



**REQUEST
FOR
PROPOSALS**

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

RFIP



PROJECT

PRE-PROPOSAL CONFERENCE

PIN

SUBMISSION DEADLINE

MICHAEL R. BLOOMBERG
Mayor

DAVID J. BURNEY, FAIA
Commissioner

DAVID RESNICK, AIA
Deputy Commissioner
Public Buildings Division

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF PUBLIC BUILDINGS

REQUEST FOR PROPOSALS

PROJECT: S216-415A

**CONSTRUCTION MANAGEMENT SERVICES FOR THE
RENOVATION AND REHABILITATION OF THE
WEST 59th STREET MARINE TRANSFER STATION,
BOROUGH OF MANHATTAN**

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PREFACE

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

SECTION I. TIMETABLE

A. RFP Issuance

Pre-Proposal conference

A pre-proposal conference will be held at 10:00 A.M. on Thursday, July 26, 2012, at DDC Headquarters, 30-30 Thomson Avenue, Long Island City, New York, 11101, in Conference Room 401. Attendance at this pre-proposal conference is not mandatory to propose on the contract described in this RFP; however, it is strongly encouraged.

B. Submission Deadline

The proposer shall deliver, on or before 4:00 P.M. on Thursday, August 9, 2012, the Proposal in a clearly marked, envelope or package. The proposal shall consist of THREE clearly marked, sealed packages containing the following: (1) the Technical Proposal (1 original and 6 copies), (2) Subcontractor Utilization Plan (1 original), and (3) Doing Business Data Form (1 original).

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

Carlo Di Fava (718) 391-1541
Professional Contracts Section
Department of Design and Construction
30-30 Thomson Avenue, 4th Floor (Entrance on 30th Place)
Long Island City, NY 11101
e-mail difavac@ddc.nyc.gov

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

C. Inquiries

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the

RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website. All inquiries must be directed ONLY to the contact person listed in above.

D. Addenda

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

E. RFP Schedule

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

- | | | |
|----|---------------------------------|---|
| 1. | Identify Consultant: | Within four weeks of submission deadline |
| 2. | Complete Contract Registration: | Approximately three months from date of CM selection. |
| 3. | Commence Work: | When directed by DDC. |

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS**A. Background and Objectives of the Project:**

The New York City Department of Design and Construction (DDC), Division of Public Buildings, is seeking a Construction Management firm to provide services for the Project described in this RFP. The selected CM will be required to provide services throughout the duration of the project (i.e., pre-construction, construction and post-construction services). The selected CM will be required to provide all services necessary and required for the inspection, management, coordination and administration of the Project, from commencement through substantial completion, final acceptance, and project close-out.

Project Location and Background

The West 59th Street Marine Transfer Station, located on Pier 99 at the terminus of West 59th Street on the Hudson River, is being renovated by DDC for the New York City Department of Sanitation (DSNY). This RFP is for Construction Management services related to the renovation of this facility.

The transfer station is part of DSNY's city-wide truck-to-barge waste removal system, which is currently under development, with four new marine transfer stations either in design or under construction in Queens, Brooklyn and Manhattan. When completed, these new facilities will serve as fully enclosed work environments where waste will be transferred from DSNY collection vehicles to closed shipping containers, which will in turn be loaded onto barges and shipped out of the city via city waterways. The renovation and development of this group of transfer stations is essential to DSNY's overall planning, outlined in their long-term *Solid Waste Management Plan*, aimed at reducing the negative environmental impact caused by long-distance truck hauling operations through city neighborhoods and on city roadways.

The West 59th Street transfer station is open 24 hours-a-day, 6 days-a-week, closed Sundays. Recycling operations, including barge and DSNY collection vehicle traffic, will continue to provide uninterrupted service during this construction project.

Current Project Status and Construction Schedule

The West 59th Street Marine Transfer Station renovation project is divided into two separate phases, referred to as Projects 1 and 2. Projects 1 and 2 are both currently in the Construction Document Phase. Project 1 has a one year construction schedule, anticipated to begin in December 2012. Project 2 has a 2 years construction schedule, anticipated to begin immediately upon completion of Project 1 in April 2014. Project 1 work must be fully completed and operational, including installation of the new truck scale system, prior to the start of Project 2.

Design Team

Design for this project is being developed by Greeley and Hansen.

Project 1 Scope

Structural repair of the inshore platform located east of the pier at the intersection of West 59th Street and Marginal Street; site work and intersection safety improvements including work in both the Hudson River Park (HRP) and Riverside Park South; replacement of the existing single truck scale with separate new inbound and outbound truck scales, installation of a new truck ramp ventilation system; removal of the existing control booths and installation of a new control booth at the top of the ramp to house the scale computer equipment and monitoring work stations; marine dredging south of the north pier, including the barge slip.

Project 2 Scope

Refurbishment of the existing 50,600 square foot pier building including: construction of new emergency generator, electric, mechanical fire pump and fire valve rooms; new exit passageway construction and existing exit passageway refurbishment; re-arrangement and refurbishment of the Operations Building interiors; fire suppression system replacement throughout the entire pier structure; mechanical, electrical and plumbing system upgrades; refurbishment and recoating the existing pier structure's exterior cladding systems including metal wall and roof panel systems and translucent panel wall cladding system.

B. Joint Ventures and Other Consultant Relationships:

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

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 as prime consultant and 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 and subconsultant(s). The RFP evaluation will be handled accordingly, and if the proposer is selected, the contract documents will show only the prime firm on the signature page, and all other firms will be listed as subconsultants in Exhibit A.

C. Cost Estimate / Term of Contract:

The estimated cost of the required construction work for the Project Phase 1 is \$14.85 million and for Project Phase 2 is \$31.99 million.

The term of the Contract shall commence as of the date of registration by the Comptroller and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required CM services for the Project. The term shall be based on the detailed Project Schedule submitted by the proposer as part of its Technical Proposal. The anticipated time frame for construction final acceptance of all required work is:

1. For Project 1: 365 consecutive calendar days, commencement of construction beginning approximately December 2012 with substantial completion anticipated in December 2013. Final acceptance is anticipated 3 months later in March 2014.

2. For Project 2: 730 consecutive calendar days, commencement of construction beginning approximately April 2014 with substantial completion anticipated in April 2016. Final acceptance is anticipated 3 months later in July 2016.

The anticipated Construction Management contract schedule is as follows:

1. Project 1 no pre-construction services anticipated
2. Project 1: commencement of construction in December, 2012
3. Project 1: completion of construction work in December, 2013
4. Project 1: completion of post construction services in March, 2014
5. Project 2: pre-construction services; provide 3 months CM services
6. Project 2: commencement of construction in April, 2014
7. Project 2: completion of construction work in April, 2016
8. Project 2: completion of post construction services in July, 2016

D. Insurance:

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

E. Payment Provisions:

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

1. Staffing Expenses: The CM shall be paid for staffing expenses for individuals identified in the approved Staffing Plan as construction management personnel. Staffing expenses shall be calculated based on direct salary rates for specified individuals, subject to a Multiplier of **1.75**.
2. Fee for Profit: The CM shall be paid a Fee for Profit: The Fee for Profit shall be deemed to include the following items: (a) profit, and (b) any costs and expenses for overhead that are in excess of the amount paid to the CM through the Multiplier of **1.75**. The amount of the Fee for Profit shall be calculated as a percent of the total actual cost of construction in accordance with the proposer's fee curve. The terms and conditions applicable to payment of the Fee for Profit are set forth in the attached Contract.

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

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

B. Contract Provisions:

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

C. Staffing Plan:

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

D. Compliance with Iran Divestment Act of 2012:

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

- i. The person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- ii. The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

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

E. Compliance with Local Law 34 of 2007:

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

F. 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. Please refer to Attachment 7 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 7, 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.

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

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with 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.

1. Technical Proposal (1 original and 6 copies): The Technical Proposal shall contain all the information requested in Subsection B below, plus completed forms 254 and 255 for Proposer and its subconsultants (if any). (These forms are available at <http://www.nyc.gov/html/ddc/html/otherfrm.html>)
2. Fee Proposal (1 original): **To be submitted ONLY upon request.** The Fee Proposal shall consist of the elements listed in Subsection C Below. Forms for the submission of the Fee Proposal are included as Attachments 4 and 5 to this RFP.

B. Technical Proposal (1 original and 6 copies):

The Technical Proposal shall contain the information described below.

1. Cover Letter: Submit a Cover Letter of no more than three pages, indicating the company name and address, and the name, address and telephone number of the person authorized to represent the firm. **(Be sure to refer to the proper DDC project number and title.)** Include a brief history of the firm, the overall organization of the firm, and a statement of its goals and objectives.
2. Experience of Firm & Subconsultants (if any): Provide examples of up to five projects, completed within the last ten years, which are similar in scope and type to the Project described in this RFP. Visual materials can take the form of printed brochures, photographs, drawings or similar images. For each project, the proposer shall provide information indicating whether the project was completed on time and within budget. If the proposer intends to use any subconsultants on the Project, it shall also submit prior projects completed by the subconsultant.
3. Staffing Plan: Submit a Staffing Plan for the Project. The Staffing Plan shall only include personnel for the performance of construction management and/or technical services for the Project. The Staffing Plan shall not include any personnel who perform administrative, overhead and/or home office functions. A form for the submission of the Staffing Plan is included as Attachment 3 to this RFP. As described in Attachment 3, the proposer shall identify the following:
 - Project Executive: Identify the Project Executive. The Project Executive shall serve as the Contractor's principal representative with respect to its obligations under this contract. The Project Executive will be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project.

- Key Construction Management (CM) Personnel: Identify Key CM Personnel for the Project. This means the team of specific CM personnel determined by the proposer to be necessary for successful completion of the Project. Key CM Personnel shall provide services for the entire duration of the Project.
 - Other Construction Management (CM) Personnel: Identify by title other Construction Management (CM) Personnel for the Project. This means CM personnel who will provide services that are supportive or ancillary to the services provided by the Key CM Personnel.
 - Total Estimated Hours Per Title: For all titles identified in the Staffing Plan, indicate the total estimated hours per title. The total estimated hours per title must be in accordance with the Project Schedule submitted by the proposer. (See requirement below). The total estimated hours per title shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).
 - Resumes: For all personnel included in the Staffing Plan, submit resumes detailing managerial and technical qualifications, as well as experience with similar projects.
4. Management Strategy: Provide a 3 page statement describing its management strategy, including (1) its understanding of the objectives and complexities of the Project, (2) its methodology for tracking and maintaining the Project's budget and schedule, and (3) its techniques for problem solving.
5. Project Schedule: Submit a detailed, coordinated schedule demonstrating the time frame for completion in 1,305 consecutive calendar days. (This time frame is based on the commencement of construction on December, 2012, final acceptance of construction by July, 2016. The Project Schedule shall detail time frames for all required construction operations, as well as interrelationships between significant contracts and/or components of the work. The Project Schedule shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours). The Project Schedule shall be in consecutive calendar days and shall specify time frames for the following activities:
- Pre-construction
 - Public Bidding of construction contracts: DDC anticipates that the time frame required for public bidding of the construction contracts is 30 consecutive calendar days for Project 1 and 40 consecutive calendar days for Project 2
 - Construction duration
 - Substantial Completion of construction
 - Final Acceptance of construction
 - Project Close-out and completion of all post construction services
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 6) serves as the proposer's acknowledgement of the receipt of addenda to this RFP

that may have been issued by the Agency prior to the proposal due date and time. The proposer should complete this form as instructed on the form.

C. Fee Proposal:

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

D. Proposal Package Contents (“Checklist”):

The Proposal Package shall consist of the following THREE packages:

1. Technical Proposal (1 original and 6 copies):
Sealed envelope, clearly marked as “Technical Proposal”, including
 - Items listed in Section IV. B. of this RFP
 - Statement of Understanding (Attachment 1)
 - Completed and Notarized Proposer’s Certification of Compliance with Iran Divestment Act (Attachment 2)
 - Staffing Plan (Attachment 3)
 - Acknowledgement of Addenda (Attachment 6)
2. Subcontractor Utilization Plan (1 original): (Attachment 8)
Sealed envelope, clearly marked as “Subcontractor Utilization Plan”.
3. Doing Business Data Form (Attachment 9)
Sealed envelope clearly marked as “Doing Business Data Form” containing a completed Doing Business Data Form.

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**A. Selection Process:**

This is a Quality Based Selection (QBS) project. DDC will rank proposals by technical merit, and negotiate a fair and reasonable price with the highest ranked firm. A DDC evaluation committee will review, evaluate and score all technical proposals in accordance with the criteria described below. The score will determine the proposer's ranking. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their technical proposals, after which their scores may be re-evaluated. Proposers shall be ranked in accordance with the scores. The ranking will be submitted to the Executive Consultant Selection Committee (ECSC) who will certify the results and authorize fee negotiation to commence with the highest ranked firm. Should negotiations fail with the highest ranked firm, the ECSC will authorize fee negotiation with the next highest ranked firm.

B. Proposal Evaluation Criteria:

The proposal evaluation criteria are as follows:

- Experience of the Firm & Subconsultants: (Weight 30%)
- Staffing Plan: (Weight 30%)
- Management Strategy: (Weight 25%)
- Project Schedule: (Weight 15%)

C. Basis of Award:

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

D. Supply and Service Employment Report:

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

E. VENDEX

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

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

- (1) **Submission:** VENDEX Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: VENDEX, 253 Broadway, 9th Floor, New York, New York 10007.
- (2) **Requirement:** Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, proposers may be obligated to complete and submit VENDEX Questionnaires. If required, VENDEX Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after award.

F. **Contract Finalization**

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

SECTION VI. GENERAL INFORMATION TO PROPOSERS**A. Complaints**

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

B. Applicable Laws

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

C. Contractual Requirements

1. Contracts shall be subject to New York City's general provisions, in substantially the form that they appear in "Appendix A-General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.
2. Any firm awarded a contract as a result of this RFP will be required to sign the City's standard requirements contract for Professional Services. 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.
3. 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.
4. The City will deal only with the Consultant and the City has no financial obligation to sub-consultants and sub-contractors of the Consultant. 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).
5. If this is an Infrastructure contract for engineering design services, the Proposer must negotiate with the agency the adoption of a schedule of payments and deliverables. In the event that a satisfactory decision cannot be reached regarding those schedules, the agency reserves the right to award to another proposer.

D. Contract Award

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

E. Proposer Appeal Rights

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

F. Multi-Year Contracts

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

G. Prompt Payment Policy

Pursuant to the PPB Rules, it is the City's policy to process contract payments efficiently and expeditiously. The prompt Payment provisions set forth in the edition of the Procurement Policy Board Rules in effect at the time of this solicitation shall be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest payments made after the required payment date except as set forth in the Rules.

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

H. Prices Irrevocable

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

I. Confidential, Proprietary Information or Trade Secrets

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

J. RFP Postponement/Cancellation

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

K. Proposer Costs

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

L. VENDEX Fees

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

M. Charter Section 312(a) Certification

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

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 resident engineering inspection services contract, attached hereto, and (iv) will, if its proposal is accepted, enter into the attached Standard contract with the New York City Department of Design and Construction.

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

- Yes**
- No**

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

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

Name of Firm
(Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

Address

E-Mail Address

ATTACHMENT 2**IRAN DIVESTMENT ACT COMPLIANCE RIDER
FOR NEW YORK CITY CONTRACTORS**

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

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

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

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

- (1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or
- (2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

ATTACHMENT 2 (continued)

**PROPOSER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT**

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

[Please Check One]

PROPOSER'S CERTIFICATION

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

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

Dated: _____, _____
City State

_____, 20_____
Month, Date Year

SIGNATURE

PRINTED NAME

TITLE

FULL BUSINESS NAME

Sworn to before me this
_____ day of _____, 20_____

Notary Public

ATTACHMENT 3

TECHNICAL PROPOSAL – FORM FOR STAFFING PLAN

FMS ID: S216-415A
Project: Construction Management Services for the Renovation and Rehabilitation of the West 59th Street Marine Transfer Station, Borough of Manhattan

Submission: The proposer shall submit Attachment 2 as part of its Technical Proposal.

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

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

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

Project Executive: _____

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

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

Title:	Name:	Total Estimated Hours per Phase		
		Pre-construction	Construction	Post Construction
Project Manager	_____	_____	_____	_____
Assistant Project Manager	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

ATTACHMENT 3 (continued)

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

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

Title:	Name:	Total Estimated Hours per Phase		
		Pre-construction	Construction	Post Construction
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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

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

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

Name of Firm
(Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

ATTACHMENT 4

FEE PROPOSAL – FORM FOR FEE FOR PROFIT

FMS ID: S216-415A
Project: Construction Management Services for the Renovation and Rehabilitation of the West 59th Street Marine Transfer Station, Borough of Manhattan

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

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

Instructions: In the space provided below, for each increment in actual construction cost, the proposer shall indicate a Fee for Profit, calculated as a percent of the total actual cost of construction. For actual construction costs between the levels designated, the Fee for Profit will be interpolated on a straight line basis.

Payment Provisions: The terms and conditions applicable to payment of the Fee for Profit are set forth in Article 7 of the attached Contract.

<u>Total Actual Construction Cost</u>	<u>Fee for Profit as a Percent of Actual Construction Cost</u>	<u>Amount of Fee for Profit</u>
\$40,000,000	_____ %	\$ _____
\$42,000,000	_____ %	\$ _____
\$44,000,000	_____ %	\$ _____
\$46,000,000	_____ %	\$ _____
\$48,000,000	_____ %	\$ _____
\$50,000,000	_____ %	\$ _____
\$52,000,000	_____ %	\$ _____
\$54,000,000	_____ %	\$ _____
\$56,000,000	_____ %	\$ _____
\$58,000,000	_____ %	\$ _____
\$60,000,000	_____ %	\$ _____
\$62,000,000	_____ %	\$ _____
\$64,000,000	_____ %	\$ _____
\$66,000,000	_____ %	\$ _____
\$68,000,000	_____ %	\$ _____
\$70,000,000	_____ %	\$ _____
\$72,000,000	_____ %	\$ _____
\$74,000,000	_____ %	\$ _____
\$76,000,000	_____ %	\$ _____
\$78,000,000	_____ %	\$ _____
\$80,000,000	_____ %	\$ _____
\$82,000,000	_____ %	\$ _____
\$84,000,000	_____ %	\$ _____
\$86,000,000	_____ %	\$ _____
\$88,000,000	_____ %	\$ _____
\$90,000,000	_____ %	\$ _____

Do not leave blanks - do not retype this sheet.

ATTACHMENT 4 (continued)

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

Name of Firm
(Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

ATTACHMENT 5

FEE PROPOSAL: FORM FOR STAFFING EXPENSES

FMS ID: S216-415A
Project: Construction Management Services for the Renovation and Rehabilitation of the West 59th Street Marine Transfer Station, Borough of Manhattan

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

Total Estimated Staffing Expenses: The proposer shall calculate the total estimated staffing expenses for the Project based on direct salary rate information for specified CM personnel. In completing this Attachment 5, the proposer shall provide information IDENTICAL to that provided in Attachment 2 regarding the specific CM personnel to be assigned to the Project, as well as the total estimated hours per title. The total estimated hours per title shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).

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

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

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

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

ATTACHMENT 5 (continued)

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

Total with Multiplier of **1.75**: _____

Total Estimated Staffing Expenses for Pre-Construction Phase: _____

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

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

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

Total with Multiplier of **1.75**: _____

Total Estimated Staffing Expenses for Construction Phase: _____

ATTACHMENT 5 (continued)

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

<u>CM Personnel Title and Name</u>	<u>Direct Salary Rate (per hour)</u>	x	<u>Total Estimated Hours Per Title</u>	=	<u>Total Estimated Amount per Title</u>
--	--	---	--	---	---

(1) Project Manager:

Name: _____	_____	x	_____	=	_____
-------------	-------	---	-------	---	-------

(2) Assistant Project Manager:

Name: _____	_____	x	_____	=	_____
-------------	-------	---	-------	---	-------

(3) Title: _____

Name: _____	_____	x	_____	=	_____
-------------	-------	---	-------	---	-------

(4) Title: _____

Name: _____	_____	x	_____	=	_____
-------------	-------	---	-------	---	-------

(5) Title: _____

Name: _____	_____	x	_____	=	_____
-------------	-------	---	-------	---	-------

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

Total with Multiplier of **1.75**: _____

Total Estimated Staffing Expenses for Post Construction Phase: _____

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

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

Name of Firm
(Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

ATTACHMENT 6

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS: Construction Management Services for the Renovation and Rehabilitation of the West 59 th Street Marine Transfer Station, Borough of Manhattan	PIN: 8502012TR0006P
--	------------------------

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

___Part I

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

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

___Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer's Authorized Representative:

- Name: _____
- Title: _____
- Signature: _____
- Date: _____

ATTACHMENT 7

CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of VENDEX Compliance

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

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

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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ATTACHMENT 8

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.

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To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at poped@ddc.nyc.gov or via facsimile at (718) 391-1866. 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

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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 is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Subcontractor Participation Goals established for this Contract by proposing one or more subcontractors that are M/WBEs for any portion of the Wicks trade work if the amount to be awarded to such M/WBE subcontractor is under \$1 million.** 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, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311.

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.

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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. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its 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;

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(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.

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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;

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

5. Whenever Agency has reason to believe that an MBE 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.

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

7. The Contractor's record in implementing its 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.

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ATTACHMENT 8 (continued)

M/WBE PROGRAM

SUBCONTRACTOR UTILIZATION PLAN

Subcontractor Utilization Plan: The Subcontractor Utilization Plan for this Contract is set forth on the following pages of this RFP. The Subcontractor Utilization Plan (Part I) indicates whether participation goals have been established for this Contract. If participation goals have been established for this Contract, the proposer must submit a Subcontractor Utilization Plan (Part II) with its Technical Proposal in a sealed envelope clearly marked as "Subcontractor Utilization Plan".

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

Contract Provisions: Contract provisions regarding the participation of MWBE firms are set forth in Article 46 of the Contract. The proposer is advised to review these contract provisions.

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

Rejection of the Proposal: The proposer must complete the Subcontractor Utilization Plan (Part II) set forth on the following pages. Subcontractor Utilization Plans which do not include the required affirmations (on the second page of the form) 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.



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 # 8502012TR0006P **FMS Project ID#:** S216-415A

Project Title Construction Management Services for the Renovation and Rehabilitation of the West 59th Street Marine Transfer Station , Borough of Manhattan

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 Cerasoli **Title** Deputy Director

Telephone # (718)391-1549 **Email** Cerasoli@ddc.nyc.gov

Project Description *(attach additional pages if necessary)*

Construction Management Services for the Renovation and Rehabilitation West 59th Street Marine Transfer Station, Borough of Manhattan

- (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. 10%

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

Group	Construction	Professional Services
Black American	0%	UNSPECIFIED %
Hispanic American	0%	UNSPECIFIED %
Asian American	0%	UNSPECIFIED %
Caucasian Female	No Goal	UNSPECIFIED %
Total Participation	(2) 0	(3) 31%

* For this procurement, individual ethnicity and gender goals are not specified. The Total Participation Goals for professional services subcontracts may be met by using Black American, Hispanic American or Caucasian Female firms or any combination of such firms.



THE CITY OF NEW YORK

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

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

• **Subcontracts under \$1M (construction/professional services):** Enter the value you expect to award to subcontractors in dollars for amounts under \$1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2.

- **Total Bid/Proposal Value:** Provide the dollar amount of the bid/proposal.
- **Calculated Target Subcontracting Percentage:** The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under \$1 million for construction and/or professional services. **This percentage must equal or exceed the percentage listed by the agency on page 1, at line (1).**

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.	<ul style="list-style-type: none"> From line a. above, allocate the dollar value of "Subcontracts under \$1M" by Construction and Professional Services. If all subcontracts under \$1M are in one industry, enter '0' for the industry with no subcontracts. Amounts listed on these lines should add up to the value from line a. 	Construction		Professional Services	
	Subcontracts under \$1M by Industry	\$ _____		\$ _____	
c.	<ul style="list-style-type: none"> For Construction enter percentage from line (2) from Page 1. For Professional Services enter percentage from line (3) from Page 1. Total Participation Goals Percentages must be copied from Part I, lines (2) and (3). 	Total Participation Goals	x _____ %	x _____ %	
d.	Value of Total Participation Goals	\$ _____		\$ _____	

Step 3:

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

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

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

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

Section IV: Vendor Certification 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 _____

Tax ID #: _____

PIN #: _____

SCHEDULE B – PART III – REQUEST FOR WAIVER OF TARGET SUBCONTRACTING PERCENTAGE

Contract Overview

Tax ID # _____ FMS Vendor ID # _____

Business Name _____

Contact Name _____ Telephone # _____ Email _____

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

PIN # (for this procurement) _____	Type of work on Prime Contract	Type of work on Subcontract (<i>Check all that apply</i>):	
	(<i>Check one</i>): <input type="checkbox"/> Construction <input type="checkbox"/> Professional Services	<input type="checkbox"/> Construction <input type="checkbox"/> Professional Services	<input type="checkbox"/> Other

SUBCONTRACTING as described in bid/solicitation documents (*Copy this % figure from the solicitation*)
 _____ % of the total contract value anticipated by the agency to be subcontracted for construction/professional services subcontracts valued below \$1 million (each)

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

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

- Vendor does not subcontract construction/professional services, and has the capacity and good faith intention to perform all such work itself.
- Vendor subcontracts *some* of this type of work but at *lower %* than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract.
- Other _____

References

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

CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____

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

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

TYPE OF WORK _____	AGENCY/ENTITY _____	DATE COMPLETED _____
Manager at agency/entity that hired vendor (Name/Phone No.) _____		
TYPE OF WORK _____	AGENCY/ENTITY _____	DATE COMPLETED _____
Manager at agency/entity that hired vendor (Name/Phone No.) _____		
TYPE OF WORK _____	AGENCY/ENTITY _____	DATE COMPLETED _____
Manager at agency/entity that hired vendor (Name/Phone No.) _____		

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

Signature: _____ Date: _____

Print Name: _____ Title: _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____ Date: _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature: _____ Date: _____

ATTACHMENT 9**DOING BUSINESS DATA FORM****DOING BUSINESS ACCOUNTABILITY PROJECT
QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM****What is the purpose of this *Data Form*?**

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

Why have I received this *Data Form*?

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this Data Form is completed. Most transactions valued at more than \$5,000 are considered business dealings and require completion of the Data Form. Exceptions include transactions awarded on an emergency basis or by “conventional” competitive sealed bid (i.e. bids that do not use a prequalified list or “Best Value” selection criteria.) Other types of transactions that are considered business dealings include real property and land use actions with the City.

What individuals will be included in the Doing Business Database?

The principal officers, owners and certain senior managers of 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 or the Data Form will be considered incomplete.

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

Yes. An organization is required to submit a Doing Business Data Form each time it enters into a transaction considered a business dealing with the City, including contract, concession and franchise proposals. However, the Data Form has both a Change option, which requires only information that has changed since the last Data Form was filed, and a No Change option. No organization should have to fill out the entire Data Form more than once. If you have already submitted a Data Form for one transaction type (such as a contract), and this is the first time you are completing a Data Form for a different transaction type (such as a grant), please select the Change option and complete Section 4 (Senior Managers) for the new transaction type.

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

No. 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 organization 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.

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.

What organizations will be included in the Doing Business Database?

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

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

Yes. All organizations 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.

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

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

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

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

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

When an organization stops doing business with the City, the people associated with it are removed from the *Database* automatically. However, any person who believes that s/he should not be listed may apply for removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the organization. Organizations may also update their database information by submitting an update form. Removal Request and Update forms are available online at www.nyc.gov/mocs (once there, click MOCS Programs) or by calling 212-788-8104.

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

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

The *Data Form* is to be returned to the City office that issued it.

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.



Doing Business Data Form

To be completed by the City agency prior to distribution	
Agency: 850	Transaction ID: EPIN-85012P0020;PIN-8502012TR0006P
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 office that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@cityhall.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

Section 1: Entity Information

Entity Name: _____
 Entity EIN/TIN: _____

Entity Filing Status (select one):

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

Entity is a Non-Profit: Yes No

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

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

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

Section 2: Principal Officers

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

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

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

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

There are no owners listed because (select one):

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

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Section 4: Senior Managers

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

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

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

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

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

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

CONTRACT FOR
CONSTRUCTION MANAGEMENT SERVICES

PROJECT: West 59th Street Marine Transfer Station

BOROUGH: Manhattan

FMS ID: S216-415A

REGISTRATION
NUMBER: _____

E-PIN: _____

PIN NUMBER: _____

CM: _____

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

WITNESSETH:

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

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

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

ARTICLE 1 - Definitions

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

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

1.2 "Agency" shall mean a city, county, borough or other office, position, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

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

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

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

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

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

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

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

1.10 "Construction Documents" shall mean the final plans, drawings and specifications for the construction work and all modifications thereto prepared by Consultant(s) engaged by the Department and approved in writing by the Commissioner.

1.11 "Construction Manager" or "CM" shall mean the entity entering into this Agreement with the Department.

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

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

1.14 "Contractor" or "Construction Manager" or "CM" shall mean the entity entering into this Agreement with the Department.

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

1.16 "Department" or "DDC" shall mean the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or his/her duly authorized representative.

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

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

1.19 "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.

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

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

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

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

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

1.25 "Project" shall mean the Project described in Exhibit A.

1.26 "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).

1.27 "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.

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

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

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

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

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

ARTICLE 2 - General Provisions

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

ARTICLE 3 - Agreement to Serve

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

ARTICLE 4 - Time Provisions

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

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

4.3 Extension of Contract: Upon written application by the CM, the Agency Chief Contracting Officer ("ACCO") may grant an extension of time for performance of the Contract. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total number of delay in days attributable to such cause. The ruling of the ACCO shall be final and binding as to the allowance of an extension and the number of days allowed.

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

the Commissioner.

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

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

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

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

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

ARTICLE 5 - The CM's Personnel

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

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

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

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

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

5.2.3 Project Executive: The Project Executive, identified in Exhibit B, shall serve as the CM's principal

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

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

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

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

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

5.2.8 Review and Approval of Staffing Plan: The Commissioner shall review the CM’s proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of his/her review, the Commissioner shall determine the following: (1) whether the Staffing Plan includes the individuals identified by the CM as Key Personnel its Proposal for the Contract, (2) whether each specific individual is qualified for the applicable title, and (3) the direct salary rate per hour to be paid for each specific individual, computed in accordance with Article 7. The CM shall revise the Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

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

- (a) Replacement Personnel: No substitutions for assigned personnel shall be permitted unless the proposed replacement has received the prior written approval of the Commissioner. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced. As set forth above, replacement of the Project Executive and/or the Key CM Personnel will only be permitted under the circumstances set forth in Article 5.2.5.
- (b) Changes by the Commissioner: The Commissioner reserves the right to direct changes to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Project and increasing or decreasing the personnel assigned to the Project, based upon the scope of the required Work. The CM shall increase or decrease the personnel assigned to the Project, as directed by the Commissioner.
- (c) Removal of Personnel: At the Commissioner's request at any time, the CM shall remove any personnel and substitute another employee of the CM reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his/her sole discretion.
- (d) Revisions Due to Delay: In the event completion of the Project is delayed for any reason, including

without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the CM, the Commissioner shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The CM shall be paid for the cost of the staffing it is directed by the Commissioner to maintain. Upon termination of the delay, the CM shall restore the level of staffing as directed by the Commissioner.

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

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

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

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

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

ARTICLE 6 – Construction Management Services

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

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

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

by this Contract. All CM services performed hereunder shall be in accordance with these standard practices.

- (c) The Commissioner or his duly authorized representative(s) shall have the right at all times to inspect the work of the CM and contractors.
- (d) The CM's services shall include the management, supervision and coordination of any Reimbursable Services required for the Project.

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

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

- (a) Overnight Delivery: Upon request, the CM shall provide overnight delivery of the following Project documents: (1) design documents; (2) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (3) change orders; (4) documents with respect to payment, and (5) any other critical communications and/or documents.
- (b) Transportation: The CM shall provide transportation for all personnel performing services, including without limitation: (1) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.5), (2) expenses for time spent by personnel commuting or traveling, and (3) expenses for parking and tolls. CMs and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (c) Equipment: The CM shall provide the items set forth below for all personnel performing services, including any Project Executive(s).
 - (1) All necessary CADD or computer usage time
 - (2) All necessary office supplies and/or tools
 - (3) Communications equipment and service, including without limitation cellular telephones. The telephone numbers of all personnel shall be submitted to the Commissioner.
 - (4) Hard hats, safety vests, and all other necessary and required Personal Protective Equipment (P.P.E.).
- (d) In the event the CM is directed in advance in writing by the Commissioner to provide services which require long distance travel, the CM shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel is defined in Article 6.5.

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

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

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

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

6.2.4 Take appropriate action to ensure that all required filings with regulatory agencies with respect to the

design have been made.

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

- (a) Review of Design Documents: The CM shall review and provide written comments with respect to design documents for the Project prepared by the Consultant. The CM's review and comments shall address the issues set forth below.
- (1) Constructability;
 - (2) Coordination;
 - (3) Economy and efficiency;
 - (4) Construction methods and materials;
 - (5) Availability of materials and labor;
 - (6) Minimalization of impact on agency operations;
 - (7) Division of the Work for the purpose of bidding, taking into account such factors as the type or scope of Work to be performed, time of performance, availability of labor, community relations and other pertinent data relating to the various trades involved;
 - (8) Time of performance;
 - (9) Compliance with the required scope of Work;
 - (10) Compliance with criteria set forth in the DDC Guide for Consultants;
 - (11) Compliance with DDC comments;
 - (12) Avoidance of possible conflicts and overlapping jurisdiction among the Subcontractors performing Work for the Project, including recommended solutions for the elimination of such conflicts or overlaps, and
 - (13) Avoidance of inconsistencies, problems, delays and change orders during the construction process.

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

- (b) Detailed Cost Estimate: The CM shall provide a detailed cost estimate for the Project, based upon design documents prepared by the Consultant.

6.2.6 Review Bid and Contract Documents for the Project and evaluate the same for completeness and compliance with DDC requirements. The CM's review shall ensure that the Bid and Contract Documents include all construction Work, as well as the DDC General Conditions. If required for the Project, such General Conditions shall include provisions for temporary facilities necessary to enable the contractors to perform their work. If directed by DDC, the CM shall assist in the preparation of such Bid and Contract Documents for the Project; provided, however, the CM shall have no responsibility for the preparation of design documents or other documents for which Consultant has responsibility.

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

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

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

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

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

- (a) Implement procedures to be followed by construction contractors for the expeditious processing of submittals, including without limitation shop drawings, material samples and catalogue cuts. Such procedures shall be in accordance with DDC guidelines.
- (b) Make recommendations to the Commissioner regarding the approval of proposed subcontractors and material vendors.

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

- (a) Provide technical inspection, supervision and coordination of the Work on the Project until final completion of the Work and Final Acceptance thereof by the Commissioner, verifying that the materials furnished and Work performed are in accordance with all requirements of the Construction Documents, and that Work on the Project is progressing on schedule.
- (b) Provide offsite plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Commissioner, to insure conformance with the material specifications of the Construction Documents.
- (c) Take appropriate action to prevent the installation of Work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the Construction Documents, and inform Commissioner promptly of such action and the reasons for and outcome of such action.
- (d) Supervise the performance of all inspections, quality control tests, or any other tests required by law, rule or regulation or by the Construction Documents, to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include without limitation, semi-controlled or off-site inspections and controlled inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel or any other material or equipment. If directed by the Commissioner in writing as a reimbursable service, the CM shall retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory services will be provided to the CM pursuant to the Allowance for Reimbursable Services.
- (e) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative on a periodic basis and prior to Substantial Completion, occupancy by the City, or Final Acceptance, as set forth below in this Article 6. The CM shall furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
- (f) Inspect the Project and provide a report prior to the expiration of the guarantee period, as set forth below in this Article 6.

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

- (a) Review and coordinate proposed Progress Schedule(s), and any updates thereto, submitted by the construction contractor(s) and direct revisions to the Progress Schedule(s) as required by the Commissioner.
- (b) Make recommendations to the Commissioner regarding approval or disapproval of the Progress Schedule(s).
- (c) If necessary, prepare a combined Progress Schedule for the Project in the form of a bar chart or equivalent.
- (d) Monitor compliance with the Progress Schedule(s) by the contractor(s).
- (e) Review the adequacy of the personnel and equipment of the contractor(s) and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule(s).
- (f) Notify the Commissioner of any anticipated delays in fabrication, erection or construction.
- (g) If performance of the work by the contractor(s) falls behind the Progress Schedule(s), advise the

Commissioner of the same and make recommendations as to what methods should be adopted to make up for lost time.

- (h) Render assistance when required to minimize delays to the Project caused by labor disputes during construction.

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

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

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

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

- (a) Keep accurate and detailed written records of the progress of the Project during all stages of planning and construction.
- (b) Maintain a daily job diary or log book describing all activities which occurred on the Project on a daily basis, including without limitation, all work accomplished, the number of workers, identified by trade, employed at the site by the construction contractor(s), the number of hours worked, material shortages, labor difficulties, weather conditions, visits by officials, decisions reached, specific problems encountered, general and specific observations, and all other pertinent data relative to the performance of the work.
- (c) Maintain accurate, orderly and detailed files and written records and documents regarding the Project, including without limitation, correspondence, minutes and/or reports of job conferences, progress reports, shop drawings and other submissions, construction contract documents, including all addenda, change orders, supplemental drawings and all other project-related documents. The CM shall provide any records, documents or information concerning the Project to the Commissioner as directed.
- (d) With respect to work to be performed on a time-and-materials, unit cost, or similar basis, requiring the keeping of records and computation therefrom, maintain cost accounting records in accordance with the City's procedures.
- (e) Ensure that record "as built" drawings are produced and kept current by the construction contractor(s) in accordance with the requirements of the Construction Documents.
- (f) All Project records, including without limitation those specified above, shall be available to the Commissioner at all times immediately upon request, and the Commissioner shall have the right to remove such Project records and make copies thereof.

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

6.3.9 Prepare correspondence or other communications to the construction contractor(s) as required in order

to advance the Project, including without limitation letters for the signature of the Commissioner or the Commissioner's Representative.

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

- (a) Review all requisitions for payments submitted by the construction contractor(s), including without limitation partial payments, payments for extra work, substantial completion and final payments.
- (b) Make recommendations to the Commissioner for approval or disapproval of all contractor requisitions for payment in accordance with the City's procedures.
- (c) Verify all estimates for payments of work performed, computations, as well as field measurements and sketches necessary for payment purposes.
- (d) With respect to each requisition for payments submitted by the construction contractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.

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

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

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

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

6.3.15 Schedule and conduct job meetings with the construction contractor(s), Consultant(s), representatives of the Commissioner, the sponsoring agency, regulatory agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, coordination, scheduling and related issues. The CM shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees.

6.3.16 Undertake the following responsibilities with respect to Project reports:

- (a) Submit written progress reports to the Commissioner on a monthly basis, unless otherwise directed. Such reports shall be based upon the most current information and shall include, without limitation:
 - (1) Progress Schedule, including information concerning the Work of the construction

- contractor(s) and the percentage of completion of the Work;
- (2) Change Order Tracking Sheet, indicating the number and amount of change orders;
- (3) Shop Drawing Log Schedule;
- (4) Fabrication and Delivery Schedule;
- (5) Budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete, and
- (6) Progress photographs, as set forth below in this Article 6.

(b) Provide reports regarding the Work as may be directed by the Commissioner, incorporating such information, interpretation, detail or back-up material as may be required by the Commissioner.

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

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

- (a) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative at the time of substantial completion.
- (b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
- (c) Make recommendations to the Commissioner regarding a determination of substantial completion.
- (d) Prepare and/or finalize all necessary punch lists, including completion dates for all items, and expedite execution of the same by the contractor(s).
- (e) Perform the above duties in the event the City is to take over, use, occupy or operate the Project, or any part thereof.

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

- (a) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative at the time of final acceptance.
- (b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished work.
- (c) Make recommendations to the Commissioner regarding a determination of final acceptance.
- (d) Assemble and deliver to the Commissioner all record "as built" drawings. The CM shall notify the Commissioner of any issues, problems or observations relative to such record drawings.

6.3.20 Collect guarantees from the manufacturer, maintenance and operations manuals, keying schedules and other data required of the construction contractor(s), and maintain photographic records, material and equipment delivery records, visual aids, charts and graphs.

6.3.21 Prior to the expiration of the guarantee period set forth in the construction contract, inspect the Project and furnish a report to the Commissioner describing in detail any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

6.3.22 Take photographs to document the progress of the construction Work. Such photographs shall be taken on a bi-weekly basis until Substantial Completion of the Work. Such photographs shall be included in each monthly progress report.

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

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

each of these events has occurred.

6.3.25 In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the CM shall diligently render to the City all assistance which the City may require. Such services shall be rendered by the CM without additional fee or other compensation, except for the costs and expense of personnel who were assigned to the Project as job-site or management staff, or comparable personnel if those who were assigned to the Project are no longer employed by the CM.

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

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

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

6.4.2 Manage and supervise training sessions provided by the construction contractors for all equipment and/or systems installed.

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

6.4.3 Submit to the Commissioner originals of all final Project records, including without limitation, (1) all reports for the Project, including inspector's reports, as well as laboratory and plant testing reports; (2) all certificates, warranties and guarantees from manufacturers; (3) office and/or field diaries or log books; (4) all original records with respect to contractor payments; (5) record "As Built" Drawings; (6) progress photographs of the construction, and (7) any other Project records required by the Commissioner.

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

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

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

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

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

- (a) Printing of contract documents and reports
- (b) Express mail postage, except as otherwise provided herein and excluding mail from the CM's main or home office to the Field Office
- (c) Laboratory services for testing of materials and/or items of work
- (d) Purchase of long lead items for the construction work
- (e) Performance of general conditions items
- (f) Long distance travel. In the event the CM is directed in advance in writing by the Commissioner to provide services which require long distance travel, the CM shall be reimbursed for expenses incurred

in connection with such long distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the CM's home office. Reimbursement for long distance travel expenses shall be as set forth in Article 7. Long distance travel shall not include travel expenses for the CM and/or any Subconsultants that are not located in New York City or its vicinity.

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

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

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

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

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

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

ARTICLE 7 - Payment Terms and Conditions

7.1 General

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

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

7.1.3 Allowances: In the event the allowance amounts described in this Article are not sufficient, as determined by the Commissioner, to cover the cost of the items of required Work for which allowance amounts are specified, the City will increase the amounts of such allowances. Notwithstanding the specific amounts allocated for

allowances, as set forth in Exhibit A, the Commissioner may, by issuance of a “No Cost Change Order” to the Contractor, reallocate such specific allowance amounts within this Article 7.

7.2 Fee for Profit

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

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

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

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

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

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

- (a) Any amounts for change orders to the construction contracts, except for a change order which meets the following conditions: (1) the change order increases the scope of work for the Project, and (2) the total amount of other scope increasing change orders issued to date exceeds five (5%) percent of the total dollar value of all construction Work as described above;
- (b) Any amounts for the assessment of liquidated damages which has been deducted from the total price for the construction contract(s) for the Project;
- (c) Any allowance amounts or otherwise designated amounts for construction work, whether for specified lump sum items or for unit price items, included in the original price for the construction contract(s) which remain unexpended at the conclusion of the Project;
- (d) Any amounts for bonus payments to the construction contractor(s), whether payment is by change order or through allowances provided in the construction contract(s);
- (e) Any amounts for work omitted from the construction contract(s), and
- (f) Any amounts for construction work which is determined to be defective, unsatisfactory or not in accordance with the construction contract(s).

7.2.4 Total Fee for Profit: Upon completion of all required services by the CM, the total Fee for Profit for the Project shall be determined as follows: the total actual cost of construction for the Project, as defined above, shall be multiplied by the applicable percent set forth in the Fee Curve (Exhibit D). If the total actual cost of construction falls

between the dollar levels designated in the Fee Curve, the Fee for Profit shall be interpolated on a straight line basis between the corresponding two dollar levels. The Fee Curve set forth in Exhibit D shall apply to the Contract term and any extension thereof. Partial payments to the CM of the estimated Fee for Profit shall be subject to adjustment as set forth below.

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

7.3 Staffing Expenses

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

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

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

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

- (a) Assigned Employee's Direct Salary Rate per hour, determined and approved in writing by the Commissioner in accordance with the provisions set forth below. In the event the CM receives written authorization from the Commissioner to have the Assigned Employee perform services during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for this Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for the Project for which the CM is not entitled to compensation, and (5) any non-regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
- (c) Non-billable hours shall be defined as any hours set forth 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.
- (d) The costs deemed included in the Multiplier are set forth in Article 7.3.8 below.

7.3.4 Equitable Reduction: The amount of payment to the CM for services performed for the Project by an Assigned Employee, calculated as set forth above, shall be subject to an equitable reduction if, for the week during

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

- (a) Total number of hours for which the Assigned Employee was actually paid by the CM for the week in question, less any non-billable hours, as defined above.
- (b) Total number of hours actually billed by the CM to all entities for the Assigned Employee's services for the week in question, including the number of hours billed for this Project

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

- (a) Actual Annual Direct Salary Rate per Hour: For each Assigned Employee, the CM shall submit the items set forth below. The CM shall also submit any records or documentation requested by the Commissioner to verify the Assigned Employee's actual annual direct salary, including without limitation, the CM's payroll register for the past twelve (12) months.
 - (1) Actual Annual Direct Salary: The Assigned Employee's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) any payments for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (2) any employer payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) any costs for any other fringe and/or supplemental benefits.
 - (2) Computation: The Assigned Employee's actual annual direct salary rate per hour shall be computed as follows: the Assigned Employee's actual annual direct salary, as defined above, divided by 2080.
- (b) Determination of Direct Salary Rate: For each Assigned Employee, the Commissioner shall determine and approve in writing the Direct Salary Rate per hour to be paid for such employee.
 - (1) Once determined and approved by the Commissioner as set forth above, the Assigned Employee's Direct Salary Rate per hour shall not be eligible for any increase whatsoever, except for the increase described in Article 7.3.6 below. Any such increase must be approved in writing by the Commissioner.
 - (2) The Direct Salary Rate per hour for an Assigned Employee, determined and approved by the Commissioner, may be adjusted in accordance with Article 7.3.7 below, in the event the CM receives written authorization from the Commissioner in the particular instance to have the Assigned Employee perform services during other than regular business hours.

7.3.6 Increases: An Assigned Employee's Direct Salary Rate per hour, determined and approved by the Commissioner, shall be subject to an increase on a yearly basis, subject to the limitations set forth below. The first such increase shall be made one (1) year after the commencement date (i.e., the date on which the Contract is registered by the Comptroller), and thereafter, for the remainder of the term of the Contract, including the extended term, on a yearly basis, on the anniversary of commencement date. Any increase in the Direct Salary Rate(s) shall be based on whatever increase may have occurred in the Employment Cost Index for Professional, Scientific and Technical Services, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO"). If for the prior year, EAO determines that the Index showed an increase, the Direct Salary Rate(s) shall be increased. If, for the prior year, EAO determines that the Index declined or showed no increase, the

Direct Salary Rate(s) shall remain unchanged. Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only and shall have no impact on the rate paid to date.

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

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

- (a) The CM's policy is subject to approval by the Commissioner in accordance with Article 5.
- (b) The premium for Night Differential shall not exceed ten (10%) percent of the Assigned Employee's Direct Salary Rate per hour, and the premium for Overtime shall not exceed fifty (50%) percent of such Direct Salary Rate.
- (c) The CM shall not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the CM to the Assigned Employee, as evidenced by the CM's payroll register.

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

- (a) All expenses for compensation paid to personnel of the CM (other than construction management personnel identified in the approved Staffing Plan, except for the Project Executive). Such other personnel of the CM shall include without limitation all officers, principals, employees and personnel of the CM, serving in whatever capacity, including any Project Executive(s). Compensation for such other personnel is deemed included in the Multiplier. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, social security and medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.
- (b) All expenses for compensation paid to construction management personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include without limitation the items listed in item (a) above.
- (c) All expenses in connection with the performance of services, including without limitation: (1) expenses for non-reimbursable services, as set forth in Article 6, (2) meals, and (3) lodging.
- (d) All expenses for home office general facilities, including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls to the job site and DDC (except for long distance calls to other locations as specifically required by the Commissioner), sales, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, copying, postage, and any other office expenses or overhead costs, except as otherwise expressly provided in this Agreement.
- (e) All expenses for applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.
- (f) All expenses for insurance coverage determined by the CM to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required by this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the CM, including without

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

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

7.4 Allowance for Reimbursable Services

7.4.1 General: An allowance in the amount set forth in Exhibit A is established for payment for Reimbursable Services, as set forth in Article 6. In providing Reimbursable Services, the CM shall comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Commissioner. If so directed, the CM shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$5,000.

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

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

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

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

7.4.5 Requisitions: For payment for Reimbursable Services, the CM shall submit the documentation set forth in this Article 7.

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

7.5 Requisitions for Payment

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

- (a) Project Progress Report: The CM shall submit a current report indicating (1) the percentage of

completion of all required Work for the Project, and (2) the services the CM provided during the payment period.

(b) Staffing Expenses: For any period for which the CM is requesting payment for staffing expenses for an Assigned Employee, the CM shall submit the documentation set forth below:

- (1) Assigned Employee's name and title.
- (2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.
- (3) Assigned Employee's direct salary rate determined and approved by the Commissioner and included in the Staffing Plan;
- (4) Statement that Multiplier for Overhead is 1.75.
- (5) Number of hours worked each day by the Assigned Employee for the week(s) in question. The number of hours per day shall be broken down to indicate the number of regular business hours and the number of non-regular business hours. The Multiplier shall not apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during other than regular business hours.
- (6) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during the employee performed services for this Project; (2) actual hours during which the employee performed services for other projects; (3) non-billable hours, as defined above; (4) actual hours, if any, during which the Assigned Employee spent performing services for this Project for which the CM is not entitled to compensation, and (5) non-regular business hours, if any.
- (7) Copy of the CM's payroll register for the week(s) in question reflecting the amount actually paid by the CM to the Assigned Employee for that week,
- (8) Applicable only if services were performed during other than regular business hours: (i) copy of authorization by Commissioner for such services, and (ii) copy of Commissioner's approval of the CM's policy regarding payment of a premium for services performed during other than regular business hours.

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

- (1) Description of the Reimbursable Service the Consultant was directed to provide.
- (2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required services.
- (3) If payment is on a unit price basis, a report indicating the number of completed units.
- (4) If payment is based on actual cost, receipted bills or any other data required by the Commissioner.

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

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

ARTICLE 8 - Authorized Action

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

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

ARTICLE 9 - Services Furnished by the City

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

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

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

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

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 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. Schedule B of the Contract ("Subcontractor Utilization Plan") is included in the Request for Proposals.

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The Target Subcontracting Percentage applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line (1)). The "Target Subcontracting Percentage" is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of business award to one or more subcontractors for amounts under \$1 million for construction and professional services.

A prospective contractor may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at poped@ddc.nyc.gov or via facsimile at (718) 391-1885. 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 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 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. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Subcontractor Participation Goals established for this Contract by proposing one or more subcontractors that are M/WBEs for any portion of the Wicks trade work if the amount to be awarded to such M/WBE subcontractor is under \$1 million.** 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, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order

to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311.

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. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its 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 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. If a Subcontractor Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to award subcontracts to MBEs and/or WBEs sufficient to meet the Subcontractor Participation Goals contained in its Subcontractor Utilization Plan or the Subcontractor Participation Goals as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of subcontracts required to be awarded to MBE and/or WBE subcontractors to meet the Subcontractor Participation Goals and the dollar amount the Contractor actually awarded and paid to MBE and/or WBE subcontractors. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the Subcontractor Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE 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.

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

7. The Contractor's record in implementing its 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 CM.

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

CONSTRUCTION MANAGER:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

EXHIBIT A

CONTRACT INFORMATION

- Project: _____

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

- Total Not to Exceed Amount: \$ _____
(Total of the Allowances listed below)
 - Allowance for Fee for Profit: \$ _____

 - Allowance for Staffing Expenses: \$ _____

 - Allowance for Reimbursable Services: \$ _____

- Term of Contract: The Contract shall commence as of the date of registration by the Comptroller shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services hereunder. The anticipated time frame for Final Acceptance of all required construction work for the Project and completion of all required services is:
 1. For Project 1: 455 consecutive calendar days (CCD's), broken down as follows: (1) Pre-construction Phase (Public Bidding and Award of construction contracts): 0 CCD's, (2) Construction Phase (Start to Substantial Completion) 365 CCD's, and (3) Post Construction Phase: 90 CCD's.
 2. For Project 2: 910 consecutive calendar days (CCD's), broken down as follows: (1) Pre-construction Phase (Public Bidding and Award of construction contracts): 90 CCD's, (2) Construction Phase (Start to Substantial Completion) 730 CCD's, and (3) Post Construction Phase: 90 CCD's.

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

EXHIBIT B

STAFFING PLAN

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

EXHIBIT C

PROJECT SCHEDULE

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

EXHIBIT D

FEE CURVE FOR FEE FOR PROFIT

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

TOTAL ACTUAL CONSTRUCTION COST	FEE FOR PROFIT AS A PERCENT OF TOTAL ACTUAL CONSTRUCTION COST	AMOUNT OF FEE FOR PROFIT
\$30,000,000	_____ %	\$ _____
\$32,000,000	_____ %	\$ _____
\$34,000,000	_____ %	\$ _____
\$36,000,000	_____ %	\$ _____
\$38,000,000	_____ %	\$ _____
\$40,000,000	_____ %	\$ _____
\$42,000,000	_____ %	\$ _____
\$44,000,000	_____ %	\$ _____
\$46,000,000	_____ %	\$ _____
\$48,000,000	_____ %	\$ _____
\$50,000,000	_____ %	\$ _____
\$52,000,000	_____ %	\$ _____
\$54,000,000	_____ %	\$ _____
\$56,000,000	_____ %	\$ _____
\$58,000,000	_____ %	\$ _____
\$60,000,000	_____ %	\$ _____
\$62,000,000	_____ %	\$ _____
\$64,000,000	_____ %	\$ _____
\$66,000,000	_____ %	\$ _____
\$68,000,000	_____ %	\$ _____
\$70,000,000	_____ %	\$ _____
\$72,000,000	_____ %	\$ _____
\$74,000,000	_____ %	\$ _____
\$76,000,000	_____ %	\$ _____
\$78,000,000	_____ %	\$ _____
\$80,000,000	_____ %	\$ _____
\$82,000,000	_____ %	\$ _____
\$84,000,000	_____ %	\$ _____
\$86,000,000	_____ %	\$ _____
\$88,000,000	_____ %	\$ _____
\$90,000,000	_____ %	\$ _____

EXHIBIT E

CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

SAFETY REQUIREMENTS

THE DDC SAFETY REQUIREMENTS INCLUDE THE FOLLOWING SECTIONS:

- I. POLICY ON SITE SAFETY**
- II. PURPOSE**
- III. DEFINITIONS**
- IV. RESPONSIBILITIES**
- V. SAFETY QUESTIONNAIRE**
- VI. SAFETY PROGRAM AND SITE SAFETY PLAN**
- VII. KICK-OFF/PRE-CONSTRUCTION MEETINGS AND SAFETY REVIEW**
- VIII. EVALUATION DURING WORK IN PROGRESS**
- IX. SAFETY PERFORMANCE EVALUATION**

I. POLICY ON SITE SAFETY

The City of New York Department of Design and Construction (DDC) is committed to a policy of injury and illness prevention and risk management for construction work that will ensure the safety and health of the workers engaged in the projects and the protection of the general public. Therefore, it is DDC's policy that work carried out by Contractors on DDC jobsites must, at a minimum, comply with applicable federal, state and city laws, rules and regulations, including without limitation:

- ❑ U. S. Department of Labor 29 Code of Federal Regulations (CFR) Part 1926 and applicable Sub-parts of Part 1910 – U.S. Occupational Safety and Health Administration (OSHA) including, but not limited to “Respiratory Protection” (29 CFR 1910.134), “Permit-Required Confined Spaces” (29 CFR 1910.146), and “Hazard Communication” (29 CFR 1910.1200);
- ❑ New York State Department of Labor Industrial Code Rule 23 – Protection in Construction, Demolition and Excavation;
- ❑ New York City Construction Codes, Title 28
- ❑ NYC Department of Transportation Title 34 Chapter 2 – Highway Rules
- ❑ New York State Department of Labor Industrial Code Rule 753
- ❑ NYC Local Law No. 113 (2005) Noise Control Code

In addition, all regulations promulgated by the NYC Department of Transportation, including requirements for Maintenance and Protection of Traffic (MPT), are applicable when contained in contract specifications. While MPT is a significant component of work in our Infrastructure Division, it does not supersede or exempt Contractors from complying with other applicable health and safety standards (for example, excavating and trenching standards, operation of heavy equipment and compliance with City environmental and noise regulations).

II. PURPOSE

The purpose of this policy is to ensure that Contractors perform their work and supervise their employees in accordance with all applicable federal, state and city rules and regulations. Further, Contractors will be expected to minimize or eliminate jobsite and public hazard, through a planning, inspection, auditing and corrective action process. The goal is to control risks so that injuries, illnesses and accidents to contractors' employees, DDC employees and the general public, as well as damage to city-owned and private property, are reduced to the lowest level feasible.

III. DEFINITIONS

Agency Chief Contracting Officer (ACCO): The ACCO shall mean the person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO.

Competent Person: As defined by OSHA, an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees or the general public, and who has authorization to take prompt corrective measures to eliminate them.

Construction Safety Auditor: A representative of the QACS Construction Safety Unit who provides inspection and assessment services to enhance health and safety on all DDC construction projects. The activities of the Construction Safety Auditor include performing site surveys, reviewing health and safety plans, reviewing construction permits, and rendering technical advice and assistance to DDC Resident Engineers and Project Managers.

Construction Safety Unit: A part of QACS within the Division of Technical Support that assesses contractor safety on DDC jobsites and advises responsible parties of needed corrective actions.

Construction Superintendent: A representative of the contractor responsible for overseeing performance of the required construction work. This individual must engage in sound construction practices, and is responsible to maintain a safe work site. In the case of a project involving the demolition, alteration or new construction of buildings, the Construction Superintendent must be licensed by the NYC Department of Buildings.

Contractor: For purposes of these Safety Requirements, the term “Contractor” shall mean any person or entity that enters into a contract for the performance of construction work on a DDC project. The term “Contractor” shall include any person or entity which enters into any of the following types of contracts: (1) a prime construction contract for a specific project, (2) a prime construction contract using the Job Order Contracting System (“JOCS Contract”), and (3) a subcontract with a CM/Builder (“First Tier Subcontract”).

Director - Quality Assurance and Construction Safety (QACS): Responsible for the operations of the QACS Construction Safety Unit and the DDC Site Safety management programs.

Job Hazard Assessment (JHA): A process of identifying site-specific hazards that may be present during construction and establishing the means and methods to reduce or eliminate those hazards.

Jobsite Safety Coordinator: A person designated by the Contractor to be onsite during all activities. This individual shall have received, at a minimum, the OSHA 10-hour construction safety program. Other examples of acceptable training are the 30-hour OSHA Safety and Health Standards for the Construction Industry training program (OSHA 510) or a degree/certificate in a safety and health from a college-level curriculum. This person does not necessarily have to be dedicated full-time to site safety, but must have sufficient experience and authority to undertake corrective action and must qualify to be a competent person. For certain projects, as defined in NYC Construction Codes – Title 28, this person may be required to have a Site Safety Manager’s License issued by the NYC DOB.

Qualified Person: As defined by OSHA, an individual who, by possession of a recognized degree, certificate, license or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his or her ability to solve problems relating to the subject matter, the work, or the project. Qualified Persons are required under regulation to address issues pertaining, but without limit, to fall protection, scaffold design and trenching and shoring, among others.

Resident Engineer (RE) / Construction Project Manager (CPM): Representative of the Commissioner duly designated by the Commissioner to be his/her representative at the site of the work. (The RE/CPM may be a third-party consultant, including a CM, retained by DDC.)

Safety Program: Established by the Contractor that covers all operations of that Contractor and establishes the Contractor’s overall safety policy, regulatory compliance plan and minimum safety standards. The Safety Program must be submitted prior to award and is subject to review and acceptance by the Construction Safety Unit.

Safety Questionnaire: Used by DDC to evaluate Contractor’s current and past safety performance. It is required to be completed by all Contractors initially when submitting bids for Construction work, or when being pre-qualified and updated annually or as requested by the DDC.

Site Safety Plan: A site-specific safety plan developed by the Contractor for a specific project. The Site Safety Plan must identify hazards associated with the project, and include specific safety precautions and training appropriate and necessary to complete the work. The Site Safety Plan must be submitted prior to award and is subject to review and acceptance by the Construction Safety Unit.

Unsafe or Unhealthy Condition: A condition that could be potentially hazardous to the health and safety of personnel or the public, and/or damaging to equipment, machinery, property or the environment.

Weekly Safety Meetings: Weekly documented jobsite safety meetings, given to all jobsite personnel by contractor, with the purpose of discussing general safety topics and job specific requirements encountered at the DDC work site.

IV. RESPONSIBILITIES

All persons who manage, perform, and provide support for construction projects shall conduct operations in compliance with the requirements identified in this Policy and all applicable governing regulatory agency requirements and guidelines pertaining to safety in construction.

A. Resident Engineer / Construction Project Manager / Construction Manager

- Monitors the issuance of safety- related permits, approvals and drawings and maintains copies on site.
- Monitors construction-related work activities to confirm that they are conducted in accordance with DDC policies and all applicable regulations that pertain to construction safety.
- Maintains documentation and periodically attends weekly safety meeting.
- Notifies the Construction Safety Unit and the ACCO's Insurance and Risk Management Unit of project- related accidents and emergencies, as per DDC's Construction Safety Emergency Protocol.
- Gathers facts related to all accidents and prepares DDC Accident Reports.
- Notifies the Construction Safety Unit of outside regulatory agency inspections and forwards a copy of the inspection report within three days of its receipt.
- Monitors the conditions at the site for conformance with the Site Safety Plan and DDC construction documents.
- Notifies the contractor and DDC in the event that any condition or activity exists that is not in compliance with the Site Safety Plan, applicable federal, state or local codes or any condition that presents a potential risk of injury to the public or workers or possible damage to property.
- Notifies DDC of any emergency condition and directs the contractor to provide such labor, materials, equipment and supervision to abate such conditions.
- Reports gross safety violations to the Construction Safety Unit immediately.

B. Contractors

- Complete a Safety Questionnaire and submit with its bid or as part of a pre-qualification package.
- Provide a Written Job Hazard Assessment (JHA) that identifies expected safety issues of the work to be performed. JHA shall be included with the Site Safety Plan submitted by the contractor.
- Submit a Site Safety Plan and Safety Program within 10 business days of notification from DDC that it has been identified as the low bidder. The Site Safety Plan and Safety Program are subject to review and acceptance by the Construction Safety Unit prior to an award of contract. The Site Safety Plan shall be revised and updated as necessary.
- Ensure that all employees are aware of the hazards associated with the project through formal and informal training and/or other communications. Conduct and document weekly safety meetings for the duration of the project. Documentation to be provided to the RE/CPM/CM on a monthly basis.
- Name a Construction Superintendent, if required.
- Name a Job Site Safety Coordinator. The Contractor will be required to identify the Job Site Safety Coordinator in the Site Safety Plan.
- Comply with all mandated federal, state and local safety and health rules and regulations.
- Comply with all provisions of the Site Safety Plan.
- As part of the Site Safety Plan, prepare a site specific MPT (if not otherwise provided in the contract documents) and comply with all of its provisions.
- Conduct and document site-specific safety orientation for Contractor personnel to review the hazards associated with the project as identified in the Site Safety Plan and the specific safety procedures and controls that will be used to protect workers, the general public and property. The Job Site Safety Coordinator will conduct this training prior to mobilization and provide documentation to the RE/CPM/CM.
- Provide, replace and adequately maintain at or around the project site, suitable and sufficient signage, lights, barricades and enclosures (fences, sidewalk sheds, netting, bracing, etc.).
- Report unsafe conditions or hazards to the DDC RE/CPM/CM as soon as practical, but no more than 24 hours after discovery, and take action to remove or abate such conditions.
- Report any accident involving injuries to workers or the general public, as well as property damage, to the DDC RE/CPM/CM within two (2) hours.
- Notify the DDC RE/CPM/CM within two (2) hours of the start of an inspection by any regulatory agency personnel, including OSHA.
- Maintain all records pertaining to all required compliance documents and accident and injury reports.
- Respond to DDC recommendations on safety, which shall in no way relieve the Contractor of its responsibilities for safety on the project. The Contractor has sole responsibility for safety.

V. SAFETY QUESTIONNAIRE

DDC requires that all Contractors provide information regarding their current and past safety and environmental performance and programs. This will be accomplished by the use of the DDC Safety Questionnaire. As a part of the bid submittal package, the contractor must submit a completed DDC Safety Questionnaire listing their workers' compensation experience modification rating and OSHA Incidence Rates for the three (3) years prior to the date of the bid opening. DDC may request a Contractor to update its Questionnaire at any time or to provide more detailed information. The Contractor must provide the requested update within 30 days.

The following criteria will be used by DDC in reviewing the Contractor's responsibility, which will be based on the information provided on the questionnaire:

- Criteria 1: OSHA Injury and Illness Rates (I&IR) are no greater than the average for the industry (based on the most current Bureau of Labor Statistics data for the Contractors SIC code); and
- Criteria 2: Insurance workers compensation Experience Modification Rate (EMR) equal to or less than 1.0; and
- Criteria 3: Any willful violations issued by OSHA or NYC DOB within the last three years; and
- Criteria 4: A fatality (worker or member of public) experienced on or near Contractor's worksite within the last three (3) years; and
- Criteria 5: An unacceptable rating by QACS based on past performance on DDC projects; and
- Criteria 6: Contractor has in place an acceptable corporate safety program and its employees shall have completed all documented relative safety training; and
- Criteria 7: Contractor shall provide OSHA Injury Records (currently OSHA 300 Log) for the last three (3) years.

If the Contractor fails to meet the basic criteria listed above, the Construction Safety Unit may request, through the ACCO, more detail concerning the Contractor's safety experience. DDC may request the Contractor to provide copies of, among other things, OSHA records, OSHA and DOB citations, EPA citations and written Safety Programs.

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

The Contractor shall submit the following within 10 days of notification from DDC that it has been identified as the low bidder: (1) Safety Program, and (2) Site Safety Plan. The Safety Program shall set forth the Contractor's overall safety policy, regulatory compliance plan and minimum safety standard, and the Site Safety Plan shall identify hazards associated with the project, and include specific safety precautions and training appropriate and necessary to complete the work. The Safety Program and the Site Safety Plan are subject to review and acceptance by the Construction Safety Unit prior to an award of contract.

The Site Safety Plan shall apply to all Contractor and subcontractor operations, and shall have at a minimum, the following elements. Each element shall be described in a separate section in the written document. It may be necessary to modify the basic format for certain unique or high-risk projects (such as tunnels or high-rise construction). The basic elements are as follows:

1. **Responsibility and Organization:** Identify the person or persons with authority and responsibility for implementing the Site Safety Plan. Provide an organization chart and define levels of authority and responsibility. Identify the Competent Person, the Construction Superintendent (if required), the Job Safety Coordinator and the Qualified Person required for this project.
2. **Communication:** Establish a system for communicating with employees and subcontractors on matters relating to worker and public safety and health and environmental protection, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. An emergency response notification protocol is to be established that also includes after hours contact numbers. The plan must also include provisions for weekly safety meetings held by the Job Site Safety Coordinator.
3. **Job Hazard Assessment:** A written document submitted by the contractor, used to identify expected job hazards and public safety risks and state the specific means and methods to reduce, control or eliminate those hazards. This part of the Site Safety Plan must also include how on-going evaluations of those risks and hazards will be carried out, including plans for periodic inspections to identify unsafe conditions, work practices and public safety hazards.

4. Accident/Exposure Investigation: Establish a procedure to investigate and report occupational and public injury or illness, property damage, vehicle accidents or other mishaps.
5. Hazard Correction: Establish means, methods and/or procedures for correcting unsafe or unhealthy conditions that might be exposing both the public and workers to hazards. Corrective actions must be taken immediately when observed or discovered. Should an imminent hazard exist which cannot be immediately abated without endangering employees, the public and/or property, remove or restrict all exposed persons from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards. When corrective actions cannot be taken immediately, temporary measures should be taken until such time permanent measures are taken to eliminate the potential risks or hazards
6. Training: Describe site-specific hazard training programs. In addition to the required safety orientation, additional site specific training, in the form of required weekly safety meetings, will be required. Contractors must also initiate training when: a) new employees are hired; b) employees are given new job assignments for which training has not been previously received; c) new substances, processes, procedures or equipment are introduced that might represent a new public or worker hazard; d) the employee is made aware of a new or previously unrecognized hazard; e) new supervisors are assigned to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed; and f) after a jobsite incident or accident has occurred.
7. Recordkeeping: Establish procedures to maintain records of scheduled and periodic inspections, weekly safety meetings, and training records. Updated records shall be maintained at the jobsite, accessible to the Construction Safety Auditors and/or Quality Assurance Auditors/RE/CPM, and retained in accordance with DDC policy.

The most critical component of the Site Safety Plan is the Job Hazard Assessment section. This section must address specific hazards that are anticipated throughout the project. Each Site Safety Plan must address, at a minimum:

- Public and pedestrian safety
- Fall protection
- Electrical hazards
- Scaffolding
- Fire protection
- Emergency notification & response
- Housekeeping / debris removal
- Dust control
- Maintenance and protection of traffic
- Trenching and excavating
- Heavy equipment operations
- Material / equipment storage
- Environmental contamination
- Sheeting and shoring
- Alcohol and Drug Abuse Policy

The following additional hazards must be addressed, if applicable, based on the contract safety specifications and/or the results of the JHA (the list is not all-inclusive):

- Basic Personal Protective Equipment
- Compressed Air
- Compressed Gas Cylinders
- Cranes, Derricks and Hoists
- Demolition
- Electrical safety
- Excavations and Trenching
- Fall Protection – Floor openings/Stairways
- Fall Protection – Guardrails Toe boards etc
- Fall Protection – Leading Edge
- Fall Protection – Personal Fall Protection Devices
- Fire Protection and Fire Prevention
- Hazard Communication (RIGHT TO KNOW)
- Hazardous Energy & Lock Out / Tag Out

- Housekeeping/ Sanitation
- Maintenance and Protection of Traffic (MPT)
- Man Lifts /Aerial Lifts
- Marine Operations
- Motor Vehicle Safety
- Overhead Power lines
- Permit Required Confined Space
- Portable Ladders
- Powered Actuated Tools
- Powered Material Handling Equipment
- Scaffolds – Mobile
- Scaffolds – Stationary
- Scaffolds – Suspended
- Slings
- Steel Erection
- Welding and Cutting (Hot Work)
- Airborne Contaminants – Particulates – General
- Asbestos
- Blood borne Pathogens
- Hearing Protection
- Lead in Construction
- Mercury in Construction
- PCB's
- Respiratory Protection
- Silica
- Thermal Stress
- West Nile Virus
- Rodents and Vermin
- Noise Mitigation Plan

Certain DDC programs, such as Job Order Contracting System (JOCS), may not necessarily require Site Safety Plans. The JOCS contractor will be required to submit a Safety Program. In addition, certain DDC Operating Units may establish program or client-specific safety requirements. The contractor's Site Safety Plan must address such program or client specific safety requirements.

VII. KICK-OFF MEETINGS/PRE-CONSTRUCTION AND SAFETY REVIEW

As part of the construction kick-off meeting, a Site Safety Plan review will be part of the agenda. A QACS representative will participate in this meeting with the contractor prior to the start of the project for the purpose of:

- A. Reviewing the safety issues detailed in the contract.
- B. Reviewing the Site Safety Plan.
- C. Reviewing any new issues or information that was not previously addressed.
- D. Discussing planned inspections and audits of the site by DDC personnel.

VIII. EVALUATION DURING WORK IN PROGRESS

The Contractor's adherence to these Safety Requirements will be monitored throughout the project. This will be accomplished by the following:

- A. Use of a safety checklist by a representative of the Construction Safety Unit or other designated DDC representative or Consultant during regular, unannounced inspections of the job site. Field Exit Conferences will be held with the RE/CPM, Contractor Superintendents or Safety Representatives.
- B. The RE/CPM will continually monitor the safety and environmental performance of the contractor's

- employees and work methods. Deficiencies shall be brought to the attention of the contractor's representative on site for immediate correction. The DDC representative will maintain a written record of these deficiencies and forward them to the Construction Safety Unit on a weekly basis. Any critical deficiencies shall be immediately reported to QACS phone# (718) 391-1624 or (718) 391-1911.
- C. If the Contractor's safety performance during the project is not up to DDC standards (safety performance measure, accident/incident rate, etc.) the Director- QACS, or designee will meet with the Contractor's safety representative, the DDC project manager, the RE/CPM, or the DDC Environmental Specialist (if environmental issues are involved). The purpose of this meeting is to 1) determine the level of non-compliance; 2) explain and clarify the safety/environmental provisions; 3) agree on a future course of action to correct the deficiencies.
 - D. If the deficiencies continue to occur with inadequate attention by the contractor, this shall, among other remedies available, be grounds for default.
 - E. The contractor shall inform the Construction Safety Unit and ACCO Insurance and Risk Management Unit of all medical injuries or illnesses that require doctors' treatment resulting from an on-the-job incident within 24 hours of the occurrence. The Construction Safety Unit shall also be immediately informed of all fatalities, catastrophic accidents with more than one employee hospitalized, any injuries to members of the general public and major equipment damage (e.g., property damage, equipment rollovers, loads dropped from crane). QACS shall maintain a record of all contractor injuries and illnesses during the project and provide regular reports to the Agency.
 - F. The Construction Safety Unit shall be immediately notified at the start of any NYS-DOL/ NYC-COSH/ OSHA/ EPA inspections. The Director of Quality Assurance & Construction Safety shall maintain a log of all contractor OSHA/EPA inspections and citations during the project.

IX. SAFETY PERFORMANCE EVALUATION

The contractor's safety record, including all DDC inspection results, will be considered as part of the Contractor's performance evaluation at the conclusion of the project. Poor safety performance during the course of the project shall be a reason to rate a Contractor unsatisfactory which will be reflected in the City's Vendex system and will be considered for future procurement actions as set forth in the City's Procurement Policy Board Rules.

EXHIBIT F

M/WBE SUBCONTRACTOR UTILIZATION PLAN

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