but not be limited to, the materials (including the grade and type of structural steel, compressive strength and type of concrete,

materials to be used for fencing and railing, etc.), allowable stresses for proposed materials, etc. The Consultant shall also investigate the availability and lead-time for procurement of the proposed materials. All elements must be designed to meet the minimum requirements of AASHTO Guidelines.

- c. The Preliminary Design shall show sufficient detail to accomplish the following: (1) demonstrate constructability of the proposed scheme, including all existing and proposed utilities and seismic retrofitting (if required); (2) show significant elements of the design (structural, architectural, lighting and site design) with adequate and appropriate dimensions; (3) address MPT requirements in detail; (4) show itemized scope of work, and (5) serve as a basis for the development of the Construction Documents. Large-scale partial cross sections showing dimensions between utilities and structural members/components shall be provided for both the existing and proposed conditions. The Preliminary Design shall include a separate detailed Right-of-Way plan. The Consultant shall also submit an up to date itemized cost estimate.
- d. The Consultant shall provide site design/landscape design drawings that include the following: grading and drainage plans; pavements layout plans; site lighting plans; tree mitigation plans; site planting plans and pertinent details (including, but not limited to pavements, curbs, walls, site furnishings, plantings lighting, etc.) and any required sections and elevations. Associated site design specifications and cost estimates shall also be included.
  - i. Tree Survey: The Consultant's Arborist shall prepare a survey of existing trees within the project limits. The tree survey shall cover the entire project area and shall show the location, species and caliper diameter of the existing trees, as well as any open street tree pits without trees, shrubs, etc. The tree survey shall make recommendations regarding the following, if applicable: (a) removal and / or pruning of existing trees that are diseased, infested with pests, in particular, the ALB (Asian Longhorned Beetle) infestation or infected with pathogens or fungal infections; (b) pruning plan for the existing trees, branches and roots as they relate to the proposed site, and (c) transplanting of trees. The Arborist Consultant shall consult with NYSDAM (NY State Department of Agriculture and Markets) concerning current Asian Longhorned Beetle regulations and current quarantine areas and identify all potential host species on the tree survey.
  - ii. Tree Mitigation Plans: The Consultant shall prepare tree mitigation plans, which provide for the removal and/or replacement and transplanting of the trees. Such plans shall conform to the latest requirements of the New York City Department of Parks and Recreation (DPR), as well as NYSDAM requirements. The Consultant shall submit tree mitigation plans to DPR for its approval. Such plans shall include restitution for all tree removals, calculated in accordance with DPR's latest requirements for restitution.
- e. Construction Duration Analysis: The Consultant shall propose appropriate construction duration such that the retaining wall is constructed in the shortest possible time and with minimal impact to the community. The Consultant shall evaluate the construction methodology, impact of the project on pedestrian traffic, vehicular traffic; public safety; the community (quality of life, businesses, schools, hospitals, places of worship, etc.); program needs (scheduling of other affected projects, etc.); other means of transportation (railroad, waterway, etc.); the project's complexity; coordination with others (railroads, utilities, etc.); etc. in doing so.
- f. The Consultant shall submit six (6) sets of the Draft Preliminary Design to the Commissioner for review. The Consultant shall resolve and include all comments into the Final Preliminary Plans. Final Preliminary Plans shall be used for Mass Mailing No.1.
- g. Mass Mailing No.1: The Consultant shall prepare a Mass Mailing list and submit it to the Commissioner for approval. As directed by the Commissioner, the Consultant shall schedule an All Agency Conference No. 1 (Alignment Meeting No. 1) with all affected City and non-City agencies. The Consultant shall submit required sets of the Preliminary Design to all affected agencies for their review (written receipts required).

- h. The consultant shall also schedule a separate meeting with DOT – OCMC to obtain stipulations and approval of the preliminary MPT plans.
- i. The Consultant shall compile a list of comments made by all affected agencies, including, DOT – OCMC and railroad(s) (if applicable), on the Preliminary Plans submission and submit it to DDC. The Consultant shall resolve these comments in coordination with DDC. All approved comments shall be incorporated into the Preliminary Plans as directed by the Commissioner.
- j. Upon approval by the Commissioner, the Consultant shall submit six (6) sets of the approved Preliminary Design to the Commissioner as per the schedule specified in the Task Order.

**C. Construction Documents – Detailed Requirements:**

During this phase, the services to be provided by the Consultant shall include, without limitation, the services described below.

**1. Preparation of Advanced Plans:**

The Consultant shall prepare Advanced Plans submission, including plans (plans, elevations, sections, profiles, details, etc.), specifications, special specifications and itemized cost estimates. All drawings shall be prepared in accordance with the latest NYCDDC Requirements for the Preparation of Engineering Drawings and Documents.

**a. Advanced Plans Requirements:**

The Consultant shall develop and prepare Advanced Plans based on the approved Preliminary Design for the retaining wall project(s). The Advanced Plans submission shall include plans, specifications, special specifications and itemized cost estimates, the completeness of which shall be not less than 90% of the Construction Documents submission. The Advanced Plans shall be in accordance with the following requirements:

- i. The Consultant shall use its best efforts to eliminate (or, at a minimum, to improve) all substandard features for the proposed retaining wall(s). In the event the proposed retaining wall retains any substandard feature, the Consultant shall submit a separate written justification for each substandard feature documenting the reasons for retaining the feature. In addition, the Consultant shall submit a separate written justification documenting the reasons for merely improving a substandard feature, as opposed to fully eliminating the substandard feature. Reasons for retention or improvement shall be supported by an accident study, cost of eliminating substandard feature, traffic study, environmental impact, etc.
- ii. The retaining wall project shall be coordinated with any adjacent public/private agency projects currently anticipated.
- iii. The incorporation of all work required by public agencies, public utilities, private utilities, railroads, etc. as concurred by the DDC.
- iv. All deficient conditions noted in the RWCIR, and any conditions commented on by DDC or DOT during the Preliminary Design phase, shall be addressed in the Advanced Plans.

**b. Maintenance and Protection of Traffic:**

The consultant shall further develop and include detailed Maintenance & Protection of Traffic (MPT) plans in the Advanced Plans submission. The approved Preliminary Design shall be used as the initial basis for the MPT plans. The Consultant shall incorporate all approved changes into the MPT plans due to involvement of impacted agencies. As directed by the Commissioner, the Consultant shall schedule a separate meeting with NYCDOT – OCMC to obtain final stipulations and approval of the MPT plans.

**c. Suggested Construction Schedule:**

- i. The Consultant shall prepare and submit a basic suggested construction schedule, in the form of a Bar Chart, together with the Advance Plans submission. The construction schedule shall enumerate all major pertinent construction tasks and shall take railroad or other restrictions into account.
- ii. The construction schedule shall graphically show the major activities necessary to complete the work, and the sequence in which each activity is to be accomplished as planned by the Consultant and in accordance with current construction practices. The suggested construction schedule shall take into account, at a minimum: Procurement, fabrication and delivery of equipment and special materials; Holiday shutdown; Railroad activities; Maintenance and Protection of Traffic work; Utility work; obtaining necessary permits; interdependence of various activities; etc.
- iii. The Consultant shall revise, update and resubmit the construction schedule for final approval as required by the Commissioner.
- iv. The Consultant shall include the suggested construction schedule on one of the drawing of the Construction Documents.

**d. Standard Specifications:**

The Consultant shall use NYCDOT, Bureau of Highway Operations, Standard Specifications (February 2009) with ALL addenda to date and latest NYCDDC, Division of Infrastructure, Bidscope Item Price List Report. The Consultant shall also use and refer to the publications referred to in sub-section A.1.d of Article V Detailed Requirements. All work shown on the plans shall be completed and paid for under the specified items. If the required specification is not available or included in the above referenced publications, the Consultant shall develop Special Specifications as described in the sub-section e below.

**e. Special Specifications:**

- i. If the required specification is not available or included in the above referenced publications, the Consultant may ask NYCDDC for previously approved special specification items. If such specification is available, NYCDDC will provide it to the Consultant. If required, it shall be the Consultant's responsibility to convert such specification items from SI (metric) to English to units.
- ii. If the required specification is not available or included in the above referenced publications, the Consultant shall prepare such Special Specifications and submit them to NYCDDC as early as possible for approval.
- iii. The procedure for preparing and obtaining approval for new special specifications shall include the following:
  - (a) After determining that there are no applicable NYCDDC Specifications, the Consultant shall prepare any special specifications required and shall submit them for approval to the Commissioner and all affected parties.
  - (b) After approval by all affected parties and the Commissioner, DDC will assign the item numbers to the Special Specifications. The Consultant shall then incorporate the special specifications into the Specification Books of the Construction Documents.

**f. Special Provisions:**

The Consultant shall prepare special provisions based on project specific needs and NYCDDC requirements. NYCDDC may furnish such requirements to the Consultant as deemed necessary. The Consultant shall modify the special provisions as necessary for each retaining wall project.

**g. Specification Books:**

NYCDDC shall provide a sample of complete specification books to the Consultant. NYCDDC shall also provide standard "boiler plate" portions of the Specification Books. The Consultant shall prepare the following: (1) the detailed itemized estimate required to prepare the Bid Schedule, (2) special provisions, (3) special specifications, etc. The Consultant shall assemble one set of original Specification Books in accordance with the Department's standard format and requirements and submit it to DDC.

**2. Mass Mailing No. 2:**

- a. When the Advanced Plans are at about 85% completion level (Draft Advanced Plans), the consultant shall submit three (3) sets of the Draft Advanced Plans to the Commissioner for review. The purpose of this review shall be to determine the adequacy of the information presented in the documents for the review by all affected City and non-City agencies.
- b. DDC shall review the Draft Advanced Plans in about two weeks and provide comments. All review comments shall be resolved and incorporated in the Advanced Plans prior to the Mass Mailing. These Advanced Plans shall be used for Mass Mailing No. 2.
- c. The Consultant shall prepare a Mass Mailing list and submit to the Commissioner for approval. As directed by the Commissioner, the Consultant shall schedule an All Agency Conference (Alignment Meeting) with all affected City and non-City agencies.
- d. The Consultant shall submit required sets of the Advanced Plans to all affected agencies (on the approved Mass Mailing list) for their review (written receipts required).

**3. All Agency Conference (Alignment Meeting) No. 2:**

- a. The Consultant shall conduct the All Agency Conference No. 2 and compile a list of comments made by all affected agencies, including, DOT – OCMC and railroad(s) (if applicable) on the Advanced Plans submission and submit it to DDC. The Consultant shall recommend resolution of these comments in coordination with DDC. All approved comment resolutions shall be incorporated into the PS & E (Plans, Specifications and Estimate) submission as directed by the Commissioner.

**4. Itemized Capital Project (CP) Estimate(s):**

The Consultant shall prepare and submit the itemized Capital Project Estimate(s) (CP Estimates) after the Advanced Plans Submission is approved. The CP Estimates shall be prepared in accordance with Departmental requirements and as follows:

- i. On a "per item number" basis for the entire construction project, plus on an "individual retaining wall" basis for construction projects involving more than one retaining wall.
- ii. Separated by budget lines, on a "per item number" basis, for the entire construction project; and separated by budget lines on an "individual retaining wall" basis for construction projects involving more than one retaining wall.

**5. Plans, Specifications and Estimate (PS&E) Submission:**

- a. The Consultant shall prepare and submit the PS&E submission (including plans, specifications, and itemized cost estimate(s)) for the retaining wall project(s), the completeness of which shall be not less than 100% of a Construction Document submission.

- b. As directed by the Commissioner, the Consultant shall submit the PS & E Submission to all affected parties for their final review and obtain their sign-off.

**6. The Construction Documents Submission:**

Upon the approval of the PS & E submission, the Consultant shall hand-deliver to the Commissioner the following:

- a. One original Mylar and required number of copies of half size and full size sets of bound paper prints of the Contract Plans for the retaining wall project(s). Printing shall be one-sided.
- b. One original and required number of copies of the Itemized Cost Estimate, including the City agency budget code breakdown(s), for each of the retaining wall project(s).
- c. One original and unbound complete set of specification books, special specifications, special provisions, bid schedule, etc. collated with boilerplate as directed by NYCDDC. Printing shall be one-sided.
- d. The Title Sheet, all contract drawings, design computations, cost estimates, etc. shall be signed and sealed by a Professional Engineer, licensed in the State of New York, as directed by the Commissioner.

**D. Bid Assistance and Analysis – Detailed Requirements:**

During this phase, the Consultant's responsibilities shall include the following: (1) provide analysis and recommendations with respect to the bids received, (2) provide microfilming and indexing services, and (3) deliver contract document records. During this phase, the services to be provided by the Consultant shall include, without limitation, the services described below.

- 1. Bid Assistance and Analysis:
  - a. The Consultant shall obtain a copy of the Invitation For Bids at the commencement of the bidding period for the construction contract.
  - b. The Consultant shall provide all services required during the bidding period to ensure that questions from prospective bidders are answered in a timely fashion. The Consultant shall attend the Pre-Bid Meeting(s).
  - c. Where the Commissioner deems that an Addendum to the Construction Documents is necessary, the Consultant shall prepare and hand-deliver said Addendum to the Commissioner within twenty-four (24) hours of notification.
  - d. After the bid opening, a computerized print out of the bids received shall be provided to the Consultant by DDC. Within seventy-two hours of receiving the print out of the bids, the Consultant shall prepare and submit to DDC a report reviewing and analyzing the bids in accordance with DDC procedures. The Consultant's report shall include, but not be limited to, the following items: (1) a review of the bids received; (2) an analysis of the bid prices (unit price items and lump sum items) to determine whether the bid price reflects the reasonable cost of the item; (3) identification of bid prices which are unbalanced; (4) identification of bid prices which are 15% or more above the Consultant's cost estimate; (5) identification of bid prices which are 15% or more below Consultant's cost estimate, and (6) identification of mathematical errors in the bid. If required, the Consultant shall prepare a "Case II" or a "Savings" analysis, whichever applies, in accordance with the latest NYSDOT procedures. At the conclusion of its report, the Consultant shall recommend an acceptable low bidder.

**2. Preparation of Record Drawings and Electronic Media:**

- a. The Consultant shall assemble all appropriate project documents and prepare Record Drawings and Electronic Media for the said documents and prepare Computerized Index in accordance with the latest

requirements of NYCDOT Specifications for the Preparation of Record Drawings and Electronic Media". This shall include, but not be limited to, the following:

- i. The Consultant shall prepare Computerized Index for all Contract Documents and back-up information compiled in connection with this Project, including the existing Plans and all survey documents, in accordance with currently applicable Departmental Standards and Procedures. This computerized index shall be a chronological listing, including an abstract of document contents for the central project file. This Computerized Index shall be incorporated into the Electronic Media.
  - ii. All records shall be kept in a complete, comprehensively indexed central project file, which the Consultant shall maintain. This file shall contain all letters, reports, minutes, files notes, sketches, computations, records of telephone conversation, diaries, surveys, marked-up drawings, worksheets, data, research records, computer outputs, payments, problem reports, applications, renderings, and permits. Additionally, the central project file shall be kept in a format in accordance with currently applicable Departmental Standards and Procedures, which in general shall mean a format which shall facilitate the indexing of the required records.
- b. In conjunction with the Uniform Code of Building Inspection, the Consultant shall prepare and update the NYCDOT's Retaining Wall Inventory Sheets for the reconstructed retaining wall (as per the design shown in the Construction Documents submission).

#### **E. Submission of Final Contract Document Records:**

The Consultant shall hand deliver the following Final Contract Document Records to the Commissioner after the Bid Analysis, Record Drawings, Computerized Indexing and Electronic Media are complete. Submission of such records shall be in accordance with the schedule set forth in the Task Order. The Final Contract Documents shall be certified by the Consultant and signed and sealed by a Professional Engineer licensed in the State of New York as directed by the Commissioner.

- a. The complete set of original Contract Documents, including: (1) contract drawings (mylars), (2) Specifications (including special specifications and special provisions), (3) bid schedule, (4) standard construction contract, and (5) itemized cost estimate(s).
- b. CADD file diskettes (or CDs) for contract drawings (two copies).
- c. All project files, Electronic Media and index of project files.
- d. Original design calculations. The submission of computerized calculations must include, but is not limited to, diskettes and written details of all programming information and results.
- e. Originals/copies of all correspondence and data pertinent to the project. All correspondence shall be numbered, bound, and submitted with a computerized index.
- f. The Consultant's certification that all applicable Departmental Standards, Directions, Rules, Regulations, and Guidelines have been conformed to.
- g. All materials shall be packaged and delivered to the Commissioner in temporary file-type cartons together with a typed index.
- h. This submission shall be subject to Departmental review and approval.

#### **VI. CONSTRUCTION SUPPORT SERVICES**

Upon written authorization by the Commissioner, the Consultant shall provide construction support services during the construction phase (rehabilitation, reconstruction and/or replacement of the retaining wall). The scope of services shall be described in detail in the Task Order.

1. During the Construction Support Services phase, the Consultant shall perform the tasks and provide the deliverables set forth below.
  - a. Visit the site as directed by the Commissioner and on an as needed basis.
  - b. Attend Monthly Progress Meetings, as well as other coordination meetings as required.
  - c. Review and approve Requests for Information (RFIs), catalog cuts, shop drawings, mock-ups, Contractor's construction procedure/practices, etc.
    - i. The Consultant shall prepare responses to each Request for Information (RFIs) from the contractor.
    - ii. Shop Drawings shall be reviewed for their conformity with the Contract Documents, the requirements of Pre-stressed, pre-cast Concrete Institute and the New York State Steel Construction Manual. Shop Drawing Review Services shall also include review of any calculations submitted by the contractor that are required by the Construction Documents or by the Commissioner.
    - iii. The Consultant shall stamp all reviewed shop drawings indicating rejection or designations of acceptance. The Consultant may be required to coordinate his Shop Drawing review with other agencies as required by the Construction Documents or as directed by the Commissioner. Processing of Shop Drawings shall comply with directions given by the Commissioner.
  - d. Review, analyze and provide recommendations on alternative methods of construction and/or construction procedures proposed by the Contractor for adherence to the approved construction schedule.
  - e. Review and approve material samples, material substitution, cost estimate, etc., for adherence to the Contract Specifications and approved construction schedule.
  - f. Provide Engineering Services to resolve unanticipated field conditions uncovered during construction, analyze, review and approve proposed changes in design and/or materials based on the field conditions
  - g. Review, interpret and provide documents to resolve design issues and /or disputes.
  - h. Identify, review and verify Contractor's change orders including detailed cost estimate.
  - i. Assist in preparing the As-built drawings, Punch List and Contract Close-out procedure.
  - j. Inspect the portion of the project site open to pedestrian and vehicular traffic and issue flag report, as well as repair procedures, as required
  
2. All drawings prepared by the Contractor (including Sub-Contractors, Fabricators, Manufacturers, Erectors, etc.) to facilitate construction as required by the Contract Documents shall be termed Shop Drawings. Shop Drawings shall include, but not be limited to, the following:
  - a. Structural Steel Drawings
  - b. Prestressed/Precast Concrete Drawings
  - c. Foundation/Sheeting Drawings
  - d. Shop/Plant Repair Procedures and Drawings
  - e. Heat Curving/Cambering Drawings
  - f. Erection and Transportation Drawings
  - g. Steel Reinforcement Drawings
  - h. Railing and Fencing Drawings
  - i. Temporary Jacking and/or Shoring Drawings
  - j. Cofferdam/Sheeting Drawings
  - k. Electrical Drawings/Catalog Cut/Lighting Drawings
  
3. The Consultant shall review the Contractor's Demolition/Removal Plan to determine the following: (1) whether the plan adequately identifies and addresses safety requirements, and (2) whether the demolition operations subject the structure to stress in excess of the structure's ability to support.
  
4. Arboricultural services may be required during the construction phase, as directed by the Commissioner. Arboricultural services may include, but are not limited to, the following services:
  - a. Observe the contractor's planting and tree planting operations, activities and equipment;
  - b. Assess the cost of any tree damage caused by the contractor's operations;

- c. Observe the pruning of existing trees;
  - d. Observe the excavation work around trees. The arborist shall review the contractor's proposed methodology for working around trees, as well as use of tools for excavation, and shall recommend whether to approve or disapprove the same.
  - e. Observe the tree planting activities, including saw cutting, removal of unacceptable material from new tree pits and around the root ball, placement of the trees, including staking, backfilling and paver installation.
  - f. Observe any utility installation (hydrants, street lights, catch basins, electrical lines, conduits, cables, etc.) and footing installation that will impact the roots of existing trees.
  - g. Inspect all new trees and /or plant materials delivered on-site prior to unloading, and recommend whether to approve or reject such materials. The inspection shall cover the following: (1) whether the delivered materials were kept properly moist and were covered during transport to prevent desiccation; (2) whether the plant material delivered are the species required by the specifications, and (3) whether the plant materials delivered are free from disease and infestation. Rejected materials shall be identified and listed in a report.
5. The Consultant shall provide Interim (Semi-Annual) Inspection of the portion of the retaining wall project(s) to remain in service as per Interim Inspection requirements. The Consultant shall flag unsafe conditions and recommend remedial measures.
6. The duration of Construction Support Services shall be as per the schedule set forth in the Task Order.

**EXHIBIT H: REQUIREMENTS FOR FEDERAL AID PROJECTS**

**APPLICATION:** The requirements set forth in this Exhibit shall **ONLY APPLY** if the Project is a Federal Aid project. DDC will notify the Consultant in writing if the Project is a Federal Aid project.

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The Consultant is advised that the Project is a Federal Aid Project. The City of New York, Department of Design and Construction (“DDC”), is receiving funds from the United States Government for construction of the Project. Specifically, funding for the Project is being provided by the Federal Highway Administration (“FHWA”).

- (1) Amendments to the Contract: Since the Project is a Federal Aid Project, the Contract is amended as set forth below.
  - (a) Article 6: Add new paragraph 6.10 to Article 6, as set forth below.

6.10 The Consultant shall ascertain the standard practices of the City prior to the performance of services required by this Contract, and all such services shall be performed in accordance with these standard practices. In addition, the Consultant shall be familiar with the Federal Process.
  - (b) Article 45 and Exhibit E: Delete requirements for participation by MWBEs, as set forth in Article 45 and Exhibit E.
  
- (2) Opportunities for DBEs: Since the Project is a Federal Aid Project, the Consultant is required to provide the maximum possible contracting opportunities for Disadvantaged Business Enterprises (“DBEs”). The Consultant must use its best efforts to afford DBEs the maximum practicable opportunity to participate in the Project.
  - (a) DBE Goal: The Consultant is required to use its best efforts to achieve an overall DBE utilization goal, expressed as a percent of the total dollar value of the Task Order. DDC will provide written notification to the Consultant specifying the overall DBE utilization goal.
  - (b) Certified DBEs: To qualify as a “Disadvantaged Business Enterprise” (“DBE”), a business enterprise must be certified by the New York State Department of Transportation (“NYSDOT”).
  - (c) For the Department to periodically monitor compliance with DBE requirements, the Consultant and subconsultants shall submit information as required by Chapter 13 and Appendix 13 of Exhibit I: NYSDOT Procedures for Locally-Administered Federal Aid Projects. (Exhibit I is available at the following website: <https://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects>)
  
- (3) Required Provisions: Since the Project is a Federal Aid Project, the following appendices, attached to this Exhibit H, are included in the Contract.
  - (a) Appendix A: Standard Clauses for All New York State Contracts
  - (b) Appendix B: Certification of Consultant Regarding Debarment, Suspension and other Responsibility Matters
    - Appendix B-1: Certification of Subconsultant Regarding Debarment, Suspension and other Responsibility Matters
  - (c) Appendix C: Disclosure of Lobbying Activities

## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party) :

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$10,000 (\$20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.
4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. NON-DISCRIMINATION REQUIREMENTS. The contractor agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. **NON-COLLUSIVE BIDDING REQUIREMENTS.** In accordance with Section 139-d of the State Finance Law. If this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five(5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit be the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:**

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.**

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers.

Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.**

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN:** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b" and "c", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized).

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it be registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

### SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

#### Specific Equal Employment Opportunity Responsibilities

##### 1. GENERAL

(a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Order 45, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

##### 2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

The CONSULTANT, their sub-consultant and/or sub-contractor or any person acting on behalf of the CONSULTANT or sub-consultant and/or sub-contractor will accept as their operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, national origin, age, disability or marital status, and to promote the full realization of equal employment opportunity through a positive continuing program.

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

### 3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER

The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

### 4. DISSEMINATION OF POLICY

(a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.

(3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

(1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

### 5. RECRUITMENT

(a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration.

In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

## 6. PERSONNEL ACTIONS

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

## 7. TRAINING AND PROMOTION

(a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job

training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

(c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

## 8. UNIONS

If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

## 9. AFFIRMATIVE ACTION IN SUBCONTRACTING

(a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

## 10. RECORDS AND REPORTS

(a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) The CONSULTANT will submit to the New York State Department of Transportation, a monthly report for the first three months after beginning work, thereafter upon request, and each month of July following the initial submission for the duration of the project indicating the number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391, Federal-Aid Highway Construction Contractor's Monthly EEO Report. If on-the-job training is being required by

"Training Special Provision", the CONSULTANT will be required to furnish Form FHWA-1409, Federal-Aid Highway Construction Contractor's Semi-Annual Training Report.

(d) The CONSULTANT will comply with Federal Regulations Sections 49CFR 26.29 and 26.37 by providing a report of all payments made to subconsultants and subcontractors with each request for payment submitted to the New York State Department of Transportation. The Consultant Payment History Form AAP-7 shall be submitted with each request for payment consistent with Consultant Instruction 01-01 or any subsequent revision of that Consultant Instruction.

(e) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

#### 11. TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in Article II, Item VII.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women

trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

### **NYS Year 2000 Warranty**

The following Year 2000 warranty applies to procurements of:

**A) Product**, including: i) equipment incorporating embedded software or other technology (e.g. copiers, elevators, security systems), ii) software, or iii) other technology; or

**B) Services**, including: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing).

This Year 2000 Warranty shall survive beyond termination or expiration of the Contract through: a) one year, b) December 31, 2000, or c) the Contractor or Third Party Manufacturer's stated Year 2000 warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**A. Definitions**: For purposes of this warranty, the following definitions shall apply:

**i. "Product"** shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are furnished (e.g. maintenance, consulting, systems integration, code or data conversion, data entry) the term "Product" shall include resulting deliverables.

ii. **“Contractor’s Product”** shall include all Product delivered under this Contract by Contractor other than Third Party Products.

iii. **“Third Party Product”** shall include product manufactured or developed by a corporate entity independent from Contractor and provided by Contractor on a non-exclusive licensing or other distribution agreement with the third party manufacturer. “Third Party Product” does not include product where Contractor is a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

**B. Warranty Disclosure** At the time of bid for individual or agency specific contracts, or at the time of ordering Product or Product quote for OGS centralized contracts, Contractor must disclose in writing to Authorized User:

i) **For Contractor Product and Products (including, but not limited to, Contractor and/or Third Party Products and/or Authorized User’s Installed Product) which have been specified to perform as a system:** Compliance or non-compliance of the Products individually and as a system with the Warranty set forth below; and

ii) **For Third Party Product not specified to perform as part of a system:** compliance on the grounds that the Contractor has passed-through the third party manufacturer Year 2000 Warranty or non-compliance based upon the fact that a) Contractor indicates that they can not pass through the third party manufacturer’s year 2000 Warranty or b) there is no third party manufacturer’s year 2000 Warranty to pass through.

**NOTE: AN ABSENCE OR FAILURE TO FURNISH THE REQUIRED WRITTEN WARRANTY DISCLOSURE SHALL BE DEEMED A STATEMENT OF COMPLIANCE BY THE CONTRACTOR OF THE PRODUCT(S) OR SYSTEM(S) IN QUESTION WITH THE YEAR 2000 WARRANTY STATEMENT SET FORTH BELOW.**

**C. Year 2000 Warranty** Year 2000 Warranty “compliance” shall be defined in accordance with the following warranty statement:

**Warranty Statement:** Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Contractor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User’s ongoing business processes, time being of the essence, at Contractor’s sole cost and expense. This warranty does not extend to correction of Authorized User’s errors in data entry or data conversion.

**D. Year 2000 Warranty on Services** Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or date conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), in addition to the foregoing Year 2000 warranty on service deliverables, Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor’s business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

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**APPENDIX B**

**CERTIFICATION OF CONSULTANT REGARDING DEBARMENT,  
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The Consultant \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. The Consultant agrees to provide DDC with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subconsultant for the Consultant shall provide the same updated notice to the Consultant and the Consultant shall be solely responsible for collecting, updating and submitting updated information to DDC.

NOTE: If for any reason the Consultant is unable to certify to any of the statements in this certification, the Consultant shall attach an explanation to this certification.

The consultant, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. SECTIONS 3801 ET SEQ. are applicable thereto.

\_\_\_\_\_  
Print Name and Title of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**APPENDIX B-1**

**CERTIFICATION OF SUBCONSULTANT REGARDING DEBARMENT,  
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The Subconsultant \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. The Subconsultant agrees to provide the Consultant with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subconsultant for the Consultant shall provide the same updated notice to the Consultant and the Consultant shall be solely responsible for collecting, updating and submitting updated information to DDC.

NOTE: If for any reason the Subconsultant is unable to certify to any of the statements in this certification, the Consultant shall attach an explanation to this certification.

The Subconsultant, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. SECTIONS 3801 ET SEQ. are applicable thereto.

\_\_\_\_\_  
Print Name and Title of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

APPENDIX C

DISCLOSURE OF LOBBYING ACTIVITIES

I \_\_\_\_\_ hereby certifies on behalf of \_\_\_\_\_  
name and title of company representative name of company

will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The Consultant certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Consultant, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Print Name and Title of Authorized Official Date

\_\_\_\_\_  
Signature