NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION

REQUEST
FOR
PROPOSALS

RFP

PIN
8502012HW0052P

PROJECT
HBPED700Q, Pre-Scoping Design Services for the Passerelle Pedestrian Bridge, Borough of Queens

SUBMISSION DEADLINE
August 15, 2012

MICHAEL R. BLOOMBERG
Mayor

DAVID J. BURNEY, FAIA
Commissioner

ERIC MACFARLANE, PE
Deputy Commissioner
Division of Infrastructure

DEPARTMENT OF DESIGN AND CONSTRUCTION

REQUEST FOR PROPOSALS

PROJECT: HBPED700Q

PRE-SCOPING DESIGN SERVICES FOR PASSERELLE PEDESTRIAN BRIDGE, BOROUGH OF QUEENS

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PREFACE

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

SECTION I. TIMETABLE

A. RFP Issuance

Submission Deadline: The proposer shall deliver, on or before 4:00 PM on Wednesday, August 15, 2012, the Proposal in a clearly marked envelope or package. The Proposal shall consist of FOUR separate clearly marked, sealed packages containing the following: (1) Technical Proposal (1 original and 4 copies), (2) Subcontractor Utilization Plan (1 original), (3) Doing Business Data Form(1 original), and (4) Fee Proposal (Attachment 6) (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: Respondents are held responsible for ensuring that the Professional Contract Section receives the RFP response package by the deadline. Respondents are warned not to rely on signed delivery slips from their messenger services. Occasionally packages are delivered to the School Construction Authority located in the same building and the packages are not forwarded to the DDC Professional Contracts Section in a timely manner. Entrance to DDC is on 30th Place, *not* Thomson Avenue despite our Thomson Avenue house number.

B. Inquiries:

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing or by email, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers and posted at the DDC website http://ddcftp.nyc.gov/rfpweb/. All inquiries must be directed ONLY to the contact person listed above.

C. Addenda:

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

D. RFP Schedule:

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

1. Identify Consultant: Within four weeks of submission deadline.

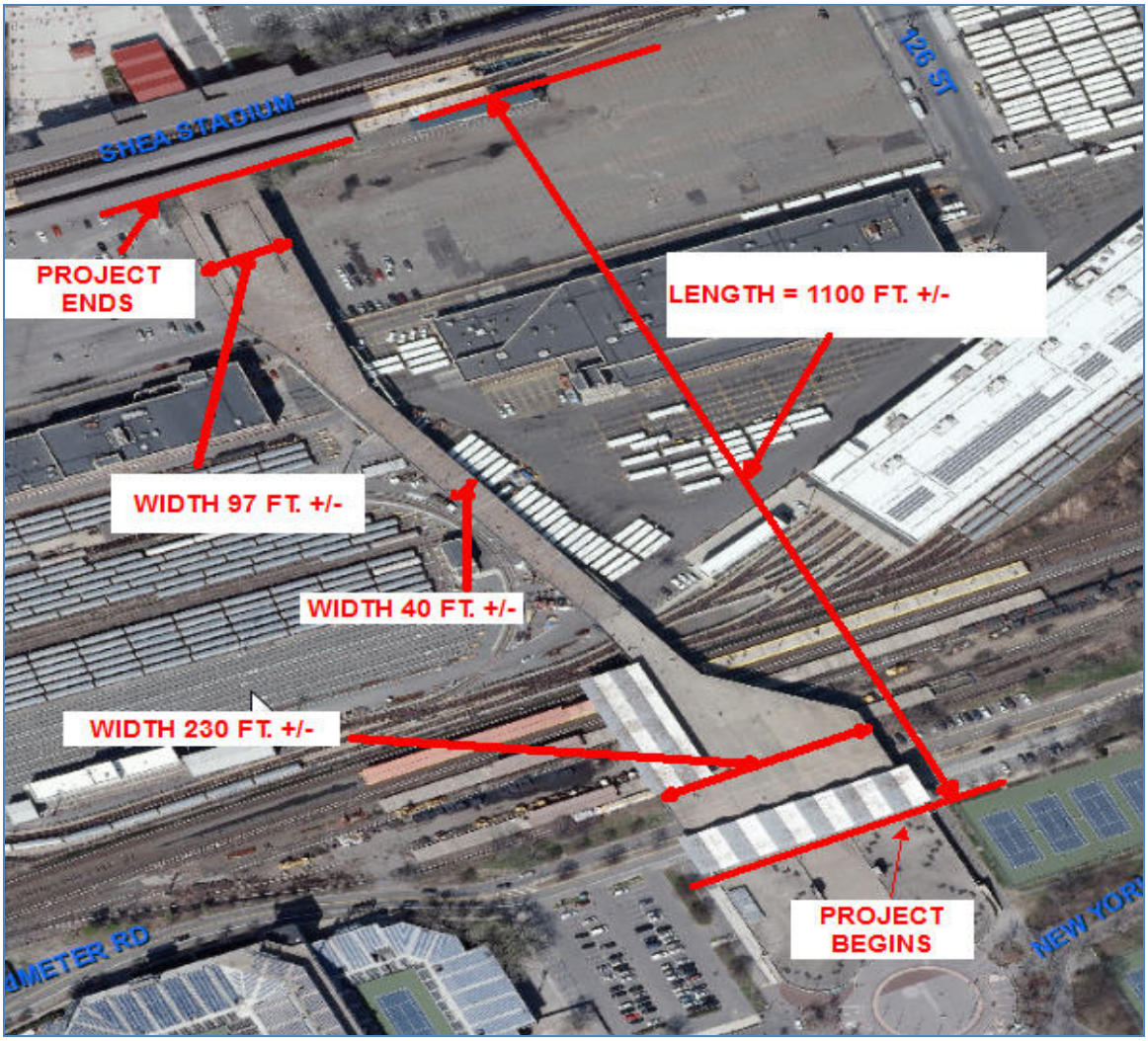
2. Complete Registration: Approximately three months from date of consultant selection.

3. Commence Work: Upon receipt of written Advice of Award.

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 Infrastructure, intends to enter into a contract with an appropriately qualified firm to provide pre-scoping services for the following Project: Passerelle Pedestrian Bridge located in the Flushing Meadows-Corona Park, Flushing, Borough of Queens, New York. Pre-Scoping Services are described in the Specific Requirements (Exhibit G to the attached contract). (For location, general description and project limits, see sketch and photographs below).



Sketch No. 1: General View and Project Limits

NOTES:

1. The project limits and dimensions shown are approximate.
2. The project begins at the expansion joint between the building and the bridge.
3. The project ends at the expansion joint between the bridge and the NYC Transit No. 7 line station at Willets Point/Shea Stadium station.
4. The project limits include entire width of the bridge, from fascia to fascia, which varies from 40 ft to 230 ft, as shown in the above Sketch No. 1- Project Limits.
5. Canopy structures supported by the bridge shall be included in the project scope.

Photograph No. 1: Bridge Elevation looking east. Spans over the parking lot as well as the New York City Transit Maintenance Yards.

Photograph No. 2: Multiple level ramps from Street and subway station platform. All ramps are Included in the project scope.

Photograph No. 3: Ramps to the subway station platforms. All ramps are included in the project scope.

End Project Limits (North Project limits): The joint between the timber decking and concrete or metal deck platform shall be considered the “End Project” limits.

Photograph No. 4: Span over the Rail Road Tracks.

East and West Project Limits: The width of the bridge varies as shown in Sketch No. 1: General View and Project Limits. Entire bridge width between the east fascia and west fascia, together with all the amenities supported by the bridge, is included in the Project Scope.

Photograph No. 5: General View of the Bridge

Photograph No. 6: “Begin Project” limits (South Project Limits): Expansion Joint between the building and bridge over the LIRR shall be considered “Begin Project” limits (South Project Limits).

Photograph No. 7: Canopy over the LIRR platform

Photograph No. 8: Canopy over the LIRR platform. Both canopies, as shown in Photograph No. 6 and Photograph No. 7 are included in Project Scope.

B. Joint Ventures and Other Consultant Relationships

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

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

C. Contract Term:

The contract shall commence as of the date of registration by the Comptroller and shall remain in effect until all required services have been completed. The time for completion of all required services, including reasonable review time by agencies whose approval the Consultant is required to obtain, shall be 548 consecutive calendar days (“ccds”).

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:

The terms and conditions regarding payment to the consultant are set forth in Article 7 of the attached contract.

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Scope of Services

The Consultant shall provide, to the satisfaction of the Commissioner, all pre-scoping services necessary and required for the Project. The intent of the Project is to prepare pre-scoping documents for Passerelle Pedestrian Bridge located in the Flushing Meadows-Corona Park, Flushing, Borough of Queens, New York. The Consultant's services shall be in accordance with the attached contract, including without limitation the following: (1) Article 6 and (2) Specific Requirements (SR) (Exhibit G).

B. Contract Provisions:

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

C. Consultant's Personnel:

The terms and conditions regarding the Consultant's obligation to provide personnel for the performance of services for the project are set forth in Article 5 of the attached contract. The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required pre-scoping services for the Project. The Consultant shall provide such personnel through its own employees and/or through its Subconsultants.

D. Minimum Requirements Per Title

Key Personnel: The names of individuals identified as Key Personnel, as well as their titles and qualifications, are set forth in below. For any title of Key Personnel, the minimum requirements per title shall be the GREATER of the following: (1) qualifications of the individual(s) identified in Attachment 3 for the title in question, or (2) minimum requirements per title set forth below.

TITLE	ASCE (A) NICET (N) GRADE See Notes 1 & 2	License or Certification & Number of Years of Experience
Project Manager	A-VI	Professional License / 10 years
Senior Structural/Bridge Engineer	A-V	Professional License / 7 years
Senior Project Architect		Professional License /7 years
Senior Geotechnical Engineer	A-V	Professional License / 7 years
Senior Civil Engineer	A-V	Professional License / 7 years
Project/Senior Landscape Architect, RLA		Professional License / 7 years

Other Personnel: For all other titles of personnel, the minimum requirements per title are set forth below:

TITLE	ASCE (A) NICET (N) GRADE See Notes 1 & 2	License or Certification & Number of Years of Experience
Project Engineer	A-IV	Professional License / 7 years
Engineer	A-III	5 years
Junior Engineer	A-II	2 years
Structural/Bridge Engineer	A-III	5 years
Junior Structural/Bridge Engineer	A- II	2 years
Junior Project Architect		3 years
Senior Civil Engineer	A-V	Professional License / 7 years
Junior Civil Engineer	A-II	2 years
Project Geotechnical Engineer/ Manager	A-VI	Professional License / 10 years
Geotechnical Engineer	A-III	5 years
Junior Geotechnical Engineer	A-II	2 Years
Landscape Manager, RLA		Professional License / 10 years
Landscape Architect		5 years
Junior Landscape Architect		3 years
Senior Urban Planner		7 years
Junior Urban Planner		3 Years
Surveyor / Manager, R.L.S.		Professional License/ 7 years
Party Chief/Foreman	N-III	5 years
Instrument Person	N-II	3 years
Rod Person	N-I	
Senior Traffic Engineer	A-V	Professional License / 7 years
Traffic Engineer	A-III	5 years
Junior Traffic Engineer – Technician	A-II	2 years
Project Environmental Engineer/ Manager		Professional License / 10 years
Senior Environmental Engineer		Professional License / 7 years
Environmental Engineer		5 years
Junior Environmental Engineer		2 years
Certified Industrial Hygienist		Professional License / 7 years, See Note 6
Industrial Hygienist		3 years, See Note 6
Project Scientist		See Note 6
Senior Electrical Engineer	A-V	Professional License / 7 years
Electrical Engineer	A-III	5 years
Lighting Designer		5 years
Senior Mechanical Engineer	A-V	Professional License / 7 years
Mechanical Engineer	A-III	5 years
Archeologist/Historian		See Note 4
Senior Archeologist		See Note 4
Junior Archeologist		See Note 4
Arborist/Forester		See Note 5
Senior Draftsperson /CADD Operator	N-IV	7 years
Draftsperson /CADD Operator	N-III	5 years
Junior Draftsperson /CADD Operator	N-II	3 years

Notes:

(1) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the American Society of Civil Engineers (ASCE). The applicable requirements for the title in question shall be the most current requirements promulgated by the ASCE for that title as of the date on which the Consultant submitted its Proposal for the Contract.

(2) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the National Institute For Certification In Engineering Technologies (NICET). The applicable requirements for the title in question shall be the most current requirements promulgated by the NICET for that title as of the date on which the Consultant submitted its Proposal for the Contract.

(3) If a title requires a professional license, such license must be issued by the State of New York.

(4) The minimum requirements for the specified titles in Archeology shall be the requirements established by the National Park Service (NPS), as set forth below.

(a) Education: Graduate degree in archeology, anthropology, or closely related field, except that for the title of Junior Archeologist, only a B.A. degree in archeology, anthropology, or closely related field.

(b) Experience:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytical experience in general North American archeology; and,
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, the professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period (36 CFR Part 1: Appendix A).

(5) The minimum requirements for the specified title of Arborist/Forester shall be the requirements established by the New York City Department of Parks and Recreation, as set forth below.

(a) Associate degree in forestry, arboriculture, horticulture, or related plant science field, and five years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
(b) B.S. in forestry, arboriculture, horticulture, or related plant science field, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
(c) M.S. in forestry, arboriculture, horticulture, or related plant science field, and one year of full-time professional experience in landscape design and the field

supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

(d) Arborist certification from the N.Y.S. Arborists/International Society of Arboriculture Chapter, Inc., and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

(e) Other state arborist certification recognized by the International Society of Arboriculture or the National Arborist Association, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction.

(6) The minimum requirements for the specified Environmental Job Titles shall be the requirements set forth below:

(a) Certified Industrial Hygienist (CIH) - shall possess a CIH license granted by the American Board of Industrial Hygiene (ABIH) for at least five (5) years. An advanced degree (M.S., M.E., and PhD) in science or engineering is preferred. This individual will demonstrate at least seven (7) years of experience in this field of expertise with not less than 5 years practical experience in the environmental engineering / science fields.

Duties: The CIH will act as the lead and provide expert opinion on matters of industrial hygiene, site safety, and environmental compliance. This individual will review and interpret data, author environmental reports and site specific health and safety plans; and shall be responsible for all aspects, including execution and monitoring, of the health and safety program.

(b) Industrial Hygienist – shall demonstrate at least three (3) years of experience in this field of expertise.

(c) Project Scientist – shall possess at a minimum a Bachelor's degree from an accredited university in the respective field of study and have six (6) years of practical experience in construction and/or design of building/infrastructure systems, building codes, fire/life–safety issues, and other topics related to general project design and development. Postgraduate education may supplement up to two (2) years of work experience. The individual will be required to demonstrate proficiency in understanding drawings, specifications, standards, codes regulations, etc. as they pertain to general construction practices and the environmental fields.

Duties: The Project Scientist will participate in a project from a hydro/geotechnical perspective, and will be called upon to provide expertise in, fire detection/suppression, life-safety and all other systems that are impacted by the environmental project. Also included are responsibilities for environmental report writing controlled inspections and most other activities that their education and background would dictate.

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

E. 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.

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 8 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 8, 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.

G. Compliance with Local Law 34 of 2007:

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

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

A. Proposal Subdivision Instructions:

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with not less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: http://www.epa.gov/cpg/products/printing.htm). Pages should be paginated. The proposal will be evaluated on the basis of its content, not its length. Failure to comply with any of these instructions will not make the proposal non-responsive. Submit proposal in a clearly labeled, sealed package as follows:

1. Technical Proposal (one original and 4 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus completed forms 254 and 255 for Proposer and its subconsultants. (These forms are available at the following website: http://www.nyc.gov/html/ddc/html/business/otherfrm.shtml). **Such forms shall not be altered in any way.**

2. Fee Proposal (1 original): The proposer shall submit Attachment 5 (Fee Proposal) in a clearly marked, sealed envelope.

B. The Technical Proposal shall contain the information described below.

1. Cover Letter: Submit a maximum of two pages, indicating the company name and address, and the name, address and telephone number of the person authorized to represent the firm. ***(Be sure to refer to the proper DDC project number and title).***

2. Experience of Firm & Subconsultants:

   (a) Experience: The proposer and each of its subconsultant(s) shall provide a list of up to ten projects completed within the last 8 (eight) years, which demonstrate the firm's ability to provide services similar to those required for the Project described in this RFP. The proposer and each of its subconsultants shall provide information regarding prior projects in response to Question #8 of Form 255.

   (b) Subconsultants: The proposer shall submit Attachment 2, identifying by name the subconsultants it intends to provide for the Project, as well as the type of services to be provided by each subconsultant.

   (c) Joint Ventures: If the proposer is a joint venture, it shall delineate the Lead Consultant for this Project and the areas of technical responsibilities of each joint venture partner.

   (d) Expertise: The proposer shall provide information indicating why the firm is especially qualified for the Project. The proposer shall provide such information in response to Question #10 of Form 255.

3. Key Personnel:

For each title of Key Personnel listed in Attachment 2, the proposer shall identify the individual it will provide, throughout the term of the contract, to perform the required services. For each individual identified in Attachment 2, the proposer must submit the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications. Each individual identified in Attachment 2 must satisfy the minimum requirements per title set forth in the attached contract (Exhibit F).

4. Technical Approach:

The proposer shall describe its planned program, technical as well as administrative, for successful completion of the project.

5. Project Schedule:

The proposer shall submit Attachment 3 (Project Schedule). The Project Schedule shall be in accordance with the following:

(a) The Project Schedule shall demonstrate completion of all required services for the Project, including reasonable review time by agencies whose approval the Consultant is required to obtain, in 548 consecutive calendar days ("ccds").

(b) The Project Schedule shall organize the progress of the pre-scoping services into a series of milestones, and shall indicate the time for completion of each milestone. The time for completion of each milestone shall be indicated in consecutive calendar days from the contract commencement date. For the purpose of the Project Schedule, a "milestone" shall mean a critical point in the progress of the pre-scoping services which is achieved when a specified list of services and/or tasks has been completed. The Progress Schedule shall indicate the services and/or tasks that must be completed in order to achieve each milestone.

(c) In addition to the above, the proposer shall submit its detailed Project Schedule in the form of a Bar Chart, as described in the Exhibit G: Specific Requirements, Section III.A. The Bar Chart shall indicate the time for completion of each milestone indicated in the Project Schedule, as well as the interrelationship between activities required for the various milestones.

6. Firm's Capability:

The proposer shall submit Attachment 4, indicating its current and anticipated workload with DDC and New York City Department of Transportation. In completing Attachment 4, the proposer shall list any Requirements Contracts it holds, as well as each individual Task Order and Supplemental Task Order issued pursuant to such Requirements Contracts.

7. Performance Evaluation(s)

(a) Proposers with prior relevant NYC experience
Provide the firm's record of **relevant** design experience for the past ten years with DDC and other City of New York governmental departments, agencies,

etc., including the contract number, project name, scope of work, duration, value of the construction project and value of the Proposer's contract. Include the respective City of New York's Agency Final Rating for performance of each contract and calendar date of rating.

(b) Proposers without relevant NYC experience

- State for the record that the proposer does not have relevant New York City experience.
- Provide indicators of the quality of the experience described in the proposal, including performance evaluations issued by comparable entities responsible for the development and maintenance of urban infrastructure assets.

8. 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.

9. Acknowledgement of Addenda:

The Acknowledgement of Addenda form (Attachment 7) serves as the proposer's acknowledgement of the receipt of addenda to this RFP that may have been issued by the Agency prior to the proposal due date and time. The proposer should complete this form as instructed on the form.

C. Proposal Package Contents ("Checklist"):

The Proposal Package should consist of the following **FOUR** packages. Each package shall be clearly marked with the Project Name, Project Identification Number and the Name of the Proposer.

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

- Items listed in Section IV B of the RFP
- Completed Forms 254 and 255
- Statement of Understanding (Attachment 1)
- Completed and Notarized Proposer's Certification of Compliance with Iran Divestment Act (Attachment 2)
- Identification of Subconsultants and Key Personnel (Attachment 3)
- Project Schedule (Attachment 4)
- Current and Anticipated Workload Disclosure (Attachment 5)
- Acknowledgement of Addenda (Attachment 7)

2. Fee Proposal: Sealed envelope clearly marked as "Fee Proposal" (Attachment 6)

3. Subcontractor Utilization Plan: (Attachment 9)
Sealed envelope, clearly marked as "Subcontractor Utilization Plan".

4. Doing Business Data Form (Attachment 10)
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 Qualifications/Quality Based Selection (QBS) project. A DDC evaluation committee will review, evaluate and score all technical proposals pursuant to the criteria described below. This evaluation will determine each proposer's technical score. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their proposals, after which their initial technical scores may be re-evaluated. Proposers will be ranked in accordance with their technical scores. The ranking will be submitted to the Executive Consultant Selection Committee (ECSC), who will certify the results and authorize fee negotiations to commence with the highest ranked firm. DDC will attempt to negotiate fair and reasonable Fees and All Inclusive Hourly Rates with the highest ranked firm. Should negotiations fail with the highest ranked firm, the ECSC will authorize fee negotiation with the next highest ranked firm. The firm whose proposal is determined to be the most advantageous to the City will be awarded the project.-

Note: Each proposer is required to submit a Fee Proposal for the project with its technical proposal; however, DDC will only open the Fee Proposal of the firm selected for negotiation in accordance with the process described above.

B. Proposal Evaluation Criteria:

1. Experience of the Firm & Subconsultant(s) (weight 20%)
2. Relevant Experience of Individuals Proposed as Key Personnel (weight 30%)
3. Technical Approach (weight 20%)
4. Project Schedule (weight 15%)
5. Firm's Capability (weight 15%)

C. Basis of Award:

DDC will award a contract to the responsible proposer whose proposal is determined to be the highest quality and most advantageous to the City, taking into consideration the overall quality of the proposal as measured against factors or criteria as set forth in the RFP and successful negotiation of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude not more than thirty days thereafter.

D. Supply and Service Employment Report:

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

E. VENDEX:

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

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/addenda provided during the proposal process, may be incorporated into the final contract to be developed by the agency.

SECTION VI. GENERAL INFORMATION TO PROPOSERS

A. Complaints

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

B. Applicable Laws

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

C. 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 design contract, attached hereto, and (iv) will, if its proposal is accepted, enter into the attached Standard Contract with the New York City Department of Design and Construction.

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

☐ **Yes** ☐ **No**

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

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

_____
Name of Proposer
(Full Business Name)

By:_____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Firm 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

IDENTIFICATION OF SUBCONSULTANTS AND KEY PERSONNEL

(A) IDENTIFICATION OF SUBCCONSULTANTS: The proposer shall submit Attachment 3 as part of its Technical Proposal. In the space provided below, the Proposer shall identify by name the Subconsultants it will provide throughout the term of the Contract for the services set forth below. If the Proposer intends to perform any of the services listed below with its own employees, it shall so indicate by inserting the words "In House".

TYPE OF SERVICES	SUBCONSULTANT
Engineering Design Services:	_____
Structural/Bridge Engineering Design Services:	_____
Architectural Design Services:	_____
Civil Engineering Design Services:	_____
Geotechnical Engineering Design Services:	_____
Landscape Architectural Design Services:	_____
Urban Planning Services:	_____
Topographical Surveying Services:	_____
Traffic/Transportation Engineering Services:	_____
Environmental Engineering/Hazmat Services:	_____
Electrical/Lighting Design Services:	_____
Mechanical Design Services:	_____
Archeological Services:	_____
Tree Consulting/Arborist Services:	_____

ATTACHMENT 3 (Continued)

IDENTIFICATION OF SUBCONSULTANTS AND KEY PERSONNEL

(B) KEY PERSONNEL: In the space provided below, the proposer shall identify by name the individuals who will perform the required services for the titles of Key Personnel set forth below. The individuals identified as Key Personnel will be included in Exhibit B of the contract. The Consultant specifically agrees to assign to the Project for its entire duration, the individuals identified below as Key Personnel, unless otherwise approved by the Commissioner. For each individual identified in this Attachment, the proposer must submit the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications. Each individual identified in this Attachment must satisfy the minimum requirements per title set forth in the attached contract (Exhibit F).

Title of Key Personnel	**Name of Individual & Firm**	**Qualifications**	
		Professional License or Certification	**Number of Years of Experience**
Project Manager:	_____	_____	
Senior Structural/Bridge Engineer:	_____	_____	
Senior Project Architect:	_____	_____	
Senior Geotechnical Engineer:	_____	_____	
Senior Civil Engineer:	_____	_____	
Senior Landscape Architect:	_____	_____	

ATTACHMENT 4

PROJECT SCHEDULE

The proposer shall submit Attachment 4 as part of its Technical Proposal. The Project Schedule shall be in accordance with the following:

(a) The Project Schedule shall demonstrate completion of all required services for the Project, including reasonable review time by agencies whose approval the Consultant is required to obtain, in 548 consecutive calendar days ("ccds").

(b) The Project Schedule shall organize the progress of the pre-scoping services into a series of milestones, and shall indicate the time for completion of each milestone. The time for completion of each milestone shall be indicated in consecutive calendar days from the contract commencement date. For the purpose of the Project Schedule, a "milestone" shall mean a critical point in the progress of the pre-scoping services which is achieved when a specified list of services and/or tasks has been completed. The Progress Schedule shall indicate the services and/or tasks that must be completed in order to achieve each milestone.

(c) In addition to the above, the proposer shall submit its detailed Project Schedule in the form of a Bar Chart, as described in the Specific Requirements, Section III.A. The Bar Chart shall indicate the time for completion of each milestone indicated in the Project Schedule, as well as the interrelationship between activities required for the various milestones.

Note: If the proposer is selected to provide services for the Project, DDC reserves the right to make non-material changes to the Project Schedule at the time of Fee negotiation.

ATTACHMENT 5

CURRENT AND ANTICIPATED WORKLOAD DISCLOSURE

The proposer and his/her Sub-consultant(s) providing services on this project must complete a separate Current and Anticipated Work Load Disclosure form. The values shown *shall not* include: (1) amount owed to Sub-consultants and Sub-contractors, or, (2) amount owed for rental/purchase of equipment.

PROJECT ID: _____

FIRM NAME _____
_____

PROJECT DESCRIPTION
_____
_____
_____
_____
_____

CONTACT PERSON _____
PHONE (___) _____
FIRM ADDRESS:
_____
_____
_____
_____

_____

NUMBER OF FIRM'S DESIGN PERSONNEL IN THE OFFICE WHERE THIS PROJECT WILL BE ASSIGNED:
Project Mgr. _____ Project Engr _____ Sr. Structural/Bridge Engr _____

Firm's Total uncompleted Workload with NYCDDC/NYCDOT (From next page) $_____

Firm's Total Uncompleted Workload with other agencies $_____

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

_____
Name of Firm (Full Business Name)

_____ _____
Signature of Partner or Corporate Officer Title

_____ _____
Print Name Date

ATTACHMENT 5 (continued)

CURRENT AND ANTICIPATED WORKLOAD WITH NYCDDC/NYCDOT

FIRM NAME:_____

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

If a Contract contains multiple task orders, list each task order.

Client Name/ Project Name	Contract #	Project Manager	Project Engineer	Type of Work	Uncompleted portion of Work ($000)	Percent complete to date (%)
DESIGN & Construction Support Services: For Street Reconstruction Projects includes Preliminary Design, Final Design and Total Design						
Subtotal					$	
Other Projects with NYCDDC/NYCDOT: Includes Traffic Engineering and Planning Services, Traffic Engineering & Safety, Environmental Engineering, Topographic Survey, Urban Design/Landscape Architecture, and other engineering design services.						
Subtotal					$	
Firm's Total Workload with NYCDDC/NYCDOT					$	

ATTACHMENT 6: FEE PROPOSAL

SUBMISSION: The proposer shall submit Attachment 5 (Fee Proposal) in a clearly marked, sealed envelope. The Fee Proposal shall consist of the following four parts, each of which is described below: (1) Part 1: Titles and All Inclusive Hourly Rates, (2) Part 2: Fee Schedule (Lump Sum Fees for All Specified Tasks), (3) Part 3: Breakdown of Lump Sum Fees (in the form of a Staffing Table), and (4) Part 4: Multiplier for Overhead and Profit. If requested in writing by DDC, the proposer shall submit Part 5: Back Up Material for All Inclusive Hourly Rates. Submission of Part 5 shall be within two (2) business days of notice by DDC.

PART 1: Titles and All Inclusive Hourly Rates: Titles of personnel are listed below. Minimum requirements per title are set forth in Exhibit F to the attached contract. For each title listed below, the proposer shall submit a Proposed All Inclusive Hourly Rate. The All Inclusive Hourly Rates will be used to negotiate fees in the event the proposer is selected to provide services for the Project. Thereafter, such All Inclusive Hourly Rates will be included in the contract and will only be used for the purposes set forth below. Such All Inclusive Hourly Rates are subject to increases and/or decreases as set forth in Article 7 of the attached contract. The costs and expenses that are deemed included in the All Inclusive Hourly Rates are set forth in Article 7 of the attached contract.

(1) If the Consultant is directed to perform services on a time card basis, i.e., services that are not included in the specified tasks for the Pre-scoping Fee, or
(2) If a Change Order is issued to the Consultant, the All Inclusive Hourly Rate shall be used to negotiate a lump sum fee for the extra work.

ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Manager	_____
Project Engineer	_____
Engineer	_____
Junior Engineer	_____

STRUCTURAL/BRIDGE ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Structural/Bridge Engineer	_____
Structural/Bridge Engineer	_____
Junior Structural/Bridge Engineer	_____

ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Project Architect	_____
Junior Project Architect	_____

CIVIL ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Civil Engineer	_____
Junior Civil Engineer	_____

GEOTECHNICAL ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Geotechnical Engineer / Manager	_____
Senior Geotechnical Engineer	_____
Geotechnical Engineer	_____
Junior Geotechnical Engineer	_____

ATTACHMENT 6 (continued)

LANDSCAPE ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Landscape Manager, R.L A.	_____
Project/Senior Landscape Architect, R.L.A	_____
Landscape Architect	_____
Junior Landscape Architect	_____

URBAN PLANNING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Urban Planner	_____
Junior Urban Planner	_____

TOPOGRAPHICAL SURVEYING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Surveyor / Manager R.L.S.	_____
Party Chief / Foreman	_____
Instrument Person	_____
Rod Person	_____

TRAFFIC TRANSPORTATION ENGINEERING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Traffic Engineer	_____
Traffic Engineer	_____
Junior Traffic Engineer - Technician	_____

ENVIRONMENTAL ENGINEERING / HAZMAT SERVICES

TITLE	ALL INCLUSIVE HOURLY RATE
Project Environmental Engineer/Manager	_____
Senior Environmental Engineer	_____
Environmental Engineer	_____
Junior Environmental Engineer	_____
Certified Industrial Hygienist	_____
Industrial Hygienist	_____
Project Scientist	_____

ELECTRICAL/LIGHTING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Electrical Engineer	_____
Electrical Engineer	_____
Lighting Designer	_____

MECHANICAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Mechanical Engineer	_____
Mechanical Engineer	_____

ARCHEOLOGIAL SERVICES

TITLE	ALL INCLUSIVE HOURLY RATE
Archeologist / Historian	_____
Senior Archeologist	_____
Junior Archeologist	_____

ATTACHMENT 6 (continued)

TREE CONSULTING SERVICES

TITLE	**ALL INCLUSIVE HOURLY RATE**
Arborist / Forester	_____

MISCELLANEOUS SERVICES

TITLE	**ALL INCLUSIVE HOURLY RATE**
Senior Draftsperson/CADD Operator	_____
Draftsperson/CADD Operator	_____
Junior Draftsperson/CADD Operator	_____

PART 2: Fee Schedule (Lump Sum Fees for All Specified Tasks): In the space provided below, the proposer shall indicate a lump sum fee for each specified task, as well as a Total Pre-scoping Fee. The scope of the required pre-scoping services is described in detail in the Specific Requirements, included as Exhibit G to the attached contract.

PRE-SCOPING FEE: The Pre-scoping Fee is comprised of the lump sum fees for the following tasks:

		SR Reference	**$ Amount**
A.	**SCHEMATIC DESIGN FEE**	Section IV.C	$_____
B.	**PRE-SCOPING DOCUMENT PREPARATION FEE:**	Section IV.D	$_____
C.	**CONTRACT DOCUMENT SUBMISSION FEE**	Section IV.E	$_____
D.	**TOTAL PRE-SCOPING FEE (Total of A+B+C):**		**$_____**
E.	**ALLOWANCE FOR TIME CARD SERVICES**	Not to Exceed	$175,000.00

	Not to Exceed Amount
• Additional Soil Investigation	$30,000.00
• Coring and Test Pit Program	$20,000.00
• Hazardous Materials Investigation	$20,000.00
• Land Use Assessment and ULURP	$30,000.00
• Archeological Study	$25,000.00
• Watermain Design	$25,000.00
• Sewer Design	$25,000.00

F.	**ALLOWANCE FOR REIMBURSABLE SERVICES**	Not to Exceed	$75,000.00

	Not to Exceed Amount
• Rental of Equipment	$35,000.00
• Printing, Reproduction and Photographs	$10,000.00
• Filing Fees and Permit Application Fees	$5,000.00
• Railroad Force Accounts	$25,000

G.	**MAXIMUM AMOUNT OF CONTRACT (Total of D+E+F)**	Not to Exceed	$_____

ATTACHMENT 6 (continued)

PART 3: Breakdown of Lump Sum Fee Per Task (Staffing Table Per Task): The proposer shall provide a Breakdown of each Lump Sum Fee per Task set forth in Part 2: Fee Schedule. For each Task, the breakdown shall be in the form of a Staffing Table. For each task, the Staffing Table shall indicate the following: (1) required titles of personnel, (2) All Inclusive Hourly Rate per Title (as set forth in Part 1), (3) total estimated hours per title, and (4) total estimated amount per title.

The proposer is advised that the Breakdown of the Lump Sum Fee per Task shall be used for proposal analysis purposes only and shall not be binding for any other purpose under the Contract, including, without limitation, for payment purposes or in connection with a claim by the consultant for extra work and/or additional professional services.

PART 4: Multiplier for Overhead and Profit: In the space provided below, the proposer shall indicate a Proposed Multiplier for Overhead and Profit. Such Multiplier is subject to negotiation. Such Multiplier for Overhead and Profit ***shall only be used*** to calculate an All Inclusive Hourly Rate for additional titles of personnel that may be required for the Project, as set forth in Article 7 of the attached contract.

Proposed Multiplier for Overhead and Profit: _____

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

If the proposer does not have an "Audited Multiplier for Overhead" that has been accepted by a governmental agency, it shall submit Audited Financial Statements for the three (3) most recent fiscal years. Each Financial Statement (Balance Sheet and Income Statement) must have been audited by an independent auditor licensed to practice as a certified public accountant (CPA). Each Financial Statement must include the auditor's standard report.

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

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

PART 5: Back up Material for All Inclusive Hourly Rates: If requested in writing by DDC, the proposer shall submit Back Up Material for All Inclusive Hourly Rates. Submission shall be within two (2) business days of written notice by DDC. Submission shall be in a clearly labeled, sealed package. The required Back Up Material shall consist of Sections (A) and (B), described below.

(A) Actual Direct Salary Rate Per Hour: For all individuals whom the proposer intends to assign as Personnel for the Project, the proposer shall submit the individual's title and Actual Direct Salary Rate per Hour, as defined below.

1. An individual's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) all payments for services performed during overtime hours (as

ATTACHMENT 6 (continued)

defined in the attached contract); (2) all employer payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) all employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) all costs for any and all other fringe and/or supplemental benefits.

2. To compute an individual's actual annual direct salary per hour, the individual's actual annual direct salary, as defined above, shall be divided by 2080.

(B) Payroll Register: The proposer shall submit its Payroll Register for the past twelve months, as well as the Payroll Register for each subconsultant identified in its Technical Proposal.

The proposer shall sign its Fee Proposal in the space provided below. By signing in the space provided below, the proposer affirms that all back up material provided as part of this Attachment 5 is true and accurate in all respects.

_____
Name of Proposer (Full Business Name)

By:_____ _____
Signature of Partner or Corporate Officer Date

_____ _____
Print Name Title

_____ _____
Telephone # EIN#

ATTACHMENT 7

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS: HBPED700Q, Pre-Scoping Design Services for the Passerelle Pedestrian Bridge, Borough of Queens	**PIN:** 8502012HW0052P

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 8

CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of VENDEX Compliance.

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of proposal Submission: _____

Project ID: _____

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

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

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

ATTACHMENT 9

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. 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 SUBCONTRCTING 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.

ATTACHMENT 9 (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.

Tax ID # : _____ PIN # : _____

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 #		**FMS Project ID#:**	**P-415PAS2**		
Project Title	Preparing Pre-scoping Documents for Passerelle Pedestrian Bridge, Borough of Queens				
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)*

The Consultant shall perform topographic survey and research and collect existing information. The Consultant shall also perform In-depth inspection and load rating analysis for the bridge. The Consultant shall prepare Schematic Design and Pre-scoping documents for rehabilitation and/or reconstruction of the bridge.

(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. **15 %**

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 %**	No Goal
Caucasian Female	No Goal	**Unspecified %**
Total Participation	**(2) 0%**	**(3) 40 %**

* 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.

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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):*

☐ **Construction** ☐ **Professional Services**

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

☐ **Construction** ☐ **Professional Services** ☐ **Other**

2. **What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts?** _____ %
3. **Will you award subcontract(s) in amounts below $ 1 million for construction and/or professional services contracts within the first 12 months of the notice to proceed on the contract?** ☐ **Yes** ☐ **No**

Section III: Subcontractor Utilization Summary

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

Step 1: 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.

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

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

Step 2:
Calculate value of subcontractor participation goals

		Subcontracts under $1M (construction/professional services)	
a.	Copy value from Step 1, line (4) – the total value of all expected subcontracts under $1M for construction and/or professional services	$	
b.	• From line a. above, allocate the dollar value of "Subcontracts under $1M" by Construction and Professional Services, • If all subcontracts under $1M are in one industry, enter '0' for the industry with no subcontracts. • Amounts listed on these lines should add up to the value from line a.	**Construction**	**Professional Services**
	Subcontracts under $1M by Industry	$	$
c.	• For Construction enter percentage from line (2) from Page 1. • For Professional Services enter percentage from line (3) from Page 1. • **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 *(Check one):*	Type of work on Subcontract *(Check all that apply):*	
_____	☐ Construction ☐ Professional Services	☐ Construction ☐ Professional Services	☐ 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 <u>in good faith</u> 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 10

DOING BUSINESS DATA FORM

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

What is the purpose of this *Data Form*?

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

Why have I received this *Data Form*?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Doing Business Data Form

To be completed by the City agency prior to distribution

Agency: 850 Transaction ID: PIN:8502012HW0052P EPIN:85012P0017

Check One:	Transaction Type (check one):			
☒ Proposal	☐ Concession	☒ Contract	☐ Economic Development Agreement
☐ Award	☐ Franchise	☐ Grant	☐ Pension Investment Contract

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

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

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

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

☐ Entity has never completed a Doing Business Data Form. *Fill out the entire form.*

☐ Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*

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

Entity is a Non-Profit: ☐ Yes ☐ No

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

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

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

Section 2: Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

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

Chief Financial Officer (CFO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

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

Chief Operating Officer (COO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

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

Section 3: Principal Owners

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

There are no owners listed because (select one):

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

☐ Other (explain): _____

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Section 4: Senior Managers

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

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

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

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

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

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

Printed on paper containing 30% post-consumer material

THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF INFRASTRUCTURE

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

CONTRACT FOR PRE-SCOPING SERVICES

PROJECT:	**PASSERELLE PEDESTRIAN BRIDGE LOCATED IN FLUSHING MEADOWS-CORONA PARK, FLUSHING, NEW YORK**
BOROUGH:	**QUEENS**
FMS NUMBER:	**HBPED700Q**
REGISTRATION NUMBER:	_____
PIN NUMBER:	_____
E-PIN:	_____
CONSULTANT:	_____
	_____
	_____
	Telephone: _____
	Facsimile: _____

Date: _____

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

WITNESSETH:

WHEREAS, the City desires to have pre-scoping services performed for the project described in the Specific Requirements, and

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

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

ARTICLE 1 Definitions

1.1 "Agreement" shall mean the various documents that constitute the contract between the Consultant and the City, including (1) the Request for Proposals for the Contract ("RFP"); (2) the Proposal submitted by the Consultant, and (3) the Exhibits set forth below. In the event of any conflict between the Specific Requirements and any other component, the Specific Requirements shall prevail.

Exhibit A	Contract Information
Exhibit B	Subconsultants and Key Personnel
Exhibit C	Project Schedule
Exhibit D	Fee Schedule
Exhibit E	Titles of Personnel and All Inclusive Hourly Rates
Exhibit F	Minimum Requirements Per Title
Exhibit G	Specific Requirements
Exhibit H	M/WBE Subcontractor Utilization Plan
Exhibit I	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 "City" shall mean the City of New York.

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

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

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

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

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

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

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

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

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

1.14 "Government Entity" shall mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.

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

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

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

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

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

1.20 “Project” shall mean the Project for which pre-scoping services are required, as described in the Specific Requirements.

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

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

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

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

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

1.26 "Subconsultant" shall mean any person, firm, or corporation, other than employees of the Consultant, who or which contracts with the Consultant or his subconsultants to furnish, or actually furnishes services, labor, or labor and

materials, or labor and equipment hereunder. All Subconsultants are subject to the prior written approval of the Commissioner.

ARTICLE 2 General Provisions

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

ARTICLE 3 The Project

3.1 The Consultant shall provide all pre-scoping services required for the Project described in the Specific Requirements.

3.2 The City hereby retains the Consultant to perform the services hereinafter described, on the terms and conditions specified herein, and the Consultant agrees to so serve. The Consultant agrees to provide, to the satisfaction of the Commissioner, all pre-scoping services necessary and required for the Project, as set forth in this Contract. The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its obligations under this Contract competently and efficiently.

ARTICLE 4 Time Provisions

4.1 Term of Contract: The contract shall commence as of the date of registration by the Comptroller and shall remain in effect until all required services have been completed. The time for completion of all required services, including reasonable review time by agencies whose approval the Consultant is required to obtain, shall be the number of consecutive calendar days indicated in Exhibit A.

4.2 Extension of Contract: Upon written application by the Consultant, the 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.

ARTICLE 5 The Consultant's Personnel

5.1 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all pre-scoping services for the Project, as set forth in Article 6. The Consultant shall provide all personnel required for the performance of such services through its own employees and/or through its Subconsultants, as set forth in Exhibit B, except as otherwise approved by the Commissioner. The Consultant specifically agrees that its employees, agents and Subconsultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

5.2 Key Personnel: The names of individuals identified as Key Personnel by the Consultant in its Proposal for the Contract, as well as their titles and qualifications, are set forth in Exhibit B. The Consultant specifically agrees to assign to the Project for its entire duration the individuals identified in Exhibit B as Key Personnel, unless otherwise approved by the Commissioner. Failure by the Consultant to provide such individual(s) identified in Exhibit B as Key Personnel shall be grounds for termination for cause.

5.2.1 Replacement of Key Personnel: No substitution for an individual identified in Exhibit B as Key Personnel shall be permitted unless approved in advance in writing by the Commissioner. Such approval will only be granted in the case of extenuating circumstances. Any proposed replacement for an individual identified as Key Personnel must possess qualifications substantially similar to those of the individual being replaced. In addition, at the Commissioner's request at any time, the Consultant shall remove any Key Personnel or other personnel and substitute another employee of the Consultant or Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his/her sole discretion.

5.3 Subconsultants: The Consultant shall engage such Subconsultants as may be necessary for the performance of all required services for the Project. The Consultant specifically agrees to engage the Subconsultants set forth in Exhibit

B. Such Subconsultants were identified by the Consultant in its Proposal for the Contract. Failure by the Consultant to provide such Subconsultants shall be grounds for termination for cause. The Consultant shall be responsible for the performance of services by all its Subconsultants, including maintenance of schedules, correlation of their work and resolution of all differences between them.

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

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

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

5.4 Services on a Time Card Basis: The Consultant may be directed to perform services for the Project on a time card basis. Such services include, without limitation: (a) Additional Professional Services, and (b) Construction Support Services. Services on a time card basis shall not be performed by the Consultant unless expressly authorized in advance in a written directive from the Commissioner. The requirements set forth below shall apply to the performance of such services.

5.4.1 Titles of Personnel: A list of titles of personnel, as well as All Inclusive Hourly Rates for such titles, are set forth in Exhibit E. Such list specifies the titles of personnel which may be required for the performance of time card services. The Consultant shall be required to provide such personnel through its own employees and/or through its Subconsultants.

5.4.2 Minimum Requirements Per Title: Personnel provided by the Consultant and/or its Subconsultants must satisfy the minimum requirements for the title in question set forth in Exhibit F. The Consultant shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the minimum requirements per title. In exceptional circumstances, the Commissioner, in his/her sole and absolute discretion, may modify the minimum requirements per title.

5.4.3 Additional Titles: If an additional title(s) of personnel is required for the Project, the Commissioner shall establish the following: (1) additional required title(s), (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. The All Inclusive Hourly Rate for the additional required title shall be calculated in accordance with the formula set forth in Article 7.3.12. The Commissioner reserves the right to reject any proposed individual for the title in question in accordance with Article 7.3.12.

5.4.4 Staffing Plan: A Staffing Plan must be established and approved by the Commissioner prior to commencement of the performance of time card services. Such Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those personnel necessary for the performance of the required services.

(a) Key Personnel: Required titles and specific individual for each title, identified in Exhibit B
(b) Other Personnel: Required titles and specific individual for each title
(c) All Inclusive Hourly Rate for each specified individual, excluding any principals. The individual's All Inclusive Hourly Rate shall be the rate set forth in Exhibit E for the title for which the Commissioner determines the individual meets the minimum requirements.
(d) Total estimated hours and amount for each title
(e) Total estimated amount for all required titles of personnel

5.4.5 Payment Limitations: Payment to the Consultant for time card services is subject to the limitations set forth below

(a) Inclusion in Staffing Plan: The Consultant 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 Consultant's entitlement to payment for services performed by such individuals.

(b) Principal: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) the principal is qualified to perform services in accordance with one of the titles set forth in Exhibit F, and (2) the principal is included in the approved Staffing Plan for such title.

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

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

5.4.8 Revisions to Staffing Plan: The Commissioner may, at any time, direct revisions to the Staffing Plan, including without limitation, increasing or decreasing the specified personnel, based upon the scope of required services for the Project. The Consultant shall increase or decrease the specified personnel, as directed by the Commissioner.

ARTICLE 6 - Scope of Services

6.1 General Description of Services: The Consultant shall provide, to the satisfaction of the Commissioner, all pre-scoping services necessary and required for the Project. The services to be provided by the Consultant shall include without limitation the services set forth in this Article 6. The Consultant shall provide the services set forth herein through its own employees and/or through its Subconsultants.

6.2 Pre-Scoping Services: The Pre-Scoping Services to be provided by the Consultant are set forth in the Specific Requirements. All tasks associated with Pre-Scoping Services are essentially the same as those associated with Preliminary Design Services. Such Pre-Scoping Services shall be deemed to include all necessary and usual components and/or services in connection with Pre-Scoping Services, including without limitation the services set forth below.

6.2.1 All normal and routine services in connection with preparation of the required deliverables for the Project, as set forth in the Specific Requirements, including, without limitation, research and investigation, unless expressly provided for as an Additional Service and/or a Reimbursable Service.

6.2.2 All services provided by the Consultant in connection with Reimbursable Services, except as otherwise expressly provided in Article 6.5.1(c). Such services shall include, without limitation, the following:

(a) Investigating and/or determining the need for Reimbursable Services;
(b) Administering, managing, supervising and coordinating Reimbursable Services, and
(c) Evaluating and incorporating data and/or material procured as Reimbursable Services into the design for the Project.

6.2.3 Deliverables: All required deliverables, including cost estimates, are subject to review and written approval by the Commissioner. All pre-scoping documents are subject to approval by all regulatory agencies whose approval of the design is required, including without limitation, (1) the New York City Departments of Transportation, Environmental Protection, and Parks; (2) the Landmark's Preservation Commission; (3) the Public Design Commission, and (4) the New York State Departments of Transportation and Environmental Conservation.

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

6.3 Project Schedule: The Consultant shall perform all required pre-scoping services for the Project and submit all required deliverables in accordance with the Project Schedule set forth in Exhibit C.

6.4 Provisions Pre-Scoping Services

6.4.1 Criteria for Services: All required pre-scoping services shall be in accordance with the following: (1) Specific Requirements, and (2) all applicable local, state and federal laws, rules and regulations, including, without limitation, the New York City Building Code and the Americans With Disabilities Act.

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

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

6.4.4 Artwork: The Consultant shall, if directed by the Commissioner, provide for the inclusion of artwork in the Project in accordance with Chapter 9, Section 224, of the New York City Charter and the rules and regulations promulgated thereunder. All costs for such artwork shall be paid from the Allowance for Artwork, as set forth in the Task Order. For services in connection with the artwork, the Consultant shall be entitled to a fee, as set forth in Article 7. To comply with Section 224 of the Charter, the Consultant shall be responsible for the items set forth below, as directed by the Commissioner.

(a) Consult with and cooperate with a panel established by the Commissioner of the Department of Cultural Affairs. The Consultant shall also prepare all data, documentation, drawings and plans to be presented to and considered by such panel.
(b) Engage an artist and administer and/or manage the services of such artist. For engagement of the artist, the Consultant shall use the standard form of contract approved by the Commissioner. The services of the artist shall be in accordance with the terms and conditions of such contract, including without limitation, requirements for fabrication, models, signage, shipping, insurance, storage, scaffolding, structural work and anchorage.

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

6.5.1 Additional Professional Services shall be services which the Commissioner determines are required for the Project and are in addition to or outside of the necessary and usual services in connection with Pre-Scoping Services, as set forth in Article 6.2. Additional Professional Services shall include, without limitation, the services set forth below.

(a) Changes to the pre-scoping documents, as set forth in Articles 6.9.1(b) and 6.9.2.
(b) Support services during construction

(c) Services to procure, manage and supervise Reimbursable Services that are required in connection with Additional Professional Services.
(d) Any other professional services, determined by the Commissioner to be necessary for the Project.

6.5.2 The Consultant may be directed to perform pre-scoping services pursuant to a change order. If so specified in the change order, the Consultant agrees to perform the pre-scoping services specified therein in accordance with the terms and conditions applicable to the performance of Additional Professional Services.

6.5.3 Additional Professional Services shall not include the services set forth in Articles 6.9.1 (a) and 6.9.3.

6.5.4 The method of payment for the performance of Additional Professional Services shall be on a time card basis, as set forth in Article 7.

6.5.5 If the Consultant is of the opinion that any service it has been directed to perform constitutes an Additional Professional Service, the Consultant shall notify the Commissioner in writing within five (5) business days of such direction. The Commissioner's determination as to whether or not such services constitute Additional Professional Services shall be final, conclusive and binding upon the Consultant.

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

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

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

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

6.6.4 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) Subcontractor services for borings, rock cores and excavation of test pits.
(b) Subcontractor services for hazmat sampling or remediation services.
(c) Laboratory services for soil / rock classification, hazmat testing or other necessary testing or analysis.
(d) Filing fees and related application fees for New York City agencies
(e) Fees for street opening permits
(f) Reproduction and/or printing of deliverables, project documents and/or records, except for printing performed in the office of the Consultant or its subconsultant
(g) Photographic film, developing and printing.
(h) Procurement of copies of documents, data sheets, drawings and reports for reference and information.
(i) Long Distance Travel. In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant’s home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
(j) Specialty subconsultants, i.e., subconsultants other than the Subconsultants set forth in Exhibit B.
(k) Renting of material and/or equipment.

(l) Railroad Force Accounts
(m) Any other services, determined by the Commissioner to be necessary for the Project.

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

6.7 Non-reimbursable Services: Throughout the Contract, the Consultant 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 payments to the Consultant, as set forth in Article 7.

6.7.1 Overnight Delivery: The Consultant shall, when requested by the Commissioner, provide overnight delivery of the following Project documents: (a) pre-scoping documents; (b) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (c) change orders; (d) documents with respect to payment, and (e) any other critical communications and/or documents.

6.7.2 Transportation: The Consultant shall provide transportation for all personnel performing services, including without limitation: (a) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.6), (b) expenses for time spent by personnel commuting or traveling, and (c) expenses for parking and tolls.

6.7.3 Equipment: The Consultant shall provide the items set forth below for all personnel performing services.

(a) All necessary CADD or computer usage time
(b) All necessary office supplies and/or tools
(c) Communications equipment and service, including without limitation cellular telephones. The telephone numbers of all personnel shall be submitted to the Commissioner.

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

6.9 Provisions Regarding Changes to the Pre-Scoping Documents

6.9.1 Changes Not Involving Scope:

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

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

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

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

ARTICLE 7 Payment Terms and Conditions

7.1 Total Payments

7.1.1 Maximum Amount: The Maximum Amount of the Contract is set forth in Exhibit A. Total payments for all services performed and all expenses incurred pursuant to this Agreement shall not exceed the Maximum Amount. The Maximum Amount does not represent a commitment or guarantee on the part of the City to pay such amount, unless it has been determined to be due and payable to the Consultant in accordance with the terms and conditions set forth herein.

7.1.2 Allowances: In the event the amount of the allowances set forth in Exhibit A are not sufficient, as determined by the Commissioner, to cover the cost of services which the Consultant is directed to provide, the Commissioner will increase the amount 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 Consultant, reallocate such specific allowance amounts.

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

7.2 Payment for Pre-Scoping Services

7.2.1 Pre-Scoping Fee: The Pre-Scoping Fee is set forth in Exhibit A. The Pre-Scoping Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultants in the performance of all required Pre-Scoping Services for the Project, as set forth in the Specific Requirements, including all expenses related to management and overhead, all expenses in connection with providing the non-reimbursable items and/or services set forth in Article 6, and any anticipated profit. The Pre-Scoping Fee does not include any expenses for: (1) Time Card Services, and (2) Reimbursable Services. The Pre-Scoping Fee is comprised of the lump sum fees for the deliverables set forth in the Fee Schedule (Exhibit D). Upon written acceptance by the Commissioner of each respective deliverable, the Consultant shall be paid the lump sum fee for that deliverable, as set forth in the Fee Schedule.

7.2.2 Partial Payments: Partial payments of the lump sum fee for any deliverable set forth in the Fee Schedule (Exhibit D) may be made to the Consultant on a monthly basis, based upon the Commissioner's determination that the Consultant is progressing the required work for the deliverable in a satisfactory fashion and in accordance with the schedule set forth in Exhibit C; provided, however, partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work.

7.2.3 Increases: If the base term of the Contract is extended, the Fees set forth in Exhibit D are subject to

increases in accordance with Article 7.7.

7.3 Payment for Time Card Services

7.3.1 Allowance: An Allowance for Time Card Services is set forth in Exhibit A. Such allowance is established for payment to the Consultant for the performance of services by those individuals who have been assigned to provide services on a time card basis and are identified in the Staffing Plan approved by the Commissioner. The Consultant shall not be entitled to payment for the services of: (1) any individual not included in the approved Staffing Plan for time card services, or (2) any principal(s), unless such principal meets the criteria set forth below.

7.3.2 Maximum Price: In the event the Consultant is directed to perform services on a time card basis, the Not to Exceed Amount set forth in the Staffing Plan shall constitute the maximum price to be paid to the Consultant for providing the services specified therein. The Consultant shall not be entitled to payment in excess of such amount, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

7.3.3 Staffing Plan: In the event the Consultant is directed to perform services on a time card basis, a Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services. Such Staffing Plan must specify the specific individuals for the performance of services and an All Inclusive Hourly Rate for each specified individual. The specific individuals set forth in the Staffing Plan shall be considered Assigned Employees for the purpose of payment hereunder.

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

(a) All expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project
(b) All expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties
(c) All expenses related to overhead and any anticipated profit
(d) All expenses related to providing the non-reimbursable items and/or services set forth in Article 6.

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

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

(a) All Inclusive Hourly Rate applicable to the Assigned Employee. The All Inclusive Hourly Rate for an Assigned Employee shall be the rate set forth in Exhibit E for the title for which the Commissioner determines the employee meets the minimum requirements.
(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services for this Project on a time card basis. This total number of hours shall NOT include the following: (1) any hours the Assigned Employee spent commuting and/or traveling; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for this Project covered under Fee(s); (4) any hours during which the Assigned Employee performed services for any other project; (5) any hours the Assigned Employee spent performing services for this Project for which the Consultant is

not entitled to compensation, and (6) 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.

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

7.3.8 Requisitions: For any week(s) for which the Consultant is requesting payment for services performed by an Assigned Employee on a time card basis, the Consultant shall submit the documentation set forth below.

7.3.9 Increases: If the term of the Contract is extended, the All Inclusive Hourly Rates set forth in Exhibit E are subject to increases in accordance with Article 7.7.

7.3.10 Decreases: The names of individuals identified as Key Personnel by the Consultant in its Proposal for the Contract, as well as their titles and qualifications, are set forth in Exhibit B. Exhibit E lists the All Inclusive Hourly Rates applicable to titles of Key Personnel. Such All Inclusive Hourly Rates were negotiated based on the qualifications and salary rates of the individuals identified in Exhibit B. In the event the Consultant fails to provide any individual listed in Exhibit B, the Commissioner may decrease the All Inclusive Hourly Rate for such individual's title to an amount based on the qualifications and salary rate of the individual approved as a replacement.

7.3.11 Change Order Services: The Consultant may be directed to perform services pursuant to a change order. If so specified in the change order, the Consultant agrees to perform the services specified therein in accordance with all terms and conditions applicable to the performance of Time Card Services. Such change order shall specify an upset amount for the performance of the Consultant's services and shall further specify one of the alternatives set forth below. No change order utilizing item (b) shall be valid unless signed by the Consultant.

(a) Upset amount will be increased if it is not sufficient to cover the cost of the required services, or

(b) Upset amount will not be increased and all costs in excess of the upset amount incurred by the Consultant in connection with the performance of the required services are the sole responsibility of the Consultant.

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

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

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

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

7.4 Payment for Reimbursable Services:

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

7.4.2 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 Consultant shall not be entitled to any mark-up for overhead and profit on payments for Reimbursable Services hereunder. All costs and expenses for overhead and/or profit in connection with the provision of Reimbursable Services are deemed included in the Design Fee for Design Services, or, if applicable, the All Inclusive Hourly Rates for Time Card Services.

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

7.5 Payment for Artwork

7.5.1 Allowance: If applicable to the Project, an Allowance for Artwork is set forth in Exhibit A. Such allowance is established for payment for services the Consultant is directed to provide, as set forth in Article 6, for the inclusion of artwork in the Project in accordance with Chapter 9, Section 224, of the New York City Charter. No such services shall be provided by the Consultant, or paid from this allowance, unless expressly authorized in advance in a written directive from the Commissioner.

7.5.2 Amount of Payment: The amount of payment for the services of the artist engaged by the Consultant shall be calculated in accordance with the terms and conditions of the contract between the Consultant and the artist. Such contract is subject to prior written approval by the Commissioner.

7.5.3 Consultant's Fee: For services in connection with the artwork, the Consultant shall be entitled to a fee, as set forth below. Payment of such fee shall be based upon the percentage of completion of all required services in connection with the artwork.

(a) For Projects where the total actual cost of the artwork is $50,000 or less, the fee shall be fifteen (15%) percent of the total actual cost of the artwork.

(b) For Projects where the total actual cost of the artwork is more than $50,000, the fee shall be $7,500, plus ten (10%) percent of the amount by which the total actual cost of the artwork exceeds $50,000.

7.6 Requisitions for Payment

7.6.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the Consultant and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into the following categories, depending on the services performed: (1) Pre-Scoping Services; (2) Time Card Services; (3) Artwork, and (4) Reimbursable Services. The Consultant shall submit one original and three (3) copies of each requisition for payment.

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

(a) Project Progress Report: The Consultant shall submit a current report indicating the percentage of completion of all required services for the Project. The progress report submitted as part of the payment requisition shall not constitute submission of the monthly Progress Report in accordance with the requirements set forth in the General Requirements.

(b) Fees: For any period for which the Consultant is requesting payment of any portion of the Fees set forth in Exhibit D, the Consultant shall provide one of the statements set forth below.

(1) Statement that the Consultant has received the Commissioner's written approval of the required deliverable.

(2) Statement that the Consultant is progressing the required work for the deliverable in a satisfactory and timely fashion. Partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work.

(c) Time Card Services: For any period for which the Consultant is requesting payment for services on a time card basis, the Consultant shall submit the documentation set forth below:

(1) Name and title of the Assigned Employee, as defined above.

(2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.

(3) All Inclusive Hourly Rate applicable to the Assigned Employee. The All Inclusive Hourly Rate for an Assigned Employee shall be the rate set forth in Exhibit E for the title for which the Commissioner determines the employee meets the minimum requirements.

(4) Number of hours worked each day by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for the Project on a time card basis.

(5) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for this Project on a time card basis; (2) actual hours during which the employee performed services for this Project covered under Fee(s); (3) actual hours during which the employee performed services for other projects; (4) non-billable hours, as defined above; (5) actual hours, if any, during which the Assigned Employee performed services for this Project for which the Consultant is not entitled to compensation, and (6) any non-regular business hours.

(d) Artwork: For any period for which the Consultant is requesting payment for artwork, the Consultant shall submit a statement indicating the percentage of completion of all required services by the artist, as well as the total actual cost of the artwork to date.

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

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

7.6.3 All payments hereunder are contingent upon the Consultant's satisfactory performance of the required services. The Consultant shall not be entitled to any compensation for services or reimbursement for costs or expenses with respect to any such obligations not properly performed by it hereunder. The Commissioner is authorized to make deductions for any services performed hereunder which he/she determines to be unsatisfactory.

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

7.7 Increases: The Fees and All Inclusive Hourly Rates set forth in Exhibits D and E shall apply to the base term of the Contract. If the base term is extended, the Commissioner shall issue a change order to the Consultant increasing the Fees and All Inclusive Hourly Rates, subject to the conditions set forth below. If no such change order is issued, the Fees and All Inclusive Hourly Rates applicable to the base term of the Contract shall remain in effect throughout the extended term of the Contract.

7.7.1 No change order increasing the Fees and All Inclusive Hourly Rates shall be issued if the Commissioner determines that the Consultant is responsible for the delay or any material portion thereof.

7.7.2 Any increase in the Fees and All Inclusive Hourly Rates shall be based on whatever increase may have occurred during the base term of the Contact in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office. If, during the base term of the Contract, the Index showed an increase, the Fees and All Inclusive Hourly Rates shall be increased. If, during the base term of the Contract, the Index declined or showed no increase, the Fees and All Inclusive Hourly Rates shall remain unchanged throughout the extended term of the Contract.

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

7.7.4 Any increase in the Fees and All Inclusive Hourly Rates shall not apply to any Change Order work issued during the base term of the Contract, even if such Change Order work was actually performed during the extended term. If any Change Order is issued during the extended term of the Contract, the increased All Inclusive Hourly Rates shall be used to negotiate a lump sum fee for such Change Order work.

ARTICLE 8 Labor Law Requirements:

8.1 The Consultant shall strictly comply with all applicable provisions of the New York State Labor Law, as amended. Such compliance is a material term of the Contract. Such compliance shall include, but is not limited to, payment of the prevailing rate of wages, as described below.

8.1.1 Certain categories of labor for Surveying Services are included in the Section 220 Prevailing Wage Schedule. In accordance with the Labor Law, for any category of labor included in such Schedule, the wages to be paid for a legal day's work to such laborers shall not be less than the "prevailing rate of wages" as defined in Labor Law

Section 220, and as fixed by the Comptroller in the Prevailing Wage Schedule and in any updates thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the work is being performed.

ARTICLE 9 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 SUBCONTRCTING 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 Consultant.

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

CONSULTANT:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

_____
Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT 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

- Maximum Amount of Contract: Not to Exceed $_____
  [Comprised of items (1) through (4) below]

  (1) Pre-Scoping Fee: $_____

  (2) Allowance for Time Card Services: Not to Exceed $175,000

  (3) Allowance for Reimbursable Services: Not to Exceed $75,000

- Term of Contract: The contract shall commence as of the date of registration by the Comptroller and shall remain in effect until all required services have been completed. The time for completion of all required services, including reasonable review time by agencies whose approval the Consultant is required to obtain, shall be 548 consecutive calendar days ("ccds").

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

- Multiplier: The Multiplier for Overhead and Profit set forth below shall be used **ONLY** as set forth in Article 7.3.12. As indicated therein, such multiplier shall be used to calculate an All Inclusive Hourly Rate for any additional required title(s).

  Multiplier: _____

EXHIBIT B: SUBCONSULTANTS AND KEY PERSONNEL

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

Engineering Design Services: _____

Structural/Bridge Engineering Design Services: _____

Architectural Design Services: _____

Civil Engineering Design Services: _____

Geotechnical Engineering Design Services: _____

Landscape Architectural Design Services: _____

Urban Planning Services: _____

Topographical Surveying Services: _____

Traffic/Transportation Engineering Services: _____

Environmental Engineering/Hazmat Services: _____

Electrical/Lighting Design Services: _____

Mechanical Design Services: _____

Archeological Services: _____

Tree Consulting/Arborist Services: _____

(B) KEY PERSONNEL: The names of individuals identified as Key Personnel by the Consultant in its Proposal for the Contract, as well as their titles and qualifications, are set forth below. The Consultant specifically agrees to assign to the Project for its entire duration, the individuals identified below as Key Personnel, unless otherwise approved by the Commissioner.

Title of Key Personnel	**Name of Individual/Firm**	**Qualifications**	
		License or Certification	**Number of Years of Experience**
Project Manager:	_____	_____	
Senior Structural/Bridge Engineer:	_____	_____	
Senior Project Architect:	_____	_____	
Senior Geotechnical Engineer:	_____	_____	
Senior Civil Engineer:	_____	_____	
Senior Landscape Architect:	_____	_____	

EXHIBIT C

PROJECT SCHEDULE

The Project Schedule set forth in this Exhibit C was submitted by Consultant as part of its Proposal for the Contract. The Consultant agrees to perform all required services in accordance with the Project Schedule.

EXHIBIT D

FEE SCHEDULE

The Pre-scoping Fee is comprised of the lump sum fees for the following tasks:

		SR Reference	Amount
A.	SCHEMATIC DESIGN FEE	Section IV.C	$_____
B.	PRE-SCOPING DOCUMENTS PREPARATION FEE:	Section IV.D	$_____
C.	CONTRACT DOCUMENTS SUBMISSION FEE	Section IV.E	$_____
D.	TOTAL PRE-SCOPING FEE: (Total of A+B+C)		$_____
E.	ALLOWANCE FOR TIME CARD SERVICES	Not to Exceed	$175,000.00
		Not to Exceed Amount	
	• Additional Soil Investigation	$30,000.00	
	• Coring and Test Pit Program	$20,000.00	
	• Hazardous Materials Investigation	$20,000.00	
	• Land Use Assessment and ULURP	$30,000.00	
	• Archeological Study	$25,000.00	
	• Watermain Design	$25,000.00	
	• Sewer Design	$25,000.00	
F.	ALLOWANCE FOR REIMBURSABLE SERVICES	Not to Exceed	$75,000.00
		Not to Exceed Amount	
	• Rental of Equipment	$35,000.00	
	• Printing, Reproduction and Photographs	$10,000.00	
	• Filing Fees and Permit Application Fees	$5,000.00	
	• Railroad Force Accounts	$25,000.00	
G.	MAXIMUM AMOUNT OF CONTRACT (Total of D+E+F)	Not to Exceed	$_____

EXHIBIT E: TITLES and ALL INCLUSIVE HOURLY RATES

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

ALL INCLUSIVE HOURLY RATES: All Inclusive Hourly Rates per title are set forth below. Such All Inclusive Hourly Rates shall only apply if the Consultant is directed to perform services on a Time Card basis. Such All Inclusive Hourly Rates are subject to increases and/or decreases in accordance with Article 7.

ADDITIONAL TITLES: If an additional title(s) of personnel is required for a specific Project, the Commissioner shall establish the following: (1) additional required title(s), (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. The All Inclusive Hourly Rate for the additional required title shall be calculated in accordance with the formula set forth in Article 7.3.12.

ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Manager	_____
Project Engineer	_____
Engineer	_____
Junior Engineer	_____

STRUCTURAL/BRIDGE ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Structural/Bridge Engineer	_____
Structural/Bridge Engineer	_____
Junior Structural/Bridge Engineer	_____

ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Project Architect	_____
Junior Project Architect	_____

CIVIL ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Civil Engineer	_____
Junior Civil Engineer	_____

GEOTECHNICAL ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Geotechnical Engineer / Manager	_____
Senior Geotechnical Engineer	_____
Geotechnical Engineer	_____
Junior Geotechnical Engineer	_____

LANDSCAPE ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Landscape Manager, R.L A.	_____
Project/Senior Landscape Architect, R.L.A	_____
Landscape Architect	_____
Junior Landscape Architect	_____

URBAN PLANNING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Urban Planner	_____
Junior Urban Planner	_____

TOPOGRAPHICAL SURVEYING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Surveyor / Manager R.L.S.	_____
Party Chief / Foreman	_____
Instrument Person	_____
Rod Person	_____

TRAFFIC TRANSPORTATION ENGINEERING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Traffic Engineer	_____
Traffic Engineer	_____
Junior Traffic Engineer - Technician	_____

ENVIRONMENTAL ENGINEERING / HAZMAT SERVICES

TITLE	ALL INCLUSIVE HOURLY RATE
Project Environmental Engineer/Manager	_____
Senior Environmental Engineer	_____
Environmental Engineer	_____
Junior Environmental Engineer	_____
Certified Industrial Hygienist	_____
Industrial Hygienist	_____
Project Scientist	_____

ELECTRICAL/LIGHTING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Electrical Engineer	_____
Electrical Engineer	_____
Lighting Designer	_____

MECHANICAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Mechanical Engineer	_____
Mechanical Engineer	_____

ARCHEOLOGIAL SERVICES

TITLE	ALL INCLUSIVE HOURLY RATE
Archeologist / Historian	_____
Senior Archeologist	_____
Junior Archeologist	_____

TREE CONSULTING SERVICES

TITLE	ALL INCLUSIVE HOURLY RATE
Arborist / Forester	_____

MISCELLANEOUS SERVICES

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Draftsperson/CADD Operator	_____
Draftsperson/CADD Operator	_____
Junior Draftsperson/CADD Operator	_____

EXHIBIT F: MINIMUM REQUIREMENTS PER TITLE

Key Personnel: The names of individuals identified as Key Personnel, as well as their titles and qualifications, are set forth in Exhibit B. For any title of Key Personnel, the minimum requirements per title shall be the **GREATER** of the following: (1) the qualifications of the individual identified for the title in question, as set forth in Exhibit B, or (2) the minimum requirements per title set forth below.

Other Personnel: For all other titles of personnel, the minimum requirements per title are set forth below.

TITLE	ASCE (A) NICET (N) GRADE See Notes 1 & 2	License or Certification & Number of Years of Experience
Project Manager	A-VI	Professional License / 10 years
Project Engineer	A-IV	Professional License / 7 years
Engineer	A-III	5 years
Junior Engineer	A-II	2 years
Senior Structural/Bridge Engineer	A-V	Professional License / 7 years
Structural/Bridge Engineer	A-III	5 years
Junior Structural/Bridge Engineer	A- II	2 years
Senior Project Architect		Professional License /7 years
Junior Project Architect		3 years
Senior Civil Engineer	A-V	Professional License / 7 years
Junior Civil Engineer	A-II	2 years
Project Geotechnical Engineer/ Manager	A-VI	Professional License / 10 years
Senior Geotechnical Engineer	A-V	Professional License / 7 years
Geotechnical Engineer	A-III	5 years
Junior Geotechnical Engineer	A-II	2 Years
Landscape Manager, RLA		Professional License / 10 years
Project/Senior Landscape Architect, RLA		Professional License / 7 years
Landscape Architect		5 years
Junior Landscape Architect		3 years
Senior Urban Planner		7 years
Junior Urban Planner		3 Years
Surveyor / Manager, R.L.S.		Professional License/ 7 years
Party Chief/Foreman	N-III	5 years
Instrument Person	N-II	3 years
Rod Person	N-I	
Senior Traffic Engineer	A-V	Professional License / 7 years
Traffic Engineer	A-III	5 years
Junior Traffic Engineer – Technician	A-II	2 years
Project Environmental Engineer/ Manager		Professional License / 10 years
Senior Environmental Engineer		Professional License / 7 years
Environmental Engineer		5 years
Junior Environmental Engineer		2 years
Certified Industrial Hygienist		Professional License / 7 years, See Note 6
Industrial Hygienist		3 years, See Note 6
Project Scientist		See Note 6
Senior Electrical Engineer	A-V	Professional License / 7 years

Electrical Engineer	A-III	5 years
Lighting Designer		5 years
Senior Mechanical Engineer	A-V	Professional License / 7 years
Mechanical Engineer	A-III	5 years
Archeologist/Historian		See Note 4
Senior Archeologist		See Note 4
Junior Archeologist		See Note 4
Arborist/Forester		See Note 5
Senior Draftsperson /CADD Operator	N-IV	7 years
Draftsperson /CADD Operator	N-III	5 years
Junior Draftsperson /CADD Operator	N-II	3 years

Notes:

(1) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the American Society of Civil Engineers (ASCE). The applicable requirements for the title in question shall be the most current requirements promulgated by the ASCE for that title as of the date on which the Consultant submitted its Proposal for the Contract.

(2) The minimum requirements for the specified titles shall be the requirements established for the various grade levels by the National Institute For Certification In Engineering Technologies (NICET). The applicable requirements for the title in question shall be the most current requirements promulgated by the NICET for that title as of the date on which the Consultant submitted its Proposal for the Contract.

(3) If a title requires a professional license, such license must be issued by the State of New York.

(4) The minimum requirements for the specified titles in Archeology shall be the requirements established by the National Park Service (NPS), as set forth below.

(a) Education: Graduate degree in archeology, anthropology, or closely related field, except that for the title of Junior Archeologist, only a B.A. degree in archeology, anthropology, or closely related field.
(b) Experience:
(1) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
(2) At least four months of supervised field and analytical experience in general North American archeology; and,
(3) Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, the professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period (36 CFR Part 1: Appendix A).

(5) The minimum requirements for the specified title of Arborist/Forester shall be the requirements established by the New York City Department of Parks and Recreation, as set forth below.

(a) Associate degree in forestry, arboriculture, horticulture, or related plant science field, and five years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

(b) B.S. in forestry, arboriculture, horticulture, or related plant science field, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

(c) M.S. in forestry, arboriculture, horticulture, or related plant science field, and one year of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

(d) Arborist certification from the N.Y.S. Arborists/International Society of Arboriculture Chapter, Inc., and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or

(e) Other state arborist certification recognized by the International Society of Arboriculture or the National Arborist Association, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction.

(6) The minimum requirements for the specified Environmental Job Titles shall be the requirements set forth below:

(a) Certified Industrial Hygienist (CIH) - shall possess a CIH license granted by the American Board of Industrial Hygiene (ABIH) for at least five (5) years. An advanced degree (M.S., M.E., and PhD) in science or engineering is preferred. This individual will demonstrate at least seven (7) years of experience in this field of expertise with not less than 5 years practical experience in the environmental engineering / science fields.

Duties: The CIH will act as the lead and provide expert opinion on matters of industrial hygiene, site safety, and environmental compliance. This individual will review and interpret data, author environmental reports and site specific health and safety plans; and shall be responsible for all aspects, including execution and monitoring, of the health and safety program.

(b) Industrial Hygienist – shall demonstrate at least three (3) years of experience in this field of expertise.

(c) Project Scientist – shall possess at a minimum a Bachelor's degree from an accredited university in the respective field of study and have six (6) years of practical experience in construction and/or design of building/infrastructure systems, building codes, fire/life–safety issues, and other topics related to general project design and development. Postgraduate education may supplement up to two (2) years of work experience. The individual will be required to demonstrate proficiency in understanding drawings, specifications, standards, codes regulations, etc. as they pertain to general construction practices and the environmental fields.

Duties: The Project Scientist will participate in a project from a hydro/geotechnical perspective, and will be called upon to provide expertise in, fire detection/suppression, life-safety and all other systems that are impacted by the environmental project. Also included are responsibilities for environmental report writing controlled inspections and most other activities that their education and background would dictate.

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

EXHIBIT G

SPECIFIC REQUIREMENTS FOR PRE-SCOPING SERVICES

EXHIBIT G: SPECIFIC REQUIREMENTS

I. PROJECT INTENT

Under this Contract with the New York City Department of Design and Construction (NYCDDC), Division of Infrastructure, the Consultant shall provide Engineering Design and related services to prepare pre-scoping documents for the Passerrelle Pedestrian Bridge, located in the Flushing Meadows-Corona Park, Flushing in the Borough of Queens, New York. Pre-Scoping Services are described in Section IV of these Specific Requirements. All tasks associated with Pre-Scoping Services are essentially the same as those associated with Preliminary Design Services.

The Passerrelle Pedestrian Bridge is owned by the New York City Department of Parks & Recreation (NYCDPR) and was built for the 1934 World's Fair and rehabilitated for the 1964 World's Fair. It spans the NYCTA Corona Maintenance Yard for trains and buses, the LIRR Port Jefferson Line tracks and a Park road and parking area, both owned by NYCDPR. The structure is multi-span steel trestle frame with timber and concrete decking with a total length of approximately 1100 feet and widths ranging from 40 feet at the main walkway to 230 feet over the LIRR area. The condition of the structure has visibly deteriorated since its last rehabilitation for the 1964 Worlds' Fair.

The Consultant shall provide engineering design and related services for preparing the pre-scoping documents, which would identify the detailed scope of rehabilitation and/or reconstruction of the existing bridge superstructure and substructure. The bridge shall be rehabilitated and/or reconstructed within the bounds of the Right of Ways (ROW). The pre-scoping documents shall provide for the continuation of pedestrian and vehicular traffic on the bridge as well as pedestrian, vehicular and railroad traffic under the bridge. The pre-scoping documents shall also address protection and support for existing utilities and installation of new support and/or utilities as required. The pre-scoping documents shall also ensure that the rehabilitation of the bridge does not create any service outages. This is essential in light of the fact that the bridge spans railroads and highways. Pedestrian access during construction must be maintained.

The Consultant shall prepare the pre-scoping documents for a "design lifespan" of 75 years for the bridge and shall comply with all applicable federal, state and local statutes including, but not limited to: the Americans with Disabilities Act (ADA), recognized industry-wide engineering standards adopted by the American Association of State Highway and Transportation Officials (AASHTO), the New York State Department of Transportation (NYSDOT), New York City Department of Transportation (NYCDOT), New York City Department of Design + Construction (NYCDDC) and the New York City Department of Parks and Recreation (NYCDPR).

Throughout this Exhibit, the following entities are referred to:

New York City Department of Design + Construction	NYCDDC
New York City Department of Transportation	NYCDOT
New York City Department of Environmental Protection	NYCDEP
New York City Department of Parks and Recreation	NYCDPR
New York State Department of Environmental Conservation	NYSDEC
New York State Department of Transportation	NYSDOT
Federal Highway Administration	FHWA

The Consultant shall prepare pre-scoping documents for the project in accordance with the schedule set forth in Exhibit C- Project Schedule. The Consultant shall coordinate the activities of its subconsultants to ensure adherence to the schedule.

II. GENERAL APPROACH:

The intent of this Contract is to have the Consultant prepare pre-scoping documents to identify the detailed scope of work for rehabilitation/reconstruction of the bridge. During the pre-scoping documents preparation phase, the Consultant shall provide all services required for preparation, coordination and submission of all required pre-scoping documents. The pre-scoping documents may require computations and sketches/drawings. The Consultant shall perform all pre-scoping computations and prepare all pre-scoping sketches/drawings using English (foot, pound and inches) units of measurement.

The services to be provided by the Consultant shall include, without limitation, the following: Engineering Design Services, Structural/Bridge Engineering Design Services, Architectural Design Services, Electrical/Lighting Design Services, Geotechnical/Foundation Design Services, Civil Engineering Design Services, Landscape Architectural/Site Design Services, Urban Design Services, Topographic Surveying Services, Environmental Engineering/Hazmat Services, Traffic/Transportation Engineering Services, Tree Consulting/Arborist Services, Archeological Services.

If directed in writing by the Commissioner, the Consultant may also be required to provide Additional Professional Services for the following: (a) Additional Soil Investigation, (b) Coring and Test Pit Program, (c) Hazardous materials Investigation, (d) Land Use Assessment and ULURP (Uniform Land Use Review Procedure), (e) Archeological Services, (f) Watermain Design, (g) Sewer Design, etc., as well as Reimbursable Services for the following: (a) Rental of Equipment, (b) Printing, Reproductions and Photographs, (c) Filing Fees and Permit Application Fees, etc.

III. GENERAL REQUIREMENTS AND PROJECT COORDINATION

Throughout the Pre-scoping Documents preparation phase of the contract, the Consultant shall be responsible for providing the services set forth below on a continuous basis. All costs for such services are deemed included in the Pre-scoping Fee, unless otherwise expressly specified. The services that the Consultant is required to provide, without any limitation, are set forth below:

A. Progress Reports and Schedule: Under this task, the Consultant shall be required to submit (a) Base Line Progress Report and (b) Monthly Progress Reports for the duration of the Contract.

i. Base Line Progress Report: Upon Notice to Proceed, the Consultant shall prepare and submit a detailed Base Line Progress Report. The Base Line Progress Report shall consist of (a) Base Line Bar Chart Schedule or Base Line CPM Schedule and (b) Base Line Written Progress Narrative, in accordance with the Contract Schedule set forth in Exhibit C. The Base Line Progress Report shall be submitted to the Commissioner at the Start-up meeting for review and approval.

a. The Base Line Bar Chart (or Base Line CPM Schedule) shall include, but not be limited to, the following: target dates for completion of In-depth Inspection, Topographic Survey (Field Survey), Coring and Test Pit Program, Soil Investigation Programs; submission dates for Draft Schematic design, Final Schematic Design, Draft Bridge Condition Inspection Report, Final Bridge Condition Inspection Report, Draft Pre-Scoping Plans, Final Pre-Scoping Plans, Itemized Estimate, ULURP completion date (if required); a detailed listing of all tasks, sub-tasks and milestones; the time necessary to complete the various tasks, sub-tasks and milestones; the interrelationship of milestones; the interrelationship and dependency of the various elements of the Base line Bar Chart; and the critical path for the project.

b. Base Line Written Progress Narrative shall include a detailed description of work to be performed this progress period as well as the detailed description of the work to be performed in the next progress reporting period.

ii. Monthly Progress Report: The Commissioner shall establish a Monthly Anniversary Date and Reporting Period for the submission of the Monthly Progress Reports. The date of the Notice to Proceed (NTP) may be used as the Anniversary Date. The reporting period shall be from the monthly Anniversary Date to one day prior to the next monthly Anniversary Date. The Monthly Progress Report shall be submitted for each progress reporting period for the entire duration of the contract, including the duration of time extension, if any.

iii. Similar to the Base Line Progress Report, the Consultant shall prepare and submit a detailed Monthly Progress Report. The Monthly Progress Report shall consist of (a) updated Bar Chart Schedule or CPM Schedule and (b) updated Written Progress Narrative.

a. In the updated Bar Chart Schedule or CPM Schedule, the Consultant shall analyze the Project's progress as it relates to the approved Base Line Bar Chart. Additionally, the Monthly Progress Report shall include, but not be limited to, the following: actual time used for each task; changes in targeted completion dates for the various tasks; the reasons for any delays in the targeted completion dates; the need and justification for any extensions of time; a narrative description of the work performed during the reporting period; a narrative description of the work projected for the next reporting period; a list of contract drawings showing the estimated percent of completion of each drawing; and a revised work plan which reflects the Project's current status at the end of the instant reporting period. All contract times and extensions of time (if any) shall be indicated.

b. In the updated Written Progress Narrative, the Consultant shall include a detailed description of work performed in the last reporting period, the work to be performed during the present reporting period as well as the detailed description of the work to be performed in the next progress reporting period, together with analysis of any delay and reasons for the delay.

iv. The Consultant shall submit Monthly Progress Report on a monthly "Anniversary Date" basis to the Commissioner for approval, no later than two (2) working days following the close of the reporting period.

B. Meetings and Coordination:

i. The Consultant shall coordinate with the Commissioner and schedule the meetings when required, including any/all required follow-up meetings, held during the progress of the contract.

ii. Such meeting shall include without limitations, kick-off meeting, Monthly Progress Meetings, coordination meetings, All Agency Conferences, meetings with all City agencies, meetings with all public and private utilities, meetings with Community Boards and Elected officials and meetings with any party having jurisdiction over or having interest in the project and any other meeting that the Commissioner and/or the Consultant deems necessary for the completion of the project.

iii. The Consultant shall prepare a draft agenda, at least five (5) business days before the meeting and submit to the Commissioner for review. The Consultant shall obtain comments on the draft agenda and revise the draft agenda as required. Upon approval of the agenda by the Commissioner, the Consultant shall distribute the approved agenda to all participants either by fax or e-mail at least two (2) business days before the meeting. The approved agenda shall also be distributed to all attendees at the meeting prior to the commencement of the meeting.

iv. The Consultant shall attend and participate in all meetings held during the progress of the contract. NYCDDC Engineer-In-Charge (EIC) will chair the meetings. The Consultant shall take detailed notes during each meeting and any/all required follow-up meetings and/or actions.

v. The Consultant shall prepare draft and final minutes for all required meetings and conferences. The minutes of meeting shall include any/all required follow-up items and/or action items.

vi. The draft minutes shall be prepared and distributed to the NYCDDC Project Manager, NYCDDC Engineer-In-Charge (EIC) and affected parties within two (2) business days of the meeting. Upon receiving comments on the draft minutes, the Consultant shall revise the minutes, as appropriate, and prepare final minutes of meeting. Upon approval of the final minutes of meeting, the Consultant shall distribute the final minutes of meeting to all attendees within five (5) business days from the date of the meeting.

C. Public and Private Utilities*:*

1. Any utility owned and/or maintained by the City of New York or any of its agencies (e.g. watermain, sewer line, street lighting, traffic signals, fire department cables, etc.), is defined as Public Utility.

2. Any utility, which is not owned and/or maintained by the City of New York or any of its agencies (e.g. gas main, Con Edison electric lines, telephone lines, fiber- optic lines, cable services, etc.), is defined as Private Utility.

3. The consultant shall clearly identify the location, size, composition, depth and ownership of all utilities, public as well private, existing or proposed, within the project limits.

4. The Consultant shall coordinate and meet with the public and private utilities to obtain their requirements at the onset of the project. The Consultant shall identify, coordinate and resolve all requirements, conditions and issues presented by affected utilities.

5. The Consultant shall provide all pre-scoping services (and associated tasks) required by the public utilities. The pre-scoping documents shall include, but not be limited to, identification of the following: (1) requirements for maintenance of existing utility services during construction; (2) relocation of and/or temporary support for existing utilities, new utility installation and support; (3) requirements for construction details, plans, specifications and estimates; etc. All costs for pre-scoping document preparation for Public Utilities are deemed included in the Pre-scoping Fee.

6. Pre-scoping Document preparation services for the Private Utilities may be provided in one of the following manners. The Consultant shall include these pre-scoping documents for the Private Utilities in the pre-scoping documents for the bridge.

   a. The Consultant may enter into an independent fee agreement with the respective Private Utility to provide all pre-scoping services (and associated tasks) required by the Private Utility and prepare pre-scoping documents for the respective Private Utility. The pre-scoping documents shall include, but not be limited to, identification of the following: (1) requirements for maintenance of existing utility services during construction; (2) relocation of and/or temporary support for existing utilities; new utility installation and support; (3) requirements for construction details, plans, specifications and estimates; etc.

   b. The Private Utility may prepare its own pre-scoping documents. In that event, the Private Utility shall prepare pre-scoping documents and submit them to the Consultant. The Consultant shall review these pre-scoping documents and provide appropriate recommendations to the City. All costs for such services (reviewing pre-scoping documents and providing appropriate recommendations) to be provided by the Consultant are deemed included in the Pre-scoping Fee.

7. The Consultant shall obtain timely approval letters from all affected Public and Private utilities prior to the finalization of the Pre-scoping Documents.

D. Permits:

i. Permits may be required from the impacted agencies during the design and/or construction. The impacted agencies may include, but are not limited to: Army Corps of Engineers, Coast Guard, NYSDEC, NYCDOT, NYCDEP, NYCDPR (Construction permit, arborist permit for tree removal and planting, etc.), NYSDOT, etc.

ii. The Consultant shall start the permit application process as early as possible, complete and process the permit applications and ensure that necessary permits are obtained during the design phase for the completion of the design work.

iii. The Consultant shall clearly identify in the Pre-Scoping Documents any permits that the Contractor shall be required to obtain to complete the construction of the project, and to ensure that the Pre-Scoping Documents provide for complying with the permit requirements.

iv. All costs for such services to be provided by the Consultant are deemed included in the Pre-Scoping Fee. The application fees and permit fees shall be considered Reimbursable Expenses and shall be paid in accordance with Article 7 of this contract.

E. Coordination with Railroad(s):

i. The bridge is located over the NYC Transit - MTA yard and LIRR - Port Jefferson Branch station. The Consultant shall coordinate and meet with the affected railroads at the onset of the project.

ii. The Consultant shall obtain design requirements from the railroads to be included in the Pre-scoping Documents. Such design requirements shall include, at a minimum, horizontal and vertical clearances, loading criteria, as well as design requirements for temporary structures (shielding, containment, etc.) and permanent structures, location and/or relocation of existing and proposed utilities, etc.

iii. The Consultant shall obtain all requirements in connection with the force account, maintenance and protection of traffic, track outages, etc. as it would impact all Field Operations as defined in Section IV.A.d.1.

iv. The Consultant shall provide pre-scoping services for all work required by the railroads, including identifying the impact on the existing facilities during construction. Such pre-scoping services shall include, but are not limited to, the requirements for temporary or permanent supports, the maintenance, as well as the reinstallation and/or relocation of railroad facilities (signal & communication cables, power cables, electrification modifications, etc.).

v. The Consultant shall ensure that all personnel (subcontractors, agents or employees) entering the railroad property possess required railroad safety training prior to entering the railroad property. Such personnel shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they are required to perform.

vi. The Consultant shall identify and resolve all requirements; conditions and issues pertaining to the railroad(s) and incorporate them into the Pre-Scoping Documents.

vii. The Consultant shall incorporate all approved work into the Pre-Scoping Documents (such as Bridge Condition Inspection Report, Schematic Alternates, Pre-scoping computations and sketches/drawings, etc.) and obtain approvals of the Pre-Scoping Documents from affected railroads prior to the finalization of the Pre-Scoping Documents.

viii. The Consultant shall obtain final approval of the Pre-Scoping Documents by obtaining stamped/approved set of Pre-Scoping Documents and/or approval letter from the affected railroads.

ix. The costs for all such services, outlined in (i) through (viii) above, are deemed included in the Pre-scoping Fee, unless otherwise specified.

x. The Consultant shall enter into an agreement with each affected railroad known as a “Force Account Agreement.” In accordance with such agreement, the railroad shall provide services in connection with the project, such as the following: (1) flagging services during bridge inspection and/or field surveys; (2) services for review and approval of the Pre-Scoping documents (including Bridge Condition Inspection Report, Schematic Alternates, computations, sketches and/or drawings) and related Field Operations; and (3) services to provide an estimate for required services during the Pre-Scoping Phases. The items of cost listed below incurred by the

Consultant in connection with the Force Account Agreement shall be considered Reimbursable Services in accordance with Articles 6 and 7 of the Contract.

(a) The cost of services provided by the railroad under the Force Account Agreement. The railroad is only entitled to receive payment for the verifiable services provided by the railroad. When flagmen services are provided, the railroad is only entitled to receive payment for the days the flagmen were at the site together with the Consultant.
(b) The cost of insurance (if any) obtained by the Consultant under the Force Account Agreement which is above and beyond the types and amounts of insurance the Consultant is required to provide under this Contract, as determined by the Commissioner.
(c) The cost of entry and/or permit fees.

F. **Approvals:**

The Consultant shall obtain all required approvals. All required Pre-Scoping Documents, including design computations, contract drawings, contract specifications, cost estimates, etc. are subject to review and written approval by the Commissioner. Pre-scoping Documents are subject to approval by all Federal, State and local agencies having jurisdiction including, without limitation, the following: (1) NYCDOT (Division of Bridges), (2) NYCDPR, (3) New York City Public Design Commission, (4) local Community Boards, (5) NYCDEP (Sewers and Water), (6) NYSDEC (Wetlands), (7) NYSDOT, (8) MTA LIRR, and (9) MTA New York City Transit.

IV. PRE-SCOPING PHASE:

Upon written authorization by the Commissioner, the Consultant shall proceed with the Pre-Scoping Phase. The Pre-Scoping Phase is subdivided into the following phases:

A. Schematic Design Phase
B. Pre-Scoping Documents Preparation Phase
C. Contract Documents Submission Phase

The Pre-Scoping services that the Consultant is required to provide shall include, without limitation, the services described below in detail.

A. SCHEMATIC DESIGN PHASE

Upon written direction of the Commissioner, the Consultant shall provide all necessary design services, without limitations, for the following phases:

1. Research and Data Collection Phase
2. Design Report Preparation Phase, and
3. Schematic Design Alternates Preparation Phase

Detailed services to be provided by the Consultant, without limitation, are set forth below:

1. RESEARCH AND DATA COLLECTION PHASE:

Upon written authorization by the Commissioner, the Consultant shall proceed to the Research and Data Collection Phase. The required design services during this phase are broken down into the following:

a. Introductory Letters/Planning Statements:
b. Research and collection of record data
c. Site Inspection
d. Maintenance and Protection of Traffic
e. Topographic Survey (Field Survey)
f. Right of Way (ROW) determination
g. In-depth Bridge Inspection

h. Hazardous Materials Investigation
i. Soils Investigation Program
j. Additional Soils Investigation Program
k. Coring and Test Pit Program
l. Land Use Assessment and ULURP

The design services that the Consultant is required to provide, without limitations, is described below in detail.

a. Introductory Letters/Planning Statements:

i. The intent of the Introductory Letters (and/or Planning Statements) is to notify all parties having jurisdiction over the project or having interest in the project of the commencement of the project and provide them information about general scope of work and schedule of design and construction. The parties having jurisdiction over the project or having interest in the project may include other New York City agencies, New York State agencies, Federal Agencies, Community Boards, Elected officials, etc.

ii. Upon receipt of the Notice to Proceed (NTP), the Consultant shall obtain the latest mailing list, prepare draft Introductory Letters, get DDC approval and prepare the final Introductory Letters.

iii. Within five (5) business days of the Notice to Proceed (NTP), the Consultant shall prepare draft mailing list and draft Introductory Letters and submit them to the Commissioner for review and approval.

iv. Upon receiving comments from the Commissioner, the Consultant shall finalize the mailing list as well as Introductory Letters to all parties having jurisdiction over the project or having interest in the project.

v. Within ten (10) business days of the Notice to Proceed (NTP), the Consultant shall mail all the final (approved) Introductory Letters to each party listed on the mailing list, as well as additional parties having jurisdiction over the project and/or as directed by the Commissioner.

vi. The Consultant shall prepare a matrix showing the names, addresses and the phone number of all parties the introductory letters are mailed to. The matrix shall also be used for tracking and shall account for the responses received from various parties.

vii. Based on the responses to the Introductory Letters and/or planning statements received from various parties, the Consultant shall account for and coordinate with all current and future projects in the vicinity of the bridge.

viii. The Consultant shall submit all responses to the Introductory Letters/planning statements to the Commissioner in the form of a report and shall be included in the Bridge Condition Inspection Report.

b. Research and Collection of Record Data:

i. The Consultant shall research, assemble and review all available record data (existing plans, specifications, as-built drawings, inspection reports, design computations, surveys, maps, maintenance records, traffic counts, alignment maps, construction photographs, accident records, etc.) including the latest NYCDOT and NYSDOT Bridge Inspection Reports and Bridge Inventory Listing for the bridge.

ii. The Consultant shall determine the location of such available record data; obtain a copy from the appropriate Agency/Department, put them in chronological order and inventory as per NYCDDC specifications and/or as directed. The Consultant shall submit a copy to the Commissioner.

iii. The Consultant shall review all available record data and coordinate/reconcile this data with the existing condition of the bridge as inspected/observed. Any discrepancies noted shall be immediately brought to the attention of the Commissioner.

iv. The Consultant shall obtain, and become familiar with, all applicable Departmental Design Directives, Standard Details, Administrative Procedural Bulletins and guidelines for the prosecution of the work/services under the various elements of the project. These shall include, but not be limited to, the latest editions (including all amendments) of the following manuals published by the New York City Department of Transportation (NYCDOT), the New York State Department of Transportation (NYSDOT), American Association of State Highway and Transportation Officials (AASHTO) and Federal Highway Administration (FHWA).

NYCDOT Procedures for Bridge Reconstruction Project Report, latest edition, including:

Appendix A: BRPR Format and Requirements
Appendix B: Substandard Features Checklist
Appendix C: Presentation of Ratings
Appendix D: In-Depth Inspection Form and Bridge Inspection & Condition Report
Appendix E: Preliminary Plan Review Checklist
Appendix F: Field Survey Requirements

NYCDOT Requirements for the Preparation of Engineering Drawings and Documents
NYCDOT Requirements for Microfilming of Engineering Drawings and Documents
NYCDOT Detailed Instructions for the Computerized Indexing of Engineering Drawings and Documents for Microfilming
NYCDOT Street Lighting Standards
NYCDOT Uniform Land Use Review Procedure
NYC Specifications for Title Examinations and Reports on Street/Railroad Intersections
NYC Specifications for Title Examinations and Reports on Privately Owned Tax Lots
NYCDEP Water Supply and Sewer Standards
Electric Code of the City of New York
National Electric Code
NYSDOT Engineering Bulletins and Engineering Instructions
NYSDOT Highway Design Manual, Volumes 1 and 2
NYSDOT Standard Specifications
NYSDOT Steel Construction Manual
NYSDOT Geometric Design Policy for Bridges
NYSDOT Prestressed Concrete Construction Manual
NYSDOT Manual of Uniform Traffic Control Devices
NYSDOT Uniform Code of Bridge Inspection
NYSDOT Bridge Inspection Manual
NYSDOT Bridge Inventory and Inspection System Manual
NYSDOT Specifications For In-Depth Bridge Inspection
NYSDOT Engineering Instructions for Load Ratings
NYSDOT Bridge Deck Evaluation Procedure Manual

NYSDOT Standard Detail for Highway Bridges, Bridge Design Data Sheets and Guideline Drawings
NYSDOT Right of Way Mapping Procedure Manual
NYSDOT Manual of Administrative Procedure (MAP)
NYSDOT Interim Guide to Metric Design
NYSDOT Metric Conversion Guidelines, Structures Division
AASHTO Standard Specifications for Highway Bridges, as amended by NYSDOT (Blue Pages)
AASHTO Manual for Condition Evaluation of Bridges
AASHTO Guide for the Development of Bicycle Facilities
AASHTO Guide to Metric Conversion
AISC Metric Properties of Structural Shapes
ASTM Standard Specifications
FHWA Seismic Design and Retrofit Manual for Highway Bridges
FHWA Seismic Retrofitting Guidelines for Highway Bridges
NYCDDC – Division of Infrastructure, Design Guidelines and Directives, July 2010, with latest addenda.

v. The Consultant shall obtain available traffic data from NYCDOT. The data shall include, but not be limited to, the daily, as well as hourly, volume of pedestrians and vehicular traffic, both on and under the bridge in each of the travel directions, as required.

vi. The Consultant shall obtain the functional classification of the bridge from the NYCDOT to be utilized in determining/analyzing applicable geometric and substandard features as well as seismic performance evaluation.

c. Site Access/Inspection:

i. The Consultant shall interview Maintenance, Inspection, and Engineering personnel, as appropriate, of the NYCDOT, NYCDDC and /or NYCDPR for gaining access to the bridge sites to perform the required services.

ii. The Consultant shall interview additional affected parties, including governmental and non-governmental personnel, as directed by the Commissioner, to determine if the project will impact on their activities and to ascertain all existing concerns, issues, problems and programs directly related to the bridge. The Consultant shall fully coordinate all activities with all Federal/State/City Agencies, public/private utilities or organized groups, which in the opinion of the Commissioner and/or the Consultant are necessary for the development of fully coordinated Design.

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

i. Upon written direction by the Commissioner, the Consultant shall prepare required Maintenance and Protection of Traffic (MPT) Plans for all Field Operation. The Field Operations, at a minimum, shall include, Topographic Survey(Field Survey), In-depth Bridge Inspection, Soil Investigation Program, Additional Soil Investigation Program, Coring and Test Pit Program, Hazardous Materials Investigation, etc.

ii. The Consultant may prepare MPT plans for a specific Field Operation or multiple Field Operations. The MPT plans shall address vehicular, rail, waterway and pedestrian traffic on and under the bridge for the duration of the specific Field Operation.

iii. The Consultant shall coordinate all required Field Operations. The Consultant may perform multiple Field Operations concurrently to minimize the impact on the traveling public and the community.

iv. Draft Maintenance and Protection of Traffic (MPT) Plans: The Consultant shall prepare Draft Maintenance and Protection of Traffic (MPT) plans and submit to the Commissioner and all affected agencies for review. At a minimum the affected agencies shall include NYCDOT-Office of Construction Mitigation and Coordination (NYCDOT-OCMC), NYCDPR, affected Railroad, Coast Guard, Army Core of Engineers, etc.

v. After submission of the Draft MPT Plans, the Consultant shall schedule and attend meetings with NYCDOT – OCMC and all parties having jurisdiction over the project and make revisions to the MPT plans.

vi. The Consultant shall incorporate all the comments provided by all affected agencies and submit the revised Maintenance and Protection of Traffic (MPT) plans to the Commissioner.

vii. The Consultant shall obtain approval of the proposed MPT plans and obtain all required stipulations, approvals, permits and working hours from NYCDOT – OCMC all affected agencies listed in (iv) above prior to the commencement of the Field Operations.

viii. The Consultant shall note that it may be necessary to work during off peak hours, nights and weekends as stipulated in any of the permit.

ix. Where the bridge is located over, or, in vicinity of Railroad(s), the Consultant shall coordinate with the affected railroad(s). Also refer to the requirements of Section III.E – Coordination with Railroad(s). Under the approved Force Account Agreement, the Consultant shall coordinate and schedule flagging services for all Field Operations as required. The Consultant shall keep a record of the flagging services provided by the railroad(s) under the Force Account Agreement.

x. Where the bridge is located over, or, in vicinity of water bodies, the Consultant shall coordinate with the Coast Guard, Army Core of Engineers and other affected agencies and obtain specific permits as required.

xi. Upon completion of all Field Operations, the Consultant shall remove all temporary equipment, Maintenance and Protection of Traffic devices, etc. from the project site. The Consultant shall restore the project site in a neat, safe and orderly condition.

e. **Topographic Survey (Field Survey):**

i. The Consultant shall perform a Topographic Survey (Field Survey) in accordance with latest NYCDOT Procedures for Bridge Reconstruction Project Report.

ii. The Consultant shall determine the survey limits such that it meets the requirements of the Contract and encompasses the limits of “Schematic Design”.

iii. The survey limits, at a minimum, shall extend at least 250 feet on either side of the bridge in longitudinal direction and 100 feet on either side of the bridge fascias in the transverse direction.

iv. The Topographic Survey shall be performed by a New York State Licensed Land Surveyor.

v. The Consultant shall install required Maintenance and Protection of Traffic devices as per the approved MPT plans in accordance with the requirements of Section d: Maintenance and Protection of Traffic.

vi. The Consultant shall bring all the equipment necessary to perform the Topographic Survey for the bridge project.

vii. The Consultant shall prepare and submit survey drawings to the Commissioner. The Topographic Survey shall show locations of all utilities within the project limits. The Topographic Survey shall also show the Right of Way (ROW) lines and encroachment, if any. The survey drawings shall be signed and sealed by a New York State Licensed Land Surveyor.

viii. The Consultant shall take sufficient color photographs during Topographic Survey (Field Survey) operations as deemed appropriate by the Consultant and/or as directed by the Commissioner. The Consultant shall provide original color photographs (or digital copies) in the Bridge Condition Inspection Report as required in accordance with the latest NYCDOT "Procedure for Bridge Reconstruction Project Report".

ix. Upon completion of the Topographic Survey, the Consultant shall remove all temporary equipment, Maintenance and Protection of Traffic devices, etc. in accordance with Section d: Maintenance and Protection of Traffic.

f. Right of Way (ROW) determination:

i. The Consultant shall perform the following basic services to determine whether temporary and/or permanent easements, and/or acquisitions, and/or a Uniform Land Use Review Procedure (ULURP) will be required for construction (including staging and access) and maintenance purposes. The Consultant shall also determine if Section 4f procedure (see FHWA Technical Advisory T 6640.8A) and/or Environmental Assessment Study (EAS) and/or Environmental Impact Statement (EIS) is required.

ii. The Consultant shall research, collect, and review of all pertinent data (existing and legal grades, mapped R.O.W. lines, alignment, grades, easements, etc.), for the entire project site.

iii. The Consultant shall perform the last owner title search for all parcels within the project limits. Each parcel shall be identified by a block & lot number, name of the owner and mailing address of the parcel as well as the owner.

iv. For publicly owned parcels, the Consultant shall coordinate with the agency that has ownership or jurisdiction and determine whether a Section 4f Evaluation (see FHWA Technical Advisory T 6640.8A) is required.

v. The Consultant shall prepare R.O.W. plans (strip map) showing legally adopted street lines (as shown on final section and/or the latest alteration maps), existing topography, property lines, highway boundaries, survey monuments, etc.; block & lot number, name of the owner and mailing address, etc. Property owner's names, addresses and block & lot numbers shall be shown together with existing easements and rights of way and total acreages of property. Identify existing encroachments, if any. All means of access to the property shall be shown.

vi. The Consultant shall prepare and submit draft ROW Plans to the Commissioner for review.

vii. The Consultant shall incorporate all comments received and revise the ROW Plan.

viii. Upon approval, the Consultant shall submit the ROW Plan to the Commissioner. The ROW Plan shall also be included in the Pre-scoping Drawings.

ix. The ROW Plan and findings of the Land Use Assessment shall be included and discussed in the Report.

x. All costs for such services described in (i) thru (ix) above, are deemed included in the Pre-Scoping Fee, unless otherwise specified.

xi. In the event, it is determined that temporary and/or permanent easements, and/or acquisitions, and/or a Uniform Land Use Review Procedure (ULURP) will be required for construction (including staging and access) and maintenance purposes, or Section 4f procedure and/or Environmental Assessment Study (EAS) and/or Environmental Impact Statement (EIS) is required, the requirements of Section l: Land Use Assessment shall apply.

g. In-depth Bridge Inspection:

i. Upon written direction by the Commissioner, the Consultant shall coordinate and schedule In-depth Bridge Inspection. The Consultant shall ensure that all necessary permits are obtained.

ii. The Consultant shall note that it may be necessary to work during off peak hours, nights and weekends as stipulated in any of the permits.

iii. The Consultant shall install required Maintenance and Protection of Traffic devices for In-depth Bridge Inspection in accordance with the requirements of Section d: Maintenance and Protection of Traffic.

iv. The Consultant shall perform the In-depth Bridge Inspection in accordance with the NYSDOT Uniform Code of Bridge Inspection and NYSDOT Specifications for In-Depth Bridge Inspection and in accordance with the latest edition of the NYCDOT Procedures for Bridge Reconstruction Project Report.

v. The Consultant shall inspect the bridge deck thoroughly and prepare Bridge Deck Evaluation Report in accordance with the latest NYCDOT "Procedures for Bridge Reconstruction Project Report."

vi. Where inspection is performed over water or railroad tracks, the Consultant shall set up additional traffic controls as directed by the affected Agency and/or Railroad.

vii. The Consultant shall bring all the equipment necessary (ladders, chipping hammers, tape measure, rulers, micrometers, etc.) to perform the In-depth Bridge Inspection.

viii. Flagged Conditions: During the In-depth Bridge Inspection and/or during the entire duration of the Contract, if the Consultant encounters "Flagged Condition", the Consultant shall immediately inform the NYCDPR and the DDC Engineer-In-Charge (EIC) of any unsafe and/or flagged conditions found on the bridge.

ix. Such "Flagged Condition" information shall be communicated immediately by telephone followed by written notification to the DDC Engineer-In-Charge

and the NYCDPR. Written notification shall include drawings showing the location(s) of the condition(s), photos of the condition(s) and recommended repair and/or support details; and load rating computations of the affected structural member(s).

x. Substandard Features: The Consultant shall prepare a Substandard Features Checklist in accordance with the latest NYCDOT "Procedures for Bridge Reconstruction Project Report". At a minimum, the Substandard Features Checklist shall show what the standard features are, the appropriate reference from which it is obtained, what are the components of the existing features and what action is proposed.

xi. The Consultant shall take sufficient color photographs during In-depth Bridge Inspection as deemed appropriate by the Consultant and/or as directed by the Commissioner. The Consultant shall provide original color photographs (or digital copies) in the Bridge Condition Inspection Report in accordance with the latest NYCDOT "Procedure for Bridge Reconstruction Project Report".

xii. Upon completion of the In-depth Bridge Inspection, the Consultant shall remove all temporary equipment, Maintenance and Protection of Traffic devices, etc. in accordance with Section d: Maintenance and Protection of Traffic.

h. Hazardous Materials Investigation:

i. The Hazardous Materials Investigation may be performed by the NYCDDC using its own forces. In the event NYCDDC directs the consultant, in writing, to perform the Hazardous Materials Investigation, the following requirements shall apply.

ii. Upon written direction by the Commissioner, the Consultant shall prepare the Scope of Work for the Hazardous Material Sampling and Testing and submit it to the Commissioner for approval. The Scope of Work shall include the types of Hazardous Materials, its location, method of sample collection, types of tests to be performed and necessary precautions to be taken during the sample collection and testing, etc. Upon approval of the Scope, the Consultant shall proceed to the Sampling and Testing of Hazardous Materials.

iii. The Consultant shall coordinate and schedule Hazardous Materials Investigation. The Consultant shall ensure that all necessary permits are in place.

iv. The Consultant shall install required Maintenance and Protection of Traffic devices for Hazardous Material Sampling and Testing in accordance with the requirements of Section d: Maintenance and Protection of Traffic.

v. The Consultant shall prepare the Statements of Hazardous Material (Asbestos, Lead Based Paint, contaminated soil, contaminated water, etc.) in accordance with the latest edition of the NYCDOT Procedures for Bridge Reconstruction Project Report and NYCDDC procedures.

vi. The Consultant shall clearly identify if hazardous materials (asbestos, lead-based paint, contaminated soil, contaminated water, etc.) exist within the project limits.

vii. The Consultant shall perform sampling and testing program to identify the contaminated materials (asbestos, leads-based paint, contaminated soil, contaminated water, etc.) as required.

viii. The Consultant shall retain the services of a qualified contractor to obtain the samples, as well as the services of a qualified testing laboratory to perform the tests on the samples collected. All such services shall be in compliance with all applicable City/State/Federal regulations and requirements.

ix. All costs associated with retaining the services of a qualified contractor and qualified testing laboratory shall be considered Reimbursable Services and will be provided at the written direction of the Commissioner. Reimbursable Services are described in Articles 6 & 7 of the Contract.

x. The Consultant shall specifically identify the types, locations, configurations and ownership of hazardous materials in the Construction Documents. The Consultant shall design methods of handling, removal and disposing off the hazardous materials, including the entities responsible for such work in the Construction Documents. Such methods shall comply with all applicable City/State/Federal regulations and requirements.

xi. The Consultant shall take sufficient color photographs during the Hazardous Materials Investigation as deemed appropriate by the Consultant and/or as directed by the Commissioner. The Consultant shall provide original color photographs (or digital copies) in the Hazardous Materials Investigation Report in accordance with the latest NYCDOT "Procedure for Bridge Reconstruction Project Report" and NYCDDC procedures.

xii. Upon completion of the Hazardous Material Sampling and Testing, the Consultant shall remove all temporary equipment, Maintenance and Protection of Traffic devices, etc. in accordance with Section d: Maintenance and Protection of Traffic.

i. Soils Investigation Program:

i. The Consultant shall research, collect and compile all available subsurface data.

ii. The Consultant shall review all existing subsurface data and determine its adequacy for foundation design and seismic design parameters. If the Consultant determines that the data is sufficient to determine the design parameters (bearing capacity, seismic design criteria, etc.) for foundation design, then the Consultant shall prepare a Geotechnical Foundation Report. The report shall include the existing subsurface exploration reports, geotechnical analysis for various subsurface materials, soil profile(s), soil analysis, rock profile, rock core analysis, evaluation and recommendations/requirements (design parameters) for Foundation Design. The report shall be submitted to the Commissioner.

iii. In the event the existing subsurface data is not available or is inadequate, the Consultant shall determine the need for Additional Soils Investigation Program to determine foundation design and seismic design parameters. In the event Additional Soils Investigation Program is required, the requirements of Section j: Additional Soils Investigation Program shall apply.

j. Additional Soils Investigation Program:

i. In the event Additional Soil Investigation Program is required and approved by the Commissioner, it shall be as described below:

ii. The Consultant shall obtain all necessary information regarding local geology and seismicity. The Consultant shall submit the Scope of Additional Soils Investigation Program and related specifications to the Commissioner for approval. The Scope of Additional Soils Investigation Program shall be adequate to determine the foundation design and seismic design aspects for all proposed reconstruction/replacement schemes.

iii. Additional Soils Investigation Program shall include subsurface exploration. The Program submittal(s) shall describe the location of soil borings and/or rock cores, types of borings/rock cores to be taken, depths of borings or drilling into rock, methods, types and purposes of the samples to be collected and types and number of tests to be performed.

iv. Upon approval of the Scope of Additional Soil Investigation Program, NYCDDC may determine to conduct the Additional Soil Investigation program using in-house forces. In that event, NYCDDC shall conduct the soil boring operation, collect samples, perform soil tests and prepare Foundation Design Report as per the approved scope and provide it to the Consultant.

v. In the event NYCDDC determines to conduct the Additional Soil Investigation Program, the Consultant shall be required to supervise the field work for the entire duration. The cost of such supervision shall be included in the Pre-scoping Fee.

vi. In the event the Consultant is authorized, in writing, to perform the Additional Soil Investigation, the Consultant shall coordinate and schedule all activities related to Additional Soil Investigation Program. The Consultant shall ensure that all necessary permits are in place.

vii. The Consultant shall retain the services of a qualified Soils Investigation (boring/drilling) contractor to obtain the required soils samples, to conduct on-site testing and install geotechnical instrumentation. The cost of retaining a qualified Soils Investigation (boring/drilling) contractor shall be considered "Reimbursable Services" in accordance with Articles 6 & 7 of the Contract.

viii. The Consultant shall retain the services of a qualified testing laboratory to perform the approved tests on the samples collected. The cost of retaining a qualified testing laboratory shall be considered "Reimbursable Services" in accordance with Articles 6 & 7 of the Contract.

ix. Upon written direction by the Commissioner, the Consultant shall install required Maintenance and Protection of Traffic devices for Additional Soil Investigation Program in accordance with the requirements of Section d: Maintenance and Protection of Traffic.

x. The Consultant and/or the qualified Soils Investigation (boring/drilling) contractor shall bring all the equipment necessary to perform the Additional Soils Investigation.

xi. The Consultant shall take sufficient color photographs during Additional Soils Investigation Program as deemed appropriate by the Consultant and/or as directed by the Commissioner. The Consultant shall provide original color photographs (or digital copies) in the Additional Soil Investigation Program Report in accordance with the latest NYCDOT "Procedure for Bridge Reconstruction Project Report".

xii. Upon completion of the Additional Soil Investigation Program, the Consultant shall remove all temporary equipment, Maintenance and Protection of Traffic

devices, etc. in accordance with Section d: Maintenance and Protection of Traffic.

xiii. Geotechnical Foundation Report: The Consultant shall compile the findings of the Additional Soils Investigation Program and prepare a Geotechnical Foundation Report. The report shall include the approved Scope of Additional Soil Investigation Program, subsurface exploration results, geotechnical analysis for various subsurface materials, soil/rock profile(s), soil/rock analysis, evaluation and recommendations/requirements (design parameters) for Foundation Design and Seismic Design and evaluation. The report shall be submitted to the Commissioner.

k. Coring and Test Pit Program:

The Consultant shall research and review the available data and determine the need for Coring and Test Pit Program. The purpose of the Coring and Test Pit Program is to obtain information such as thickness and composition of bridge deck slab, thickness and composition of pavement, thickness and composition of bridge abutment/wing wall/retaining wall, etc. The purpose of taking the Test Pits is to obtain underground information such as depth of footing, thickness of footing, as well as utility location and interference. If required, the Consultant shall submit the scope and cost estimate for a Coring and Test Pit Program, in compliance with all applicable City/State/Federal regulations, and obtain approval from the Commissioner prior to commencing the work. The Coring and Test Pit Program, if required shall be considered "Reimbursable Services" in accordance with Articles 6 and 7 of the Contract. The Coring and Test Pit Program, if required and approved by the Commissioner, shall be as described below:

i. Upon written direction by the Commissioner, the Consultant shall submit the Scope of Work, Location Plan showing location of Concrete cores, deck cores, pavement cores, test pits, etc. including number of cores to be taken, types, diameter and length/depth of the cores, methods, types and purposes of the samples to be collected and types and number of tests to be performed and related specifications to the Commissioner for approval.

ii. The Consultant shall coordinate and schedule Coring and Test Pits Program. The Consultant shall ensure that all necessary permits are in place.

iii. The Consultant shall retain the services of a qualified contractor to obtain the required samples and to conduct on-site testing. The cost of retaining a qualified contractor shall be considered "Reimbursable Services" in accordance with Articles 6 and 7 of the Contract.

iv. The Consultant shall retain the services of a qualified testing laboratory to perform the approved tests on the samples collected. The cost of retaining a qualified testing laboratory shall be considered "Reimbursable Services" in accordance with Articles 6 and 7 of the Contract.

v. Prior to commencing the coring and test pit work, the Consultant shall install required Maintenance and Protection of Traffic devices for Coring and Test Pit Program in accordance with the requirements of Section d: Maintenance and Protection of Traffic.

vi. The qualified contractor (who is actually performing coring and/or test pit work) shall obtain necessary insurance and bring all the equipment necessary to perform the Coring and Test Pit Program and collecting the required samples. The coring contractor shall perform the work and collect samples in accordance with the approved Coring and Test Pit Program and as directed by the Commissioner.

vii. The Consultant shall take sufficient color photographs during Coring and Test Pit Program operations as deemed appropriate by the Consultant and/or as directed by the Commissioner. The Consultant shall provide original color photographs (or digital copies) in the Coring and Test Pit Program Report.

viii. Upon completion of the Coring and Test Pit Program, the Consultant and/or coring contractor shall remove all temporary equipment, Maintenance and Protection of Traffic devices, etc. in accordance with Section d: Maintenance and Protection of Traffic.

ix. Coring and Test Pit Report: The Consultant shall compile the findings of the Coring and Test Pit Program and prepare a Coring and Test Pit Program Report. The report shall include approved Coring and Test Pit Program, the exploration results, analysis and evaluation of each sample and recommendations/requirements (design parameters), color photographs (or digital copies), etc. The report shall be submitted to the Commissioner for review and approval.

l. Land Use Assessment and ULURP:

i. After performing the Right of Way (ROW) Determination in accordance with Section f - Right of Way (ROW) Determination, above, if it is determined that temporary and/or permanent easements, and/or acquisitions, and/or a Uniform Land Use Review Procedure (ULURP) will be required for construction (including staging and access) and maintenance purposes, or Section 4f procedure and/or Environmental Assessment Study (EAS) and/or Environmental Impact Statement (EIS) is required, the following requirements shall apply.

ii. Upon written direction by the Commissioner, the Consultant shall submit the Scope of Work and Cost proposal to perform these services. Such services shall be considered "Additional Professional Services" in accordance with Article 6 and 7 of this Contract. At a minimum, the Consultant shall perform the following tasks:

iii. The collection, research and review of all pertinent data (existing and legal grades, mapped R.O.W. lines, etc.), including need for obtaining supplemental survey (the limits of which may extend beyond the limits of the project), as well as preparation of additional ULURP related drawings (changes to the City map, damage and acquisition drawing, alteration map, etc.).

iv. Last owner title search: The Consultant shall prepare a strip map (R.O.W. Plan) showing all parcels adjacent to bridge and approaches, (i.e. alignment, grades, easements, encroachments, etc.) including all parcels within the supplemental survey limits. Each parcel shall be identified by a block & lot number. This strip map shall be submitted to the Commissioner who will conduct the last owner title search. The results of the title search shall be provided to the Consultant and shall be incorporated in the strip map.

v. For publicly owned parcels, the Consultant shall coordinate with the agency that has ownership or jurisdiction and determine whether a Section 4f Evaluation (see FHWA Technical Advisory T 6640.8A) is required.

vi. Prepare R.O.W. plans (strip map) showing legally adopted street lines (as shown on final section and/or the latest alteration maps) existing topography, property lines, highway boundaries, survey monuments, etc. Baselines shall be tied to the bridge elements. Property owner's names, addresses and block & lot

numbers shall be shown together with existing easements and rights of way and total acreages of property. Identify existing encroachments, if any. All means of access to the property shall be shown.

vii. The R.O.W. plan and findings of the Land Use Assessment shall be included/discussed in the Land use Assessment Report.

viii. The Consultant shall complete the ULURP by filing all necessary documents including modifications to the City map, damage and acquisition drawing, alteration map, etc.

m. The foregoing sections require preparation of a report for each respective section. The Consultant may prepare reports for the individual sections as required and submit to the Commissioner for review and approval. The Consultant shall be required to compile all individual reports in one unified report, termed "Design Report" as described in Section 2: Design Report Preparation Phase.

2. **DESIGN REPORT PREPARATION PHASE:**

The services that the Consultant is required to provide during the Design Report Preparation Phase are described in detail below.

i. The Consultant shall prepare and submit a unified Design Report for the bridge project to the Commissioner for review and approval. The Design Report shall be in accordance with the latest edition of the NYCDOT Procedures for Bridge Reconstruction Project Report.

ii. The Consultant shall also include the Schematic Design Alternates, together with comparison matrix, sketches/plans and itemized cost estimate, etc. in the Design Report as directed by the Commissioner.

iii. The unified Design Report shall include, without limitation, an In-depth Inspection Report, a Bridge Deck Evaluation Report, a Right-of-way (ROW) Determination Report, a Soil Investigation Report, an Additional Soil Investigation Report (if required), a Coring & Test Pit Program Report, a Hazardous Materials Investigation Report, etc. Other pertinent information shall be included and submitted in a Technical Supplement to the Design Report.

iv. Each component of the report shall include the findings, results and recommendations of each of the respective tasks.

v. The Consultant shall incorporate the following into the unified Design Report: (1) appropriate color photographs (original or digital copy) that are taken during all the Field Operations (Topographic Survey , In-depth Bridge Inspection, MPT installation and removal, Soil Investigation Program, Additional Soil Investigation Program, Coring and Test Pit Program, Hazardous Materials Investigation, etc.), (2) other activities deemed appropriate by the Consultant and/or as directed by the Commissioner, and/or (3) other reports as described in these Specific Requirements.

vi. The Consultant shall submit six (6) copies of the Draft Design Report, which shall incorporate all of the above items for review to the Commissioner and all agencies having jurisdiction over the project.

vii. The Consultant shall obtain comments from all agencies having jurisdiction over the project, coordinate and resolve all comments and incorporate them into the Final Design Report. The Consultant shall be required to revise the Draft Design Report until all the comments are resolved and/or incorporated to the satisfaction of the Commissioner.

viii. The Consultant shall submit six (6) copies of the Final Design Report to the Commissioner for approval as per Exhibit C, Project Schedule. The Consultant shall also submit four (4) copies of the Final Design report to the New York City Department of Records and Information Services, Acquisitions Unit, as directed by the Commissioner.

3. SCHEMATIC DESIGN ALTERNATES:

During the Schematic Design phase, the Consultant shall perform, without limitation, the tasks described below:

i. The Consultant shall provide at least three distinct Schematic Design Alternates for the bridge that are appropriate for the local neighborhood and the overall environment.

ii. For each Schematic Design Alternate, the Consultant shall address the accommodation of pedestrian and vehicular traffic on the bridge, as well as pedestrian, vehicular, and railroad traffic under the bridge, as applicable.

iii. For each Schematic Design Alternate, the Consultant shall address, at a minimum, the use of material for various elements of superstructure and substructure, overall architectural design, overall landscape and site design, lighting design, compliance with Americans with Disabilities Act (ADA)/ LL58, etc.

iv. The materials/components used for the Schematic Design Alternates shall be such that they are readily obtainable for maintenance purposes (i.e. not a sole source) and in a manner that minimizes the maintenance costs.

v. The Consultant shall ensure that the Schematic Design Alternates proposed will conform to seismic requirements as specified in City/State/Federal guidelines and standards.

vi. All New York City bridges are considered to be “essential” for the purpose of seismic performance, unless otherwise stated by the Commissioner in writing.

vii. The Consultant shall prepare an itemized cost estimate for each Schematic Design Alternate. The Consultant shall take project duration, contingency and escalation into account when preparing itemized cost estimate.

viii. Construction Duration Analysis: The Consultant shall propose appropriate construction duration for each Schematic Design Alternate, so that the bridge is constructed in the shortest possible time and with minimal impact to the community. The Consultant shall evaluate the construction methodology, impact of the project on pedestrian traffic, vehicular traffic; public safety; the community (quality of life, businesses, schools, hospitals, places of worship, etc.); program needs (scheduling of other affected projects, etc.); other means of transportation (railroad, waterway, etc.); the project's complexity; coordination with others (railroads, utilities, etc.); etc. in doing so.

ix. The Consultant shall also prepare a comparative matrix showing the brief scope of work, advantages and disadvantages, construction duration, estimated construction cost, etc. for each Schematic Design Alternate. The Consultant shall also propose the recommended Alternate.

x. These Schematic Designs Alternates shall be presented to NYCDDC for initial review. The consultant shall be required to incorporate and/or respond to all the comments made by NYCDDC and revise the Schematic Design Alternates as necessary to obtain the approval of NYCDDC.

xi. As directed by the Commissioner, the Consultant shall submit the Schematic Design Alternates to the NYCDOT/NYCDPR as well as other agencies having jurisdiction, for their review.

xii. The consultant shall be required to incorporate and/or address all the comments made by NYCDOT/NYCDPR as well as other agencies having jurisdiction and revise the Schematic Design Alternates as necessary to obtain the approvals of NYCDOT/NYCDPR as well as other agencies having jurisdiction.

xiii. As directed by the Commissioner, the Consultant shall submit the Schematic Design Alternates to the NYCDPR/NYC Office of Management and Budget (OMB) for their review.

xiv. The Consultant shall be required to incorporate and/or respond to all comments made by NYCDPR/NYC Office of Management and Budget (OMB) and revise the Schematic Design Alternates as necessary to obtain the approvals of NYCDPR/NYC Office of Management and Budget (OMB).

xv. As directed by the Commissioner, the Consultant shall present the recommended Schematic Design Alternate to appropriate Community Board for their review.

xvi. The Consultant shall be required to incorporate and/or respond to all the comments made by Community Board and revise the selected Schematic Design Alternate as necessary to obtain the approvals of the Community Board.

xvii. Upon final approval of the recommended Schematic Design Alternate by NYCDDC/NYCDPR/NYCOMB and all agencies having jurisdiction over the project, the Consultant shall proceed to the Pre-scoping Design phase.

B. PRE-SCOPING DOCUMENTS PREPARATION PHASE:

During the Pre-Scoping Documents Preparation phase, the Consultant shall perform, without limitation, the tasks described below:

i. Upon approval of the selected Schematic Design Alternate and written authorization by the Commissioner, the Consultant shall proceed to the Pre-scoping Document Preparation phase and further develop the approved Schematic Design Alternate. During this phase, the Consultant shall perform the tasks and provide the deliverables set forth below.

ii. Prior to the commencement of Pre-Scoping Documents Preparation phase, the Consultant shall submit proposed design criteria and parameters, including seismic criteria, to the Commissioner for review. Such criteria and parameters shall include, but not be limited to, the materials (including the grade and type of structural steel, compressive strength and type of concrete, materials to be used for bridge fence and railing, etc.), allowable stresses for proposed materials, reference standards, etc. All elements of the bridge must be designed to meet the minimum requirements of AASHTO Guide for Pedestrian Bridges.

iii. The Consultant shall prepare the Pre-scoping Documents, including, but not limited to, the overall architectural design, overall Landscape and site design, and Lighting and Electrical Design, based on the approved Schematic Design Alternate for the bridge. The Pre-Scoping documents must comply with the Americans with Disabilities Act (ADA)/ LL58, etc.

iv. The Consultant shall prepare plans, elevations, cross sections and other pertinent details, to scale, for the existing and proposed bridge structure, approach roadways, etc. including impact to all existing and proposed utilities. The Pre-scoping Documents shall show sufficient details to ensure constructability of the proposed scheme, including all existing and proposed utilities, seismic retrofitting (if required), etc. If required, large-scale partial cross sections showing dimensions between utilities and structural members shall be provided for both the existing and

proposed conditions. The Pre-scoping Documents shall show significant elements of the design (architectural, lighting and site design); and shall be adequate to serve as a basis for the development of the Final Design Documents.

v. The Consultant shall provide site design/landscape design drawings that include the following: grading and drainage plans; pavement layout plans; site lighting plans; site planting plans and pertinent details (including, but not limited to, pavements, curbs, walls, site furnishings, plantings, lighting, etc.) and any required sections and elevations.

vi. The Consultant shall prepare Maintenance and Protection of Traffic (MPT) Plans for the proposed reconstruction scheme as directed by the Commissioner and in accordance with the latest NYCDOT Procedures for Bridge Reconstruction Project Report. The Consultant shall take into account the impact on pedestrian and vehicular traffic (including railroad and waterway traffic, if any), impact on the community, access and the staging for the reconstruction of the bridge as well as private properties within the project limits. The Consultant shall follow the procedures outlined in Section IV.A.1.d. and obtain the approval of the MPT Plans.

vii. The Consultant shall also prepare detailed Right-of-Way plan (or Strip Map) showing Block & Lot numbers, ownership information, mailing addresses of the owners, etc.

viii. The Pre-scoping Documents shall also include an up to date itemized cost estimate for the recommended alternate. The Consultant shall take project duration, contingency and escalation into account when preparing itemized cost estimate.

ix. The Consultant shall submit six (6) sets of the Draft Pre-scoping Documents to be submitted the Commissioner for review.

x. The Consultant shall be required to incorporate all comments provided by the Commissioner and resubmit the revised Draft Pre-scoping Documents to the Commissioner for approval.

xi. Upon approval of the Draft Pre-Scoping Documents, the Consultant shall submit the revised Draft Pre-Scoping Documents to NYCDDC, NYCDPR and NYC Office of Management and Budget and all parties having jurisdiction over the project. The Consultant shall be required to make PowerPoint presentation(s) to all of the above parties.

xii. The Consultant shall be required to incorporate and/or respond to all comments received from the NYCDDC, NYCDPR and NYC Office of Management and Budget and all parties having jurisdiction over the project and resubmit the revised Draft Pre-scoping Documents to the Commissioner for approval.

xiii. Upon approval of the Draft Pre-Scoping Documents and as directed by the Commissioner, the Consultant shall schedule an All Agency Conference with all affected City and non-City agencies.

xiv. The intent of the "All Agency Conference" is to notify all parties having jurisdiction over the project or having interest in the project, provide them information about general scope of work and schedule of design and construction and obtain their comments and feedback about the project.

xv. The Consultant shall obtain the latest mailing list, prepare draft All Agency Conference letters and submit to the Commissioner for approval and prepare the final All Agency Conference letters.

xvi. The Consultant shall mail all the approved All Agency Conference letters to each party listed on the mailing list as well as additional parties having jurisdiction over the project and/or as directed by the Commissioner. The mailing shall also include set(s) of approved Draft Pre-Scoping Documents as required by the particular agency and/or as directed by the Commissioner.

xvii. The Consultant shall prepare a matrix showing the names, addresses and the phone numbers of all parties the All Agency Conference letters and Pre-scoping Documents are mailed to. The matrix shall also account for tracking and the responses received from various parties. The Consultant shall obtain responses from all parties to whom the All Agency Conference letters and Pre-scoping Documents are mailed to.

xviii. The Consultant shall compile a list of comments made by all affected agencies in response to the All Agency Conference letters and/or comments received from various parties at the All Agency Conference, and submit it to the Commissioner.

xix. The Consultant shall address and resolve, in writing, all comments received at the All Agency Conference or comments received in response to the All Agency Conference letters as directed by the Commissioner. All approved comments shall be incorporated into the Final Pre-Scoping Documents submission.

xx. The consultant shall also schedule a separate meeting with NYCDOT – OCMC, if necessary, to obtain stipulations and approval of the MPT plans.

xxi. Upon approval of the Final Pre-scoping Documents by NYCDDC, NYCDPR, NYC OMB and all interested parties, the Consultant shall make PowerPoint presentations to the Community Board and obtain comments from the Community Board.

xxii. The Consultant shall be required to address and resolve, in writing, all comments received from the Community Board as directed by the Commissioner to obtain approval from the Community Board. All approved comments shall be incorporated into the Final Pre-Scoping Documents submission.

xxiii. As directed by the Commissioner, the Consultant shall submit the required documents to the Public Design Commission and make presentations to the Public Design Commission. The Consultant shall utilize the format required by the Public Design Commission. The Consultant shall refer to the Public Design Commission's web site for additional information (http://www.nyc.gov/html/artcom/html/home/home.shtml).

xxiv. The Consultant shall be required to address and resolve, in writing, all comments received from the Public Design Commission as directed by the Commissioner to obtain approval from the Public Design Commission. The Consultant shall note that multiple submissions and presentation to the Public Design Commission may be required to obtain approval. All approved comments shall be incorporated into the Final Pre-Scoping Documents submission.

xxv. The Consultant shall prepare the Final Pre-Scoping Documents, which shall include the resolutions to all the comments made by NYCDDC, NYCDPR, NYC-OMB, Community Board, Public Design Commission as well as all parties having interest in the project.

xxvi. The Consultant shall submit six (6) sets of the approved Pre-Scoping Documents to the Commissioner as per Exhibit C, Project Schedule.

xxvii. Throughout the Pre-Scoping Documents Preparation Phase, the Consultant shall be required to prepare all necessary computations necessary in accordance with the latest edition of AASHTO. All design computations shall be reviewed and signed by a Professional Engineer, licensed in the State of New York.

C. CONTRACT DOCUMENTS SUBMISSION PHASE:

The Consultant shall hand deliver the following Contract Documents to the Commissioner after the Pre-Scoping Documents have received Final approval from all parties having jurisdiction over the project and in accordance with the schedule set forth in Exhibit C: Project Schedule.

i. The complete set of original contract drawings (mylars) for the bridge(s), five (5) copies on a Compact Disc (CD) that includes all the CADD file and PDF of the Pre-scoping Documents (drawings) and completed itemized cost estimates.

ii. Original design calculations and Bridge Load Ratings. The submission of computerized calculations must include, but is not limited to, diskettes and written details of all programming information and results.

iii. Originals of all correspondence and data pertinent to the project. All correspondence shall be numbered, bound, and submitted with a typed index. All correspondence files shall be converted in a PDF file format and saved on a Compact Disc (CD). Five copies of such Compact Disc (CD) shall be submitted.

iv. The Consultant's certification that all applicable Departmental Standards, Directions, Rules, Regulations, and Guidelines have been conformed to.

v. All materials shall be packaged and delivered to the Commissioner in temporary file-type cartons together with a typed index.

vi. This submission shall be subject to Departmental review and approval prior to final acceptance.

EXHIBIT H

M/WBE SUBCONTRACTOR UTILIZATION PLAN

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

EXHIBIT I

APPENDIX A

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

APPENDIX A

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

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APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

representations and warranties in the execution of this Agreement.

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

Section 2.02 Conflicts of Interest

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

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

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

D. through H. Not Used

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

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

Section 2.05 Political Activity

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

Section 2.06 Religious Activity

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

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

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

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

Section 3.02 Subcontracting

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

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

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

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars ($100) or by imprisonment for not more than thirty (30) Days, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL"), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

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

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

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

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

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

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

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

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

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

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

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

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

or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

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

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

Section 7.03 Professional Liability Insurance

A. The Contractor is providing professional services pursuant to this Agreement. The Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars ($1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

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

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

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

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

Section 7.05 Unemployment Insurance

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

Section 7.06 Business Automobile Liability Insurance

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

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

Section 7.08 Proof of Insurance

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

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

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

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

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

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

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

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

Section 7.09 Miscellaneous

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

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

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

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

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

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

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

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

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

Section 8.06 Actions By or Against Third Parties

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

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

Section 8.07 Withholding of Payments

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

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

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

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

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

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

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

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

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

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

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

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

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

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

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

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business Days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

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

Section 10.04 Force Majeure

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

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

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination

date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

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

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

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

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

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

Section 10.06 Miscellaneous Provisions

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

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

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

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required

payment date, as set forth in the PPB Rules.

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

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

Section 11.02 Electronic Funds Transfer

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

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

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars ($25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

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

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

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

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

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

D. Presentation of Dispute to Agency Head.

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

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

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

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

Head.

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

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

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

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

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

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

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

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

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

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

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of

the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

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

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

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

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

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

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

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved

Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Not Used

Section 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

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

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.08 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Not Used

Section 13.10 Not Used

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

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

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

Section 14.05 Monies Withheld

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

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder *[below]*

_____

Address_____

City_____ State_____ Zip Code_____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

☐ B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

☐ C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By_____

Signature

_____

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

_____
[Name of broker (typewritten)]

_____
[Address of broker (typewritten)]

_____
[Signature of authorized officer of broker]

_____
[Name of authorized officer (typewritten)]

_____
[Title of authorized officer (typewritten)]

_____
[Contact Phone Number for Broker (typewritten)]

_____
[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

_____

NOTARY PUBLIC