



**TWO-STAGE
REQUEST FOR
PROPOSALS**

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

RFIP

A stylized map of New York City is overlaid on the 'RFIP' text. The map is rendered in a light green color and shows the outlines of the five boroughs and the surrounding water bodies.

PIN

PRE-PROPOSAL CONFERENCE

PROJECT

SUBMISSION DEADLINE

MICHAEL R. BLOOMBERG
Mayor

DAVID J. BURNEY, FAIA
Commissioner

DAVID RESNICK, AIA
Deputy Commissioner
Public Buildings Division

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

REQUEST FOR PROPOSALS, TWO-STAGE

PROJECT: S216-404A

**CONTRACT FOR ARCHITECTURAL, ENGINEERING
AND CONSTRUCTION RELATED SERVICES FOR:**

THE NEW GANSEVOORT MARINE TRANSFER STATION

TABLE OF CONTENTS

PREFACE

- I. TIMETABLE**
- II. SUMMARY OF THE REQUEST FOR PROPOSALS**
- III. SCOPE OF WORK AND CONTRACT CONDITIONS**
- IV. FORMAT AND CONTENT OF THE PROPOSAL**
- V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**
- VI. GENERAL INFORMATION TO PROPOSERS**
- VII. ATTACHMENTS AND ENCLOSURES**

ATTACHMENT 1 - STATEMENT OF UNDERSTANDING AND CERTIFICATION

ATTACHMENT 2 - IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NYCCONTRACTORS

ATTACHMENT 3 - STAGE TWO TECHNICAL PROPOSAL FORMS

ATTACHMENT 4 - STAGE TWO FEE PROPOSAL FORM

ATTACHMENT 5 - ACKNOWLEDGEMENT OF ADDENDA

ATTACHMENT 6 - CONFIRMATION OF VENDEX COMPLIANCE

ATTACHMENT 7 - SCHEDULE B: M/WBE UTILIZATION PLAN

ATTACHMENT 8 - DOING BUSINESS DATA FORM

ATTACHMENT 9 - WHISTLEBLOWE PROTECTION EXPANSION ACT

ATTACHMENT 10 - SUBCONTRACTOR REPORTING

**ATTACHMENT 11 - DISPLACEMENT DETERMINATION FORM- PURSUANT TO CITY
CHARTER § 312(A)**

APPENDIX 1 – CONTRACT DOCUMENT



PREFACE

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

SECTION I. TIMETABLE

A. RFP Issuance

Pre-Proposal Conference

A pre-proposal conference will be held on Wednesday, August 28 at 10:00 AM, 2013 at DDC headquarters, 30-30 Thomson Avenue, Conference Room 401, Long Island City, N.Y. 11101. Attendance is strongly encouraged, but not mandatory, to propose on the contract described in this RFP.

Submission Deadlines

Stage One Submissions

The proposer shall deliver, on or before 4:00PM on Friday, September 13, 2013, the Stage One Proposal in a clearly marked envelope or package. The proposal shall consist of TWO separate clearly marked, sealed packages containing the following: (1) Portfolio, including Acknowledgment of Addenda, (1 original and 7 copies), and (2) Doing Business Data Form (1 original). The project name and "Stage One Proposal" shall be clearly marked on the exterior of the envelope or other packaging. Please refer to Section IV.D of the RFP for proposal package contents.

Stage Two Submissions (Applicable to Stage One Short-Listed Proposers Only)

The proposer shall deliver, on a date to be determined, the Stage Two Proposal in a clearly marked envelope or package. The proposal shall consist of THREE separate clearly marked, sealed packages containing the following: (1) Technical Proposal (1 original and 7 copies), (2) Schedule B: M/WBE Utilization Plan, and (3) Stage Two Fee Proposal Form (Attachment 4) (1 original). The project name and "Stage Two Proposal" shall be clearly marked on the exterior of the envelope or other packaging. Please refer to Section IV.D of the RFP for proposal package contents.

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 RFP response package is received by the Professional Contract Section 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, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website at <http://ddcftp.nyc.gov/rfpweb/>. All inquiries must be directed ONLY to the contact person listed on the previous page.

C. Addenda

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the "Acknowledgement of Addenda" form (Attachment 5) to the Stage One and Stage Two Proposals. All addenda shall become part of the requirements for this RFP.

D. RFP Schedule

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

- a. Establish Shortlist of Stage One Firms: Within four weeks of submission deadline
- b. Identify Consultant: Within two weeks of Stage Two submission deadline
- c. Complete Contract Registration: Approximately three months from date of consultant selection.
- d. Commence Work: Upon receipt of Written Advice of Award

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. General

The New York City Department of Design and Construction, Division of Public Buildings, is seeking an appropriately qualified consultant to perform Architectural, Engineering, and Construction-related services for the New York City Department of Sanitation's New Marine Transfer Station at Gansevoort Peninsula.

Procurement of the Architectural and other design services necessary to achieve this new Gansevoort Marine Transfer Station is the purpose of the Request for Proposals (RFP), which stipulates the submission requirements and evaluation procedures of what shall be a Two-Stage, quality-based, selection process.

In Stage One, proposers will submit the materials prescribed in Section IV.A to document the proposer's ability to provide design services for the project that is the subject of this RFP.

Based on an evaluation of these materials, DDC will establish a short list of firms to be further considered in the Second Stage of the selection process. In Stage Two, the short listed firms will submit the materials prescribed in Section IV.B. The agency will commence fee negotiations with the highest ranked firm.

The selected firm would demonstrate an understanding of and commitment to design excellence that will be expressed in dignified forms and interior and exterior spaces that will inspire pride in city architecture.

The design should incorporate a cost effective approach, fully considering life cycle analysis in selection of materials and systems; a balance of innovative design and traditional operating practices including durability and ease of maintenance.

B. Background and Objectives of Project

Development of the New Gansevoort Marine Transfer Station is part of the City of New York's Solid Waste Management Plan (SWMP) adopted by the New York City Council and approved by New York State in 2006. The SWMP establishes a comprehensive framework for managing the City's solid waste with the goal of dramatically reducing the number of truck trips associated with City waste export while establishing an environmentally sound barge and rail dependent waste export system for managing the waste over the next 20 years.

The New Gansevoort Marine Transfer Station will be used for the transfer of glass, metal, plastic and paper recyclables from truck to barge. The new Marine Transfer Station will be located over the Hudson River, west of Gansevoort Peninsula, which is part of Hudson River Park. It is the intent of this RFP that the design of the new Marine Transfer Station, along with its associated access structure, be designed to be compatible with the new park land being developed by the Hudson River Park Trust.

C. Joint Ventures and Other Consultant Relationships

There is no minimum requirement for the proportion of work by either of the two joint venture parties. 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 or prime consultant/subconsultant. In the event that a proposal is received wherein two or more firms are described as being "in association with" each other, DDC will treat the relationship as one of prime consultant/subconsultant (s). The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms will be relegated to Exhibit A, which lists subconsultants.

D. Contract Term

The estimated cost of the required construction work for the project is to be determined. The Contract shall commence as of the date of registration by the Comptroller and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services. The anticipated time frame for completion of all required services, broken down by phase, is set forth below. All time frames below are in consecutive calendar days (“CCDs”).

- These duration times require review – for discussion
- Anticipated Time Frame for Completion of all Required Services: 1,845 CCDs
- Anticipated Time Frame for Design Phase: * 660 CCDs
- Anticipated Time Frame for Construction Phase: 1,185 CCDs

* The Design Phase includes, but is not limited to the following: (1) pre-schematic services, (2) preparation of design documents, (3) review by City agencies, (4) value engineering, and (5) bid, award and registration of construction contracts.

E. 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 contract. The cost of all insurance is deemed included in payments to the Consultant, as set forth in the contract.

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Project Objectives

The Project Objectives provide a comprehensive description of the project, including a detailed description of the design services required. The Project Objectives are included as Exhibit F to the Contract. The Contract is included as Appendix 1 to this RFP.

The project should address the following:

- The new Marine Transfer Station, along with its associated access structure, will be designed so as to harmonize with and complement the adjacent Hudson River Park.
- The building program and space requirements will be developed in the pre-schematic phase.
- The Marine Transfer Station access ramp and elevated roadway constructed on Gansevoort Peninsula, as well as the new Marine Transfer Station structure constructed beyond the peninsula, over the Hudson River, will be located as stipulated in the Hudson River Park Act 2008 Amendment.
- The facility will be designed to accommodate 30 sanitation trucks an hour.
- The facility will include an environmental education center.
- The project will be designed in accordance with Local Law 86 of 2005, the project shall be required to achieve a LEED Silver rating.
- The project will utilize building information modeling (BIM).

B. Contract Provisions

The Contract to be used for the project, including detailed Project Objectives, is included as Appendix 1 to this RFP. The services to be provided by the Consultant and all standards of performance applicable to the required work shall be as described in this form of contract. Any firm awarded a contract as a result of this RFP will be required to sign this form of contract. For a more complete and thorough description of the Project Objectives summarized in this section of the RFP, the proposer is advised to review the contract.

C. Compliance with Local Law 86 of 2005 (Green Buildings)

Although Local Law 86 of 2005 (LL86) does not apply to buildings classified as facilities for industrial occupancy, the New Gansevoort Marine Transfer Station project, classified as a facility for industrial occupancy, will be designed to comply with the law. This project shall achieve at least a "Silver" rating under the Leadership in Energy and Environmental Design (LEED) rating system of the U.S. Green Building Council.

In addition to preparing the required documentation for LEED certification, the consultant will be required to provide project data for the purposes of project reporting using the Local Law 86 reporting worksheet, as requested by the agency. Such data includes project description, construction cost, LEED credits sought and earned (if applicable), reductions in energy cost and in water use, and incremental construction cost.

The consultant will provide all services as necessary to support the commissioning agent to be hired under a separate contract by the DDC. Commissioning services will be sufficient to achieve the LEED prerequisite and credit for enhanced commissioning.

D. Compliance with Iran Divestment Act of 2012:

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the

energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, the Agency/Department will be able to award a contract to such proposer only in situations where the proposer is taking steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to Attachment 2 for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and go to <http://www.ogs.ny.gov/About/regs/ida.asp> for additional information concerning the list of entities.

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

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

If the contract resulting from this Request for Proposals will be subject to M/WBE participation requirements under Section 6-129 of the Administrative Code of the City of New York, as indicated by the inclusion of Schedule B – M/WBE Utilization Plan (Attachment 7) and the Participation Goals indicated in Part I thereof, proposers must complete the Schedule B – M/WBE Utilization Plan and submit it with their proposals. Please refer to the Schedule B – M/WBE Utilization Plan and the Notice to All Prospective Contractors (Attachment 7) for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms. If the proposer intends to seek a full or partial waiver of the Participation Goals on the grounds described in Section 10 of the Notice to All Prospective Contractors, including but not limited to, proposer's intention to use its own forces to perform any or all of the required contract work would result in a failure to attain the Participation Goals, the proposer must request and obtain from the Agency a full or partial waiver of the Participation Goals (M/WBE Utilization Plan, Part III) in advance of proposal submission and submit the waiver determination with the proposal. Please note that if a partial waiver is obtained, the proposer is required to submit a completed Schedule B-M/WBE Utilization Plan based on the revised Participation Goals in order to be found responsive.

Note: As fully explained in Attachment 7, if you are planning to request a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be considered.

F. 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.

G. Whistleblower Protection Expansion Act Rider

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read Attachment 9, the Whistleblower Protection Expansion Act Rider, carefully.

J. Subcontractor Compliance Notice

The selected vendor will be required to utilize the City's web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment 10, the subcontractor compliance notice as it relates to competitive solicitations.

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

Proposal Subdivisions Instructions:

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/epawaste/conserva/tools/cpg/index.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:

A. Stage One Proposal Requirements

This stage serves to highlight each proposer's previously completed architectural projects that demonstrate extraordinary creativity and insight. Proposers should submit projects that demonstrate this ability in interior planning and design, as well as sensitivity to project site planning and the surrounding environment. Projects illustrating creative and innovative design solutions, as well as use of sustainable technologies and innovative and creative use of materials, should be clearly presented and clearly described.

Portfolio (1 original and 7 copies): Provide a portfolio of up to five projects built within the last ten years that demonstrate the firm's creativity and insight in solving architectural problems. For each project, include the following: (1) resumes of the lead designer, (2) plan views as well as site plans, with a three dimensional view of the exterior; and other graphic content as necessary, and (3) a brief written description highlighting the salient characteristics of the project, including the design approach and a description of what was innovative about the design. In addition, list any design citations or awards and entries to design competitions. Present each project on a single 11x17 inch sheet; including all text. All of the pages shall be bound in covers no larger than 9 x 12 inches. Format may be either landscape or portrait, but not both.

B. Stage Two Proposal Requirements (Applicable to Stage One Short-Listed Proposers Only)

For those firms short-listed in Stage One, the Stage Two Proposal will serve to highlight their management and technical ability to carry out a project of the scope and type that is the subject of this RFP. In addition to the Stage Two Proposal, short-listed firms will be required to make a one-hour presentation. See Section V.2 for a more detailed description of the presentation requirements.

Technical Proposal (1 original and 7 copies): The technical proposal shall contain the following information:

A cover letter of no more than three pages, including the company name and address, and the name, address and telephone number of the person authorized to represent the responding firm. **(Be sure to refer to the proper DDC project number and title on the cover page.)** Include a brief history of the firm, the overall firm organization, its goals and objectives, and a statement of its design philosophy, plus completed forms 254 and 255 for Proposer and its subconsultants. These forms are available in hard copy from DDC and can be downloaded online at <http://www.nyc.gov/html/ddc/html/business/otherfrm.shtml>. **Such forms**

shall not be altered in any way. Proposals containing altered forms may be deemed nonresponsive.

1. Experience of Firm & Subconsultants: Submit Attachment 3 (Part A), to identify by name the subconsultants the proposer intends to use for this Project. Submit the following for the proposer and each subconsultant identified in Attachment 3: examples of up to five projects, completed within the last ten years, which are similar in scope and type to the Project described in this RFP. Visual materials can take the form of a printed brochure, photographs, drawings or similar images. For each project, the proposer shall provide information indicating whether the project was completed on time and within budget.
2. Key Personnel for the Project: Submit Attachment 3 (Part B), to identify by name the individuals to be assigned to the Project for its entire duration as Key Personnel. The required titles of Key Personnel for the Project are set forth in Attachment 3. Minimum requirements for individuals assigned to the Project as Key Personnel are set forth in Exhibit E to the Contract. Submit the following for each individual identified in Attachment 3 (Part B):
 - a. Resume: The resume shall detail the individual's managerial and technical qualifications, as well as his/her experience with similar projects.

3. Technical Approach:

Provide a three page statement describing the proposer's technical approach to the project, including (1) its understanding of the technical issues and complexities of the project, (2) its techniques for problem solving, (3) its technical quality control procedures, and (4) its management structure.

4. Project Methodology

Provide a statement (up to three pages) describing the proposer's project methodology, including its methodology for tracking and maintaining the project's budget and schedule.

5. Statement of Understanding and Certification

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

6. Acknowledgement of Addenda:

The Acknowledgement of Addenda form (Attachment 5) serves as the proposer's acknowledgement of the receipt of addenda to this RFP that may have been issued by DDC prior to the Proposal Due Date and Time. The proposer should complete this form as instructed on the form.

C. Fee Proposal (Applicable to Stage One Short-Listed Proposers Only)

A form for submission of the Fee Proposal is included as Attachment 4 of the RFP. The proposer must submit the Fee Proposal in a separate, clearly labeled, sealed package. The proposer must complete the Fee Proposal as per instructions on Attachment 4. **Each proposer is required to submit a Fee Proposal with their Stage Two Technical Proposal. Please refer to Item D below for the package proposal contents.**

D. Proposal Package Contents (“Checklist”)

The Proposal Package should contain the following Materials:

Stage One:

1. Portfolio (1 original and 7 copies)
Separate sealed envelope clearly marked with “Stage One Submission”, including:
 - Acknowledgement of Addenda (Attachment 5)
2. Doing Business Data Form (Attachment 8)
Separate sealed envelope clearly marked as “Doing Business Data Form” containing a completed Doing Business Data Form.

Stage Two (Applicable to Stage One Short-Listed Proposers Only):

1. Technical Proposal: (1 original and 7 copies):
Sealed envelope, clearly marked as “Stage Two Submission”, including:
 - Items listed in Section IV B of the RFP
 - Statement of Understanding and Certification (Attachment 1)
 - Certification of Compliance with Iran Divestment Act (Completed and Notarized) (Attachment 2)
 - Stage Two Technical Proposal Forms (Attachment 3)
 - Acknowledgement of Addenda (Attachment 5)
2. M/WBE Utilization Plan: (Attachment 7)
Separate sealed envelope, clearly marked as “M/WBE Utilization Plan” (Schedule B, Part II), or Approved Waiver of Participation Goals (Schedule B, Part III), or M/WBE Utilization Plan (Schedule B, Part II) and Approved **Partial** Waiver of Participation Goals (Schedule B, Part III).
3. Fee Proposal (Applicable to Stage One Short-Listed Proposers Only) (Attachment 4)
Sealed envelope clearly marked as “Fee Proposal”

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

This is a Quality Based Selection (QBS) project. DDC will follow the two stage selection process below, and negotiate a fair and reasonable price with the highest ranked firm after the completion of Stage Two. If negotiations are not successful, DDC will enter into negotiations with the next highest ranked firm.

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

A. Technical Proposal Evaluation

1. Stage One Selection Process

An evaluation committee comprised of an independent design professional, DDC and client agency personnel will review, evaluate and score all Stage One proposals pursuant to the criteria prescribed below. This evaluation and scoring will determine the proposer's Stage One Technical Rating. Proposers will then be ranked in accordance with their overall Stage One Technical Ratings. Scores will be solely based on the submission requirements referred to in Section IV.A.

The scores will be submitted to the Executive Consultant Selection Committee who will certify the results and determine the number of top ranked firms to be included on the short list of firms to be further considered in the Stage Two selection process.

Proposal Evaluation Criteria: The projects submitted will be evaluated based on the following criteria:

- a. Design quality, extraordinary creativity, solution to design problem, and relationship of the site and surrounding environment (Weight 60%)
- b. Constructability, innovative use of materials, systems and construction technology (Weight 40%)

2. Stage Two Selection Process (Applicable to Stage One Short-Listed Proposers Only)

An evaluation committee comprised of an independent design professional, DDC and client agency personnel will review, evaluate and score all Technical Proposals pursuant to the criteria prescribed below. This evaluation and scoring will determine the proposer's Stage Two Technical Rating. Proposers will then be ranked in accordance with their overall Stage Two Technical Ratings.

Each Stage Two proposer will be requested to make a one-hour presentation of their submission. Such presentation shall include the following: (1) an introduction to the firm and to the following Key Personnel for Architectural Design: Principal, Project Manager, Project Architect, Senior Architectural Designer, and Senior Interior Designer; (2) an introduction to the main sub-consultants; and (3) a statement as to how the proposed project methodology, including project approach and problem solving techniques, will meet the primary design objectives of this project, as well as the standard of design excellence described in Section II of this RFP. The presentation should be structured to highlight the proposer's response to the submission requirements for Stage Two Proposals. In addition, the portfolio of the projects submitted for Stage One shall be available for further evaluation.

The evaluation committee may amend their initial Stage Two scores based on the proposer's presentation. Proposers will be ranked in accordance with their final technical ratings. The rankings will be submitted to the Executive Consultant Selection Committee who will certify the results and authorize fee negotiations to commence with the highest ranked firm. Should negotiations fail with the highest ranked firm, the ECSC will authorize negotiations to commence with the next highest ranked firm.

Proposal Evaluation Criteria: The proposal evaluation criteria are as follows:

- a. Experience of Firm and Subconsultants (Weight 30%)
- b. Key Personnel (Weight 30%)
- c. Technical Approach (Weight 40%)

3. Basis of Award

The Department of Design and Construction 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 Request for Proposals and the successful negotiation of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude no more than thirty days thereafter.

4. Supply and Service Employment Report

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

5. VENDEX

Upon selection, the successful proposer will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification the proposer must submit a Confirmation of Vendex Compliance 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.

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

6. Contract Finalization

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

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

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

B. Applicable Laws

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

C. General Contract Provisions

Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A-General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.

D. Contract Award

Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of 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 New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

H. Prices Irrevocable

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

I. Confidential, Proprietary Information or Trade Secrets

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

J. RFP Postponement/Cancellation

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

K. Proposer Costs

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

L. VENDEX 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. See attached Displacement Determination Form.

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

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

ACCO Signature

Date

ATTACHMENT 1: STATEMENT OF UNDERSTANDING AND CERTIFICATION

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

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

Yes No

CERTIFICATION FOR M/WBE UTILIZATION PLAN: By signing in the space below, the proposer agrees to the Vendor Certification and Required Affirmations set forth below, unless a full waiver of the Participation Goals is granted. The Vendor Certification and Required Affirmations will be deemed to satisfy the requirement to complete Section V of Part II of Schedule B: M/WBE Utilization Plan.

Section V: Vendor Certification and Required Affirmations

I hereby:

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth in this Contract and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;
- 2) affirm that the information supplied in support of the M/WBE Utilization Plan is true and correct;
- 3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
- 4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and
- 5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Name of Proposer
(Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

Address

E-Mail Address

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

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

- (1) 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
- (2) 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: STAGE TWO TECHNICAL PROPOSAL FORMS

A. FORM FOR IDENTIFICATION OF SUBCONSULTANTS (include this form with the Proposal)

As set forth in Section IV (B) (1) of the RFP, the Proposer must identify by name the specific Subconsultants the proposer intends to use to perform the required services. Specifically, identify the Subconsultants for the services set forth below. If for any of the areas set forth below, the Proposer intends to perform the services with its own employees, so indicate by inserting the words "In House".

Structural Engineering Design Services _____

Bridge and Highway Structural Engineering Design Services: _____

Marine Engineering Design Services: _____

Civil Engineering Design Services: _____

Environmental Engineering Design Services: _____

Geotechnical Engineering Services: _____

HVAC and Fire Protection Design Services: _____

Electrical Engineering Design Services: _____

Plumbing Engineering Design Services: _____

Communications / Data Systems Design Services: _____

Lighting Design Services: _____

Landscape Architectural Design Services: _____

Sustainable Design Services: _____

Building Information Modeling Services: _____

Programming Services: _____

Specification Services: _____

Cost Estimating Services: _____

Waste Management Design Services: _____

Traffic Engineering Design Services: _____

Signage and Wayfinding Design Services: _____

Filing/Zoning/Code Consulting Services: _____

Community Relations Consulting Services: _____

ATTACHMENT 3 (continued)

B. FORM FOR IDENTIFICATION OF KEY PERSONNEL (include this form with the Proposal)

As set forth in Section IV (B) (2) of the RFP, 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 C of the contract. Submit the following for each individual identified below:

- Resume detailing the individual’s qualifications and experience with similar projects.
- SF-255 Form (available at <http://www.nyc.gov/html/ddc/html/business/otherfrm.shtml>)

Architectural Design Services:

Principal: _____

Project Manager: _____

Project Architect: _____

Senior Architectural Designer: _____

Senior Interior Designer: _____

Structural Engineering Design Services:

Project Engineer: _____

Senior Structural Designer: _____

Bridge and Highway Structural Engineering Design Services:

Project Engineer: _____

Senior Structural Designer: _____

Marine Engineering Design Services:

Project Engineer: _____

Senior Structural Designer: _____

Civil Engineering Design Services:

Senior Civil Designer _____

Geotechnical Engineering Services:

Senior Geotechnical Engineer _____

ATTACHMENT 3 (continued)

Geotechnical Engineering Services:

Senior Geotechnical Engineer _____

HVAC/Fire Protection Design Services:

Project Engineer: _____

Senior HVAC Designer: _____

Senior Fire Protection Designer: _____

Electrical Engineering Design Services:

Project Engineer: _____

Senior Electrical Designer: _____

Fire Alarm Specialist: _____

Plumbing Engineering Design Services:

Project Engineer: _____

Senior Plumbing Designer: _____

Lighting Design Services:

Senior Lighting Designer: _____

Landscape Architectural Services:

Senior Landscape Architect: _____

Cost Estimating Services:

Senior Estimator: _____

Waste Management Design Services:

Senior Waste Management Designer: _____

ATTACHMENT 4: STAGE 2: FEE PROPOSAL FORM

Project: S216-404A - Consultant for Architectural, Engineering & Construction Related Services for New Gansevoort Marine Transfer Station

Submission: The proposer shall submit Attachment 4 as its Fee Proposal. Attachment 4 is to be submitted in a clearly marked, sealed envelope.

Part 1: Fee Curve for Design Fee

Design Fee: In the space provided below, for each increment in estimated construction cost, the proposer shall indicate a Design Fee, calculated as a percent of the total estimated cost of construction. For the purpose of calculating the Design Fee based on the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development; provided, however, the total amount of such estimate shall be reduced to comply with the terms and conditions set forth below. If the total estimate of the cost of construction falls between the dollar levels designated in the Fee Curve, the Design Fee shall be interpolated on a straight line basis between the corresponding two dollar levels.

(a) **Components of the Estimate:** The Design Consultant Guide sets forth the components to be included in the total estimate of the cost of construction of the Project at the conclusion of Design Development; however, for the purpose of calculating the Design Fee in accordance with the Fee Curve, the total amount of such estimate shall be reduced to exclude any amount in connection with the components set forth below.

- Design Contingency of 10%.
- Overhead and Profit at 15%.
- Construction Contingency of 10%.

(b) **Exclusions From the Estimate:** For the purpose of calculating the Design Fee in accordance with the Fee Curve, the total amount of the estimate of the cost of construction of the Project shall be reduced to exclude any costs or expenses in connection with the items set forth below.

- Bonds, insurance, mobilization or special conditions for performance of the construction work.
- New furniture and all equipment in connection with the Truck Scale System.
- Existing equipment and/or material the Consultant is directed by the Commissioner to use for the Project. In such case, the estimate shall include only the cost of relocating such existing equipment and/or material.
- Components of the Project for which design services are paid for on a time card
- Components of the Project for which design services are provided by the City.
- Reimbursable Services, as set forth in Article 6.
- Artwork, as set forth in Article 6.

(c) **No Increase:** The Design Fee shall not be subject to any increase in the event either or both of the following occur: (1) in the event services are performed during non-regular business hours, or (2) in the event DDC directs the Consultant to prepare and organize design documents for the Project into multiple construction contacts.

ATTACHMENT 4 (Continued)

TOTAL ESTIMATED CONSTRUCTION COST	DESIGN FEE AS A PERCENT OF ESTIMATED CONSTRUCTION COST	AMOUNT OF DESIGN FEE
\$ 50,000,000	_____ %	\$ _____
\$ 55,000,000	_____ %	\$ _____
\$ 60,000,000	_____ %	\$ _____
\$ 65,000,000	_____ %	\$ _____
\$ 70,000,000	_____ %	\$ _____
\$ 75,000,000	_____ %	\$ _____
\$ 80,000,000	_____ %	\$ _____
\$ 85,000,000	_____ %	\$ _____
\$ 90,000,000	_____ %	\$ _____
\$ 95,000,000	_____ %	\$ _____
\$100,000,000	_____ %	\$ _____
\$105,000,000	_____ %	\$ _____
\$110,000,000	_____ %	\$ _____
\$115,000,000	_____ %	\$ _____
\$120,000,000	_____ %	\$ _____
\$125,000,000	_____ %	\$ _____
\$130,000,000	_____ %	\$ _____
\$135,000,000	_____ %	\$ _____
\$140,000,000	_____ %	\$ _____
\$145,000,000	_____ %	\$ _____
\$150,000,000	_____ %	\$ _____
\$155,000,000	_____ %	\$ _____
\$160,000,000	_____ %	\$ _____
\$165,000,000	_____ %	\$ _____
\$170,000,000	_____ %	\$ _____
\$175,000,000	_____ %	\$ _____
\$180,000,000	_____ %	\$ _____
\$185,000,000	_____ %	\$ _____
\$190,000,000	_____ %	\$ _____
\$195,000,000	_____ %	\$ _____
\$200,000,000	_____ %	\$ _____
\$205,000,000	_____ %	\$ _____
\$210,000,000	_____ %	\$ _____
\$215,000,000	_____ %	\$ _____
\$220,000,000	_____ %	\$ _____
\$225,000,000	_____ %	\$ _____
\$230,000,000	_____ %	\$ _____
\$235,000,000	_____ %	\$ _____
\$240,000,000	_____ %	\$ _____
\$245,000,000	_____ %	\$ _____
\$250,000,000	_____ %	\$ _____

NOTE: The proposer shall not leave any blanks nor qualify fees in any way. Do not retype this form. Provide fee information only on this form!

ATTACHMENT 4 (Continued)
PART 2: Multiplier for Overhead and Profit

Multiplier for Overhead and Profit: In the event the Consultant is directed in writing to perform services on a time card basis, payment for such services shall be in accordance with Article 7 of the Contract. As indicated therein, payment for services on a time card basis is limited to those individuals who are identified in the approved Staffing Plan for such services. Payment for services on a time card basis shall be calculated based on the approved Direct Salary Rate per hour for each specified individual, subject to a Multiplier for Overhead and Profit. The costs and expenses deemed included in the Multiplier for Overhead and Profit are set forth in Article 7 of the Contract.

A list of titles of personnel is set forth in Exhibit D to the Contract. Such list specifies the titles of personnel which may be required for the performance of services on a time card basis. The Consultant shall be required to provide such personnel through its own employees and/or through its Subconsultants.

In the space provided below, the proposer shall indicate a Proposed Multiplier for Overhead and Profit. Such Multiplier is subject to negotiation.

Proposed Multiplier for Overhead and Profit: _____

Back-up Material: As Back-up material, the proposer shall submit one of the following: (1) its Audited Multiplier for Overhead, or (2) Audited Financial Statements, as described below.

- (1) **Audited Multiplier for Overhead:** If the proposer has an "Audited Multiplier for Overhead" that has been accepted by a governmental agency, it shall submit its Audited Multiplier for Overhead, as well as a letter from a governmental agency that engages in capital construction work (city, state or federal) approving or accepting such Audited Multiplier for Overhead.
- (2) **Audited Financial Statements:** If the proposer does not have 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.
- (3) **Additional Information:** DDC reserves the right to require the proposer to submit any records, documentation or accounting data in connection with its Multiplier. Such records may include, without limitation, the "CONR 385 Package". For a description of the "CONR 385 Package", the proposer is directed to the following website: <https://www.dot.ny.gov/main/business-center/audit/conr-385-388>

NOTE: The proposer shall not leave any blanks nor qualify fees in any way. Do not retype this form. Provide fee information only on this form!

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

Name of Firm

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

Address

E-Mail Address

ATTACHMENT 5

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS: S216-404A - Consultant for Architectural, Engineering & Construction Related Services for The New Gansevoort Marine Transfer Station, Borough of Manhattan	PIN: 8502013TR0007P
--	-------------------------------

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 6

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.

- (3) **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, 2nd Floor, New York, New York 10007.

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

- (4) **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 7**SCHEDULE B: M/WBE UTILIZATION PLAN**

M/WBE Program Requirements: The requirements for the M/WBE Program are set forth on the following pages of this RFP, in the section entitled “Notice to All Prospective Contractors”.

Schedule B: M/WBE Utilization Plan: Schedule B: M/WBE Utilization Plan for this Contract is set forth in this RFP on the pages following the section entitled “Notice to All Prospective Contractors”. The M/WBE Utilization Plan (Part I) indicates whether Participation Goals have been established for this Contract. If Participation Goals have been established for this Contract, the proposer must submit an M/WBE Utilization Plan (Part II) with its proposal.

Waiver: The proposer may seek a full or partial pre-award waiver of the Participation Goals in accordance with the “Notice to All Prospective Contractors” (See Part A, Section 10). The proposer’s request for a waiver must be submitted at least seven (7) calendar days prior to the proposal submission date. Waiver requests submitted after the deadline will not be considered. The form for requesting a waiver of the Participation Goals is set forth in the M/WBE Utilization Plan (Part III).

Rejection of the Proposal: The proposer must complete Schedule B: M/WBE Utilization Plan (Part II) set forth in this RFP on the pages following the section entitled “Notice to All Prospective Contractors”. A Schedule B submitted by the proposer which does not include the Vendor Certification and Required Affirmations (See Section V of Part II) will be deemed to be non-responsive, unless a full waiver of the Participation Goals is granted (Schedule B, Part III). In the event that the City determines that the proposer has submitted a Schedule B where the Vendor Certification and Required Affirmations are completed but other aspects of the Schedule B are not complete, or contain a copy or computation error that is at odds with the Vendor Certification and Required Affirmations, the proposer will be notified by the Agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a completed Schedule B to the Agency. Failure to do so will result in a determination that the Proposal is non-responsive. Receipt of notification is defined as the date notice is emailed or faxed (if the proposer has provided an email address or fax number), or no later than five (5) calendar days from the date of mailing or upon delivery, if delivered.

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes the program for participation in City procurement ("M/WBE Program") by minority- owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan"), and are detailed below.

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A

**PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD
AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS**

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, ("**Participation Goals**"), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of

Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed nonresponsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

C. **THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/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 SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE.**

RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of the **Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the **Participation Goals** in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services

required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at poped@ddc.nyc.gov or via facsimile at (718) 391-1885. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE Utilization Plan**. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE Utilization Plan** is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE Utilization Plan**. (a) A Contractor may request a modification of its **M/WBE Utilization Plan** after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's **M/WBE Utilization Plan** if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- (iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- (iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the **M/WBE Utilization Plan**, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;
- (vii) Timely written requests for assistance made by the Contractor to Agency's **M/WBE liaison officer** and to **DSBS**;
- (viii) Description of how recommendations made by **DSBS** and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

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

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B: MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of an **M/WBE Utilization Plan**, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE Utilization Plan**.

2. Pursuant to DSBS rules, construction contracts that include a requirement for an **M/WBE Utilization Plan** shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

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

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE Utilization Plan**, Agency shall send a

written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the Contractor is in default of the Contract;
- (d) terminating the Contract;
- (e) declaring the Contractor to be in breach of Contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the Contract;
- (h) assessing actual and consequential damages;
- (i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) taking any other appropriate remedy.

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

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6- 129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

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

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

SCHEDULE B – M/WBE Utilization Plan
Part I: M/WBE Participation Goals**Part I to be completed by contracting agency****Contract Overview**

APT E- Pin # 85013P0019 FMS Project ID#: S216-404A
 Project Title/ Agency PIN # Architectural, Engineering & Construction Related Services for the New Gansevoort Marine Transfer Station, Borough of Manhattan
 Bid/Proposal Response Date September 13, 2013
 Contracting Agency The New York City Department of Design and Construction
 Agency Address 30-30 Thomson Avenue City Long island City State NY Zip Code 11101
 Contact Person James A. Cerasoli Title Deputy Director
 Telephone # (718) 391-1549 Email CERASOLI@DDC.NYC.GOV

Project Description (attach additional pages if necessary)

Architectural, engineering, and construction-related services for the New York City Department of Sanitation's New Gansevoort Marine Transfer Station.

M/WBE Participation Goals for Services

Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.

Prime Contract Industry: Professional

Group	Percentage
Unspecified	10%
or	
Black American	UNSPECIFIED %
Hispanic American	UNSPECIFIED %
Asian American	NO GOAL %
Women	UNSPECIFIED %
Total Participation Goals	10% Line 1

Tax ID #: _____

APT E- 85013P0019
 PIN #: _____

SCHEDULE B - Part II: M/WBE Participation Plan

Part II to be completed by the bidder/proposer.

Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire contract, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the contracting agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your bid or proposal and you do not have to complete or submit this form with your bid or proposal.

Section I: Prime Contractor Contact Information	
Tax ID # _____	FMS Vendor ID # _____
Business Name _____	Contact Person _____
Address _____	
Telephone # _____	Email _____

Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.

PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS					
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals.	Total Bid/Proposal Value		Agency Total Participation Goals (Line 1, Page 1)		Calculated M/WBE Participation Amount
Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	\$	X		=	\$ Line 2

PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS					
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals.	Total Bid/Proposal Value		Adjusted Participation Goal (From Partial Waiver)		Calculated M/WBE Participation Amount
Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	\$	X		=	\$ Line 3

Section III: M/WBE Utilization Plan: How Proposer/Bidder Will Fulfill M/WBE Participation Goals. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer or Bidder will fulfill the M/WBE Participation Goals:

As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals. Please check all that apply to Prime Contractor:

MBE WBE

As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.

As a non M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 above, as applicable.

Section IV: General Contract Information

What is the expected percentage of the total contract dollar value that you expect to award in subcontracts for services, regardless of M/WBE status? % _____

Enter brief description of the type(s) and dollar value of subcontracts for all/any services you plan on subcontracting if awarded this contract. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.

✓ Scopes of Subcontract Work

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____

Tax ID #: _____

APT E- 85013P0019
PIN #: _____

Section V: Vendor Certification and Required Affirmations

I hereby:

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;*
- 2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;*
- 3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;*
- 4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and*
- 5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.*

Signature _____

Date _____

Print Name _____

Title _____

Tax ID #: _____

APT E- 85013P0019
PIN #: _____

SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT

Contract Overview			
Tax ID #	_____	FMS Vendor ID #	_____
Business Name	_____		
Contact Name	_____	Telephone #	_____
Type of Procurement	<input type="checkbox"/> Competitive Sealed Bids	<input type="checkbox"/> Other	Bid/Response Due Date _____
APT E-PIN # (for this procurement):	_____		
		Contracting Agency: _____	

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

_____ %

Agency M/WBE Participation Goal

Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture.

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

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts *some* of this type of work but at a *lower* % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

References
List 3 most recent contracts performed for NYC agencies (if any). Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

CONTRACT NO.	AGENCY	DATE COMPLETED
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	_____
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

CONTRACT NO.	AGENCY	DATE COMPLETED
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	_____
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

CONTRACT NO.	AGENCY	DATE COMPLETED
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	_____
Item of Work Subcontracted and _____	Item of Work Subcontracted and _____	Item of Work Subcontracted and _____

Tax ID #: _____

APT E- 85013P0019
PIN #: _____

Value of subcontract _____ Value of subcontract _____ Value of subcontract _____

List 3 most recent contracts performed for other entities. Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

(Complete ONLY if vendor has performed fewer than 3 New York City contracts.)

TYPE OF Contract _____	ENTITY _____	DATE COMPLETED _____
Manager at entity that hired vendor (Name/Phone No./Email) _____		
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	_____
Type of Work Subcontracted _____	_____	_____

TYPE OF Contract _____	AGENCY/ENTITY _____	DATE COMPLETED _____
Manager at agency/entity that hired vendor (Name/Phone No./Email) _____		
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	_____
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

TYPE OF Contract _____	AGENCY/ENTITY _____	DATE COMPLETED _____
Manager at entity that hired vendor (Name/Phone No./Email) _____		
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	_____
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

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

Signature: _____ **Date:** _____
Print Name: _____ **Title:** _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____ **Date:** _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature: _____ **Date:** _____

Waiver Determination

Full Waiver Approved:
Waiver Denied:
Partial Waiver Approved:
Revised Participation Goal: _____%

ATTACHMENT 8**DOING BUSINESS DATA FORM****DOING BUSINESS ACCOUNTABILITY PROJECT
QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM****What is the purpose of this *Data Form*?**

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

Why have I received this *Data Form*?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any person who believes that s/he should not be listed may apply for removal from the *Database* by submitting a Request for Removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the entity, or the entity no longer being in business. Entities may also update their database information by submitting an update form. Both of these forms are available online at www.nyc.gov/mocs (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:8502013TR0007P EPIN:85013P0019
Check One:	Transaction Type (check one):
<input checked="" type="checkbox"/> Proposal	<input type="checkbox"/> Concession <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise <input type="checkbox"/> Grant <input type="checkbox"/> Pension Investment Contract

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

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

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

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

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

Entity is a Non-Profit: Yes No

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

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

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

Section 2: Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

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

There are no owners listed because (select one):

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

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Doing Business Data Form

EIN/TIN: _____

Page 4 of 4

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.



ATTACHMENT 9**WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER**

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

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

(b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

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

- (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
- (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

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

(e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

ATTACHMENT 9 (continued)**NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS**

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act ("WPEA"), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

ATTACHMENT 10:
SUBCONTRACTOR REPORTING

NOTICE TO BIDDERS

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

ATTACHMENT 11
DISPLACEMENT DETERMINATION FORM- PURSUANT TO CITY
CHARTER § 312(A)

Displacement Determination Form – Pursuant to City Charter § 312(a)
(for PSRs or equivalent pre-procurement documents)

This form must be used to certify whether or not there is displacement in the instant contracting action, as defined in City Charter § 312(a) (as amended by Local Law 63 of 2011). You can either certify that there is no displacement by completing Part 1 of this form, or you can certify that there is displacement by completing Part 2 of this form.

If the contract that you are awarding is a task order contract that does not simultaneously result in the award of a first task order, then you must check the box on the bottom of this page; displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. If the contract that you are awarding does simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

If you have any questions about Local Law 63 or about completing this form, please contact the Mayor's Office of Contract Services at APTLL63@cityhall.nyc.gov or (212) 788-0010.

Procurement Description:

APT EPIN: 85013P0019

Your Name: John Ziedonis

Phone: 718-391-2864

Email: ziedonijo@ddc.nyc.gov

Please specifically identify the service(s) being procured.

S216-404A, Architectural and Engineering Design and Construction Related Services for the New Gansevoort Marine Transfer Station

- If the contract to be awarded as a result of this procurement action is a task order contract (multiple or single award and multiple or single agency) that does not simultaneously result in the award of a first task order, then displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. (Check this box *only* if you are completing this form for a task order contract that will not simultaneously result in the award of the first task order. If you check this box, do not fill out the remainder of this form.)

If the contract to be awarded as a result of this procurement action *does* simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

Part 1: Certification of No Displacement

The Agency has determined that the contract resulting from this procurement action *will not* result in the displacement of any City employee within this Agency, as defined by Charter § 312(a).

The basis upon which the Agency has made this determination (Please answer *all* questions under Part 1):

Do any civil service and/or job titles within this Agency currently perform the services sought by the proposed contract and/or services of a substantially similar nature or purpose?

Yes No

If so, list the names of such titles and the extent to which Agency employees within such titles currently perform such services.

Do the services sought by the proposed contract expand, supplement, or replace existing services?

Yes No

In either event, include a detailed description comparing the services sought by the proposed contract with such existing services.

The services under this proposed contract expand existing capacity. The services sought by the proposed contract will secure architectural and engineering design and construction related services . The role of the DDC staff in the Architecture and Engineering Division responsible for managing the contract is predominantly one of review and oversight, coordination, including, but not limited, to collaborating with the client agency in project scope development, review of consultant work in the form of design plans and specifications, and ensuring that all design guidelines are met .

Is there capacity within the Agency to perform the services sought by the proposed contract?

Yes No

If not, provide a detailed description specifying the ways in which the Agency lacks such capacity.

Constraints imposed by the agency budget for personnel service, in addition to fluctuations in our capital design and construction portfolio, has prevented the agency from hiring qualified personnel to meet these needs in-house.

For the term of the proposed contract, list the projected headcount of employees within such titles or employees who perform such services and/or services of a substantially similar nature or purpose.

Check this box to confirm that none of the below events have occurred within the Agency in the past three years.

- The displacement of a City employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- The announcement of spending reductions in connection with a budgetary program, including but not limited to a Program to Eliminate the Gap, that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- Any other statement by an Agency or by the Mayor of a specific anticipated employment action that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose.

List any other bases for the Agency's determination that the contract resulting from this procurement action will not result in the displacement of any City employee within this Agency.

Part 2: Certification of Displacement

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

THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF PUBLIC BUILDINGS
30-30 THOMSON AVENUE
LONG ISLAND CITY, NEW YORK NEW YORK 11101
CONTRACT FOR
ARCHITECTURAL, ENGINEERING
AND CONSTRUCTION RELATED SERVICES

PROJECT: New Gansevoort Marine Transfer Station

FMS ID: S216-404A

REGISTRATION NUMBER: _____

PIN NUMBER: 8502013TR0007P

E-PIN: _____

CONSULTANT: _____

Telephone: _____
Facsimile: _____
EIN: _____

Standard Project Specific Contract (Fee Curve/DSR)
Architectural, Engineering and Construction Related Services
August 2013

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 architectural, engineering and construction related services performed for the Project described in the Project Objectives (Exhibit F), 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 Project Objectives and any other component, the Project Objectives shall prevail.

Exhibit A	Contract Information
Exhibit B	Subconsultants and Key Personnel
Exhibit C	Design Fee
Exhibit D	Titles of Personnel for Additional Professional Services
Exhibit E	Minimum Requirements Per Title
Exhibit F	Project Objectives
Exhibit G	Schedule B: M/WBE Utilization Plan
Exhibit H	Design Consultant Guide dated November 2012
Exhibit I	DDC BIM Guidelines dated July 2012
Exhibit J	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 Project Manager designated by the Commissioner or any successor or alternate representative designated by the Commissioner.

- 1.8 "Comptroller" shall mean the Comptroller of the City of New York, his/her successors, or duly authorized representatives.
- 1.9 "Consultant" or "Contractor" shall mean the entity entering into this Agreement with the Department.
- 1.10 "Contract" or "Contract Documents" shall mean the Agreement referred to in Paragraph 1.1 of this Article.
- 1.11 "Days" shall mean calendar days unless otherwise specifically noted to mean business days.
- 1.12 "Department" or "DDC" shall mean the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or his/her duly authorized representative.
- 1.13 "Drawings" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.
- 1.14 "Government Entity" shall mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.
- 1.15 "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- 1.16 "Mayor" shall mean the Mayor of the City of New York, his/her successors or duly authorized representatives.
- 1.17 "Modification" shall mean any written amendment of this Agreement signed by both the Department and the Consultant.
- 1.18 "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
- 1.19 "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
- 1.20 "Project" shall mean the Project for which architectural, engineering and construction related services are required, as set forth in the Project Objectives (Exhibit F).
- 1.21 "Safety Standards" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through Final Acceptance of the construction work, pertaining to worker safety and accident prevention applicable to the Project and/or the construction work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).
- 1.22 "Shop Drawing" shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.
- 1.23 "Site(s)" shall mean the area(s) upon or in which the construction work for the Project is carried on, and such other areas adjacent thereto as may be designated by the Commissioner.
- 1.24 "Specifications" shall mean all of the directions, requirements and standards of performance applied to the construction work.
- 1.25 "State" shall mean the State of New York.

1.26 "Subconsultant" or "Subcontractor" shall mean any person, firm, or corporation, other than employees of the Consultant, who or which contracts with the Consultant or his subconsultants to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All Subconsultants or Subcontractors 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 is 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 architectural, engineering and construction related services required for the Project described in the Project Objectives (Exhibit F).

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 architectural, engineering and construction related services necessary and required for the Project, as set forth in this Contract. The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its obligations under this Contract competently and efficiently.

ARTICLE 4 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 Final Acceptance of all required construction work for the Project and completion of all required services hereunder. The anticipated time frame for completion of all required services, broken down by phase, is set forth 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 General: The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required architectural, engineering and construction related services for the Project, as set forth in Article 6. The Consultant shall provide 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 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) Pre-Schematic Design Services, as set forth in Article 6.2, and (b) Additional Professional Services, as set forth in Article 6.5. 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 is set forth in Exhibit D. Such list specifies the titles of personnel which may be required for the performance of services on a time card basis. 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, as set forth in Exhibit E. 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 Staffing Plan: A Staffing Plan must be established and approved by the Commissioner prior to commencement of the performance of time card services by the Consultant. 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 by the Consultant in its Proposal for the Contract and set forth in Exhibit B
- (b) Other Personnel: Required titles and specific individual for each title
- (c) Direct Salary Rate per hour for each specified individual (except for any Principal), determined by the Commissioner in accordance with Article 7.
- (d) Total estimated hours and amount for each title
- (e) Total estimated amount for all required titles of personnel

5.4.4 Limitations on Payment: Limitations on payment to the Consultant for the performance of services on a

time card bases are set forth in Article 7.

5.4.5 Proposed Staffing Plan: Within five (5) business days of written direction from the Commissioner, the Consultant shall submit a proposed Staffing Plan for services on a time card basis. Such Staffing Plan shall include the items listed above. With respect to each individual, the Consultant shall provide: (1) the individual's resume, as well as any other information detailing his/her technical qualifications and expertise, (2) the title for which the individual meets the minimum requirements, as set forth in Exhibit E, and (3) direct salary information, including the individual's current actual annual direct salary, as defined in Article 7, and direct salary history for the past three years.

5.4.6 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 the following: (1) whether the Staffing Plan includes the individuals identified by the Consultant as Key Personnel its Proposal for the Contract, (2) whether each specific individual meets the minimum qualification requirements for the applicable title, and (3) the direct salary rate per hour to be paid for each specific individual, computed in accordance with Article 7. The Consultant shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

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

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

ARTICLE 6 Scope of Services

6.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, all architectural, engineering and construction related services necessary and required for the Project. The services the Consultant may be required to provide shall include without limitation the services set forth in this Article 6. The services set forth herein are further described in the Project Objectives (Exhibit F) and the Design Consultant Guide (Exhibit H). The Consultant shall provide the required services through its own employees and/or through its Subconsultants.

6.2 Pre-Schematic Design Services: The Consultant shall provide Pre-Schematic Design Services, if set forth in the Project Objectives or if directed in writing by the Commissioner. If set forth in the Project Objectives, Pre-Schematic Design Services shall be expressly designated as such. Any services not so expressly designated, including services for the investigation of site conditions and/or the development of the scope of work, shall be considered Design Services.

6.3 Design Services: The Consultant shall provide Design Services as set forth below.

6.3.1 Scope of Design Services: The Consultant shall provide all design services set forth in the Project Objectives. Such services shall be in accordance with the requirements set forth in the Design Consultant Guide. Design services shall include all necessary and usual components and/or services in connection with the design. The Consultant shall provide services during the phases described below.

- (a) Design Phase: The Consultant shall provide services for the preparation of design documents, as set forth in the Design Consultant Guide.
- (b) Construction Phase: The Consultant shall provide services during construction, as set forth in the Design

Consultant Guide, Section VII (A).

6.3.2 Design Criteria: All required Design Services shall be in accordance with the following: (1) Project Objectives, including all criteria set forth therein, (2) Design Consultant Guide, (3) DDC High Performance Building Guidelines, (4) Client Agency Design Standards, and (5) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code, the Green Building Law, the Americans With Disabilities Act, and Local Laws requiring the specification of Environmentally Preferable Products. In the event of any conflict between the Project Objectives and the Design Consultant Guide, the Project Objectives shall prevail.

6.3.3 Number of Construction Contracts: DDC will advise the Consultant whether the project will be bid as a single construction contract or as multiple construction contracts. The Consultant shall prepare and organize design documents for the Project as directed by DDC.

6.3.4 Submission of Design Documents: The Consultant shall submit design documents in accordance with the time frame set forth in Exhibit A.

6.3.5 Required Approvals: All required design documents, including cost estimates, are subject to review and written approval by the Commissioner. Final design documents are subject to approval by all regulatory agencies whose approval of the design is required, including without limitation the Department of Buildings, and, if required, the Public Design Commission and the Landmarks Preservation Commission. The Consultant is responsible for filing complete applications and for obtaining all approvals for the project in accordance with the requirements of regulatory agencies.

6.3.6 Self-Certification: Self-Certification may be required by the Commissioner for approval by the Department of Buildings.

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

6.3.8 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.

6.3.9 Certificates of Occupancy: The Consultant shall assist the Commissioner in obtaining temporary and permanent certificates of occupancy for the Project.

6.3.10 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.

6.3.11 Design services shall be deemed to include all services in connection with Reimbursable Services, except as otherwise expressly provided in Article 6.5.1. 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.

6.4 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 Exhibit A. 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.

6.4.1 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.

6.4.2 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, shipping, insurance, storage, scaffolding, structural work and anchorage.

6.5 Additional Professional Services: The Consultant may be directed by the Commissioner to provide Additional Professional Services for the Project. The Consultant shall provide such Additional Professional Services through its own employees and/or through its Subconsultants, as directed in writing by the Commissioner. Payment for Additional Professional Services shall be on a time card basis in accordance with Article 7.

6.5.1 Additional Professional Services shall be professional services which the Commissioner determines are required for the Project and are in addition to or beyond the necessary and usual services in connection with Design Services. Additional Professional Services shall include, without limitation, the services set forth below.

- (a) Services set forth in the Design Consultant Guide, Section VII (B)
- (b) Changes to the design documents, as set forth in Articles 6.9.1(b) and 6.9.2 below
- (c) Revisions to the drawings to reflect as-built conditions
- (d) Professional services to procure, manage and supervise Reimbursable Services that are required in connection with Additional Professional Services.
- (e) Any other professional services, determined by the Commissioner to be necessary for the Project.

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

6.5.3 If the Consultant believes 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 service constitutes Additional Professional Service 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) Conducting exploratory probes and/or tests to investigate concealed construction
- (b) Printing design documents beyond requirements set forth in this Article 6

- (c) Laboratory services for controlled inspection
- (d) Long Distance Travel. In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant's home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (e) Filing fees and related application fees for New York City agencies
- (f) 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 entire duration of the Contract, the Consultant shall be responsible for providing the non-reimbursable services set forth below. All costs for such services are deemed included in payments to the Consultant as set forth in Article 7 hereof.

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

6.7.2 Transportation: The Consultant shall be responsible for transportation expenses for all personnel performing services, including without limitation: (1) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.6), (2) expenses for time spent by personnel commuting or traveling, and (3) expenses for parking and tolls.

6.7.3 Printing: The Consultant shall provide six (6) copies of all required design documents and/or reports. If DDC directs the Consultant to provide additional copies, the printing services required for such additional copies shall be a reimbursable service.

- 6.7.4 Equipment: The Consultant shall provide the items set forth below for all personnel performing services.
- (a) All computer hardware and software necessary for the Consultant to perform the required services, including CADD
 - (b) All computer hardware and software necessary for the Consultant to perform the required BIM services
 - (c) All necessary office supplies and/or tools
 - (d) Communications equipment and service, including without limitation cellular telephones. The telephone numbers of all personnel shall be submitted to the Commissioner.

6.7.5 Expediting Services: The Consultant shall provide all expediting services necessary and required to secure all required regulatory approvals of the design.

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

6.9 Provisions Regarding Changes to the Design Documents

6.9.1 Changes Not Involving Scope:

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

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

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

6.10 Ownership of Documents: As set forth in the General Provisions (Appendix A), any reports, documents, drawings, models (including, without limitation, BIMs), records, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials related to such items produced pursuant to this Agreement, in any format, whether in hard copy or digital form (i.e., in the form of BIMs), shall upon their creation become the exclusive property of the City.

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

ARTICLE 7 Payment Terms and Conditions

7.1 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. The Maximum Amount is comprised of the following: (1) Estimated Design Fee, (2) Allowance for Services on a Time Card Basis, and (3) Allowance for Reimbursable Services, as described below.

7.1.2 Method of Payment: The method of payment for the performance services by the Consultant shall be as set forth below. The types of services listed below are described in Article 6.

<u>Type of Service</u>	<u>Form of Payment</u>	<u>Article Reference</u>
Pre-Schematic Design Services	Time Card	Article 7.3
Design Services	Design Fee	Article 7.2
Additional Professional Services	Time Card, or Recalculation of Fee	Article 7.3 Article 7.2.6
Reimbursable Services	Reimbursement / 5% mark-up	Article 7.4
Artwork	Percent mark-up	Article 7.5

7.1.3 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 amounts within the allowances set forth in Exhibit A.

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

7.1.5 Requisitions: Payment requisitions shall be accompanied by the documentation listed in Article 7.6.

7.2 Payment for Design Services

7.2.1 Design Fee: For the performance of all required Design Services for the Project, the City agrees to pay and the Consultant agrees to accept a total Design Fee. The Design Fee shall not be subject to an increase in the event DDC directs the Consultant to prepare and organize design documents for the Project into multiple construction contracts.

- (a) Services Included: The Design Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultants in the performance of all required Design Services for the Project, 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 Design Services included in the Design Fee are set forth in Exhibit C.
- (b) Calculation of the Design Fee: The amount of the Design Fee shall be calculated in accordance with the terms and conditions set forth in Exhibit C.

7.2.2 Payment of Design Fee: The Design Fee shall be paid to the Consultant as set forth below.

- (a) Design Phase: For the performance of all required services in connection with the preparation of design documents for the Project, the Consultant shall be paid seventy-five (75%) of the Design Fee. Partial payment of this amount shall be in accordance with the percentage breakdown set forth below, upon written acceptance by the Commissioner of the specified design documents.

Schematic Design Documents	15% of the Design Fee
Design Development Documents	20% of the Design Fee
Construction Documents	40% of the Design Fee

- (b) Partial Payments: Partial payments of the fee per deliverable, as set forth above, 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 the Project Objectives (Exhibit F); provided, however, partial payments for the deliverable may not exceed 50% of the fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work. Total payment of the fee per deliverable shall not be made until written acceptance by the Commissioner of the deliverable.
- (c) Construction Phase: For the performance of all required services during construction for the Project, the Consultant shall be paid twenty-five (25%) percent of the Design Fee. Partial payment of this amount shall be in accordance with the percentage of completion of all required services during construction, as determined by the Commissioner.

7.2.3 Estimated Design Fee: The Estimated Design Fee is set forth in Exhibit A. Partial payments of the

Design Fee shall be based upon the Estimated Design Fee until calculation of the Design Fee as set forth in Exhibit C.

7.2.4 Adjustment: In the event the total of all partial payments of Estimated Design Fee is more than the total Design Fee determined hereunder, the Commissioner shall deduct and retain such excess out of any amount due and owing to the Consultant. In the event the amount due and owing to the Consultant is less than the amount of such excess payment of the Design Fee, the Consultant shall be liable to pay the difference upon demand by the Commissioner. In the event the total of all partial payments of Estimated Design Fee is less than the total Design Fee determined hereunder, the City shall pay such difference to the Consultant.

7.2.5 Additional Professional Services: In the event the Commissioner directs the Consultant to perform Additional Professional Services, payment for such services shall be on a time card basis, as set forth in Article 7.3, except as otherwise provided below.

7.2.6 Increase in Project Scope: In lieu of the method of payment for Additional Professional Services set forth above, in the event of an increase in the scope of the Project, the Commissioner may, at his/her option, direct the Consultant to perform the required Design Services for the Project, including the increased scope thereof, based upon the Fee Curve, and recalculate the Design Fee payable to the Consultant based upon the revised estimate of the cost of construction of the Project.

7.2.7 Extension: In the event the term of the Contract is extended, the Fee Curve set forth in Exhibit C shall remain in full force and effect during such extension of the Contract term.

7.3 Payment for Services on a Time Card Basis

7.3.1 Allowance: An Allowance for Services on a Time Card Basis is set forth in Exhibit A. Such allowance is established for payment for 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, or (2) any principal(s), unless such principal meets the criteria set forth below. Services on a time card basis shall not be performed by the Consultant, or paid from this allowance, unless expressly authorized in advance in a written directive from the Commissioner. If the Consultant is directed to perform services on a time card basis through its Subconsultant(s), all conditions and requirements for documentation set forth in this Article 7.3 shall apply to such Subconsultant(s).

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: A Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services on a time card basis. Such Staffing Plan must specify the specific individuals for the performance of services and the Direct Salary Rate per hour for each specified individual (except for any Principal), determined by the Commissioner in accordance with Article 7. The specific individuals set forth in the Staffing Plan shall be considered Assigned Employees for the purpose of payment hereunder.

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

7.3.5 Amount of Payment: For any week during which an Assigned Employee performs services 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), and then multiply the result by the Multiplier for Overhead and Profit set forth in Exhibit A; provided, however, such Multiplier shall **NOT** apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during other than

regular business hours.

- (a) Assigned Employee's Direct Salary Rate per hour, determined and approved in writing by the Commissioner in accordance with the provisions set forth below. In the event the Consultant receives written authorization from the Commissioner to have the Assigned Employee perform services during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week 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 hereunder. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, and (3) any other time keeping category consistent with standard accounting practices.
- (d) The costs deemed included in the Multiplier are set forth in Article 7.3.7 below.

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

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

7.3.7 Multiplier: The Multiplier for Overhead and Profit set forth in Exhibit A shall be deemed to include profit, as well as any and all expenses for overhead incurred by the Consultant and/or its Subconsultant(s) in connection with providing services on a time card basis for the Project. The Multiplier shall include, without limitation, the items set forth below.

- (a) All expenses for compensation for personnel identified in the approved Staffing Plan that are in excess of the Direct Salary Rates for such personnel payable hereunder. Compensation for such personnel shall include, without limitation: (1) wages and/or salaries that are in excess of the Direct Salary Rates payable hereunder; (2) all payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.
- (b) All expenses related to administration, management and oversight, including, without limitation, any time spent by principals performing such duties
- (c) All expenses related to overhead of any kind whatsoever

- (d) Any anticipated profit

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

- (a) Actual Annual Direct Salary Rate per Hour: For each Assigned Employee, the Consultant shall submit the items set forth below. The Consultant shall also submit any records or documentation requested by the Commissioner to verify the Assigned Employee's actual annual direct salary, including without limitation, the Consultant's payroll register for the past twelve (12) months.
 - (1) Actual Annual Direct Salary: An Assigned Employee's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall not include any amount for the following costs or payments: (1) any payments for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (2) any employer payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) any costs for any other fringe and/or supplemental benefits.
 - (2) Computation: An Assigned Employee's actual annual direct salary rate per hour shall be computed as follows: the Assigned Employee's actual annual direct salary, as defined above, divided by 2080.
- (b) Determination of Direct Salary Rate: For each Assigned Employee, the Commissioner shall determine and approve in writing the Direct Salary Rate per hour to be paid for such employee.
 - (1) Once determined and approved by the Commissioner as set forth above, the Assigned Employee's Direct Salary Rate per hour shall not be eligible for any increase whatsoever, except for the increase described in Article 7.3.9 below. Any such increase must be approved in writing by the Commissioner.
 - (2) The Direct Salary Rate per hour for an Assigned Employee, determined and approved by the Commissioner, may be adjusted in accordance with Article 7.3.10 below, in the event the Consultant receives written authorization from the Commissioner in the particular instance to have the Assigned Employee perform services during other than regular business hours.

7.3.9 Increases in Direct Salary Rates: An Assigned Employee's Direct Salary Rate per hour, determined and approved by the Commissioner, shall be subject to increases on a yearly basis. The first such increase shall be made one (1) year after the date on which the Consultant was directed to perform services on a time card basis. Thereafter, for the remaining duration of the Consultant's performance of services on a time card basis, increases in the Direct Salary Rate(s) shall be made on a yearly basis, on the anniversary of the date on which the Consultant was directed to perform such services. Any increase in the Direct Salary Rate(s) shall be subject to the limitations set forth below.

- (a) Any increase in the Direct Salary Rate(s) shall be based on an increase in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO").
- (b) Any increase in the Direct Salary Rate(s) shall be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**, as determined by EAO. If, for the prior year, the Index showed an increase, the Direct Salary Rate(s) shall be increased. If, for the prior year, the Index declined or showed no increase, the Direct Salary Rate(s) shall remain unchanged.
- (c) Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only and shall have no impact on the rate paid to date.
- (d) Any increase in the Direct Salary Rate(s) 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 Direct Salary Rate(s) shall not apply to any work performed by the Consultant during the prior year, even if payment for such work is made thereafter.

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

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

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

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 on a time card basis, as set forth herein. Such change order shall specify a not to exceed amount for the performance of the Consultant's services.

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 the Consultant is directed to provide. 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 Mark Up: The Consultant shall be entitled to a mark-up of 5% for overhead and profit on payments for Reimbursable Services hereunder; provided, however, the Consultant shall **NOT** be entitled to any mark-up with respect to (1) long distance travel, and (2) filing fees.

7.5 Payment for Artwork

7.5.1 Allowance: 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) Payment for Design Services through a Design Fee, (2) Payment for Services on a Time Card Basis, (3) Payment for Reimbursable Services, and (4) Payment for Artwork. 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 statement indicating the percentage of completion of all required services for the Project.
- (b) Payment for Design Services Through Design Fee:
 - (1) In the event the Consultant is requesting payment of any portion of the Design Fee for the preparation of design documents, the Consultant shall state that the Commissioner's written approval of the required deliverable(s) has been obtained, or the payment is otherwise authorized in accordance with Article 7.
 - (2) For any period for which the Consultant is requesting payment of any portion of the Design Fee for services during construction, the Consultant shall submit a statement indicating the percentage of completion of such services.
- (c) Payment for Services on a Time Card Basis: 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) Assigned Employee's name and title.
 - (2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.
 - (3) Assigned Employee's Direct Salary Rate per hour determined and approved by the Commissioner and included in the Staffing Plan.
 - (4) Statement indicating the Multiplier for Overhead and Profit set forth in Exhibit A.
 - (5) Number of hours worked each day by the Assigned Employee for the week(s) in question during which the employee actually performed services for the Project on a time card basis. The number of hours per day shall be broken down to indicate the number of regular business hours and the number of non-regular business hours. The Multiplier shall not apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during other than regular business hours.
 - (6) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such

detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during 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 which are covered under the Design Fee; (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 on a time card basis for which the Consultant is not entitled to compensation, including without limitation, services described in Articles 6.9.1(a) and 6.9.3, and (6) non-regular business hours, if any.

- (7) Copy of the Consultant's payroll register for the week(s) in question reflecting the amount actually paid by the Consultant to the Assigned Employee for that week.
 - (8) Applicable only if services were performed during other than regular business hours: (1) copy of authorization by Commissioner for such services, and (2) copy of Commissioner's approval of the Consultant's policy regarding payment of a premium for services performed during other than regular business hours.
- (d) Payment for Reimbursable Services: For any period for which the Consultant is requesting payment for Reimbursable Services, the Consultant shall submit:
- (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.
- (e) Payment for 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.

7.6.3 All payments hereunder are contingent upon the Consultant's satisfactory performance of the required services. The Commissioner is authorized to make deductions for any services performed 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 be filed with the Comptroller, with a copy thereof available to the Consultant if requested.

ARTICLE 8 – Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes the program for participation in City procurement ("M/WBE Program") by minority- owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan"), and are detailed below. The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129. Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, (“**Participation Goals**”), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor’s participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor’s participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered (“Master Services Agreement”) and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require

Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed nonresponsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/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 SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of the **Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the **Participation Goals** in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE** Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at poped@ddc.nyc.gov or via facsimile at (718) 391-1886. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

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

ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission. The Agency may grant a request for Modification of a Contractor's M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- (iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- (iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;
- (vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

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

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B: MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of an **M/WBE Utilization Plan**, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE Utilization Plan**.

2. Pursuant to DSBS rules, construction contracts that include a requirement for an **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.
4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required Participation Goals.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:
 - (a) Entering into an agreement with the Contractor allowing the Contractor to cure the violation;
 - (b) Revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
 - (c) Making a finding that the Contractor is in default of the Contract;
 - (d) Terminating the Contract;
 - (e) Declaring the Contractor to be in breach of Contract;
 - (f) Withholding payment or reimbursement;
 - (g) Determining not to renew the Contract;
 - (h) Assessing actual and consequential damages;
 - (i) Assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
 - (j) Exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
 - (k) Taking any other appropriate remedy.
4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or

WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

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

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in 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 \$ _____
(Addition of items below)
 - Estimated Design Fee: \$ _____
 - Allowance for Services on a Time Card Basis: Not to Exceed \$ _____
 - Allowance for Reimbursable Services: Not to Exceed \$ _____
 - Allowance for Artwork: Not to Exceed \$ _____

- Term of Contract: The Contract shall commence as of the date of registration by the Comptroller and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services hereunder. The anticipated time frame for completion of all required services, broken down by phase, is set forth below. All time frames below are in consecutive calendar days (“CCDs”).
 - Anticipated Time Frame for Completion of all Required Services: 1,845 CCDs
 - Anticipated Time Frame for Design Phase: * 660 CCDs
 - Anticipated Time Frame for Construction Phase: 1,185 CCDs

* The Design Phase includes, but is not limited to, the following: (1) pre-schematic services, (2) preparation of design documents, (3) review by City agencies, (4) value engineering, and (5) bid, award and registration of construction contracts.

- Deliverables: The submission of deliverables by the Consultant during the Design Phase shall be in accordance with the schedule set forth in the Project Objectives (Exhibit F).

- 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 for Overhead and Profit: _____

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.

- Architectural Design Services (Prime Consultant): _____
- Structural Engineering Design Services: _____
- Bridge and Highway Structural Engineering Design Services: _____
- Marine Engineering Design Services: _____
- Civil Engineering Design Services: _____
- Environmental Engineering Design Services: _____
- Geotechnical Engineering Services: _____
- HVAC and Fire Protection Design Services: _____
- Electrical Engineering Design Services: _____
- Plumbing Engineering Design Services: _____
- Communications / Data Systems Design Services: _____
- Lighting Design Services: _____
- Landscape Architectural Design Services: _____
- Sustainable Design Services: _____
- Building Information Modeling Services: _____
- Programming Services: _____
- Specification Services: _____
- Cost Estimating Services: _____
- Waste Management Design Services: _____
- Traffic Engineering Design Services: _____
- Signage and Wayfinding Design Services: _____
- Filing/Zoning/Code Consulting Services: _____
- Community Relations Consulting 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.

<u>Architectural Design Services:</u>	Name	Qualifications
Principal:	_____	_____
Project Manager:	_____	_____
Project Architect:	_____	_____
Senior Architectural Designer:	_____	_____
Senior Interior Designer:	_____	_____

<u>Structural Engineering Design Services:</u>	Name	Qualifications
Project Engineer:	_____	_____
Senior Structural Designer:	_____	_____

<u>Bridge and Highway Structural Engineering Design Services:</u>	Name	Qualifications
Project Engineer:	_____	_____
Senior Structural Designer:	_____	_____

<u>Marine Engineering Design Services:</u>	Name	Qualifications
Project Engineer:	_____	_____
Senior Structural Designer:	_____	_____

<u>Civil Engineering Design Services:</u>	Name	Qualifications
Senior Civil Engineer:	_____	_____

<u>Geotechnical Engineering Services:</u>	Name	Qualifications
Senior Geotechnical Engineer:	_____	_____

<u>HVAC/Fire Protection Design Services:</u>	Name	Qualifications
Project Engineer:	_____	_____
Senior HVAC Designer:	_____	_____
Senior Fire Protection Designer:	_____	_____

<u>Electrical Engineering Design Services:</u>	Name	Qualifications
Project Engineer:	_____	_____
Senior Electrical Designer:	_____	_____
Fire Alarm Specialist:	_____	_____

<u>Plumbing Engineering Design Services:</u>	Name	Qualifications
Project Engineer:	_____	_____
Senior Plumbing Designer:	_____	_____

<u>Lighting Design Services:</u>	Name	Qualifications
Senior Lighting Designer:	_____	_____

Landscape Architectural Services:

Name

Qualifications

Senior Landscape Architect:

Senior Landscape Designer:

Cost Estimating Services:

Name

Qualifications

Senior Estimator:

Waste Management

Design Services:

Name

Qualifications

Project Engineer:

Senior Waste Mgt Designer:

EXHIBIT C: DESIGN FEE

(1) Design Fee: For the performance of all required Design Services for the Project, as set forth below, the City agrees to pay and the Consultant agrees to accept a total Design Fee, the amount of which shall be calculated in accordance with this Exhibit C. The Design Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultants in the performance of all required Design Services for the Project, 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.

(a) Services Included in Design Fee: The services included in the Design Fee shall consist of all services required for the Project, except as otherwise provided in paragraph (b) below. The services included in the Design Fee shall include without limitation the services set forth below.

- Architectural Design Services
- Structural Engineering Design Services
- Bridge and Highway Structural Engineering Design Services
- Marine Engineering Design Services
- Civil Engineering Design Services
- Environmental Engineering Design Services
- Geotechnical Engineering Services
- Heating, Ventilating and Air-Conditioning (HVAC) and Fire Protection Design Services
- Electrical Engineering Design Services
- Plumbing Engineering Design Services
- Communications / Data Systems Design Services
- Lighting Design Services
- Landscape Architectural Design Services
- Sustainable Design Services
- Building Information Modeling (BIM) Services
- Programming Services
- Specification Services
- Cost Estimating Services
- Waste Management Design Services
- Traffic Engineering Design Services
- Signage and Wayfinding Design Services
- Filing/Zoning/Code Consulting Services
- Community Relations Consulting Services

(b) Services Not Included in Design Fee: The services set forth below are not included in the Design Fee.

<u>Service</u>	<u>Form of Payment</u>	<u>Article Reference</u>
Pre-Schematic Design Services	Time Card	Article 7.3
Additional Professional Services	Time Card, or Recalculation of Fee	Article 7.3 Article 7.2.6
Reimbursable Services	Reimbursement / 5% mark-up	Article 7.4
Artwork	Fee for Artwork	Article 7.5

(2) Calculation of Design Fee: The Design Fee shall be calculated as a percent of the total estimated cost of construction for the Project in accordance with the Fee Curve set forth in this Exhibit C. For the purpose of calculating the Design Fee based on the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development; provided, however, the total amount of such estimate shall be reduced to comply with the terms and conditions set forth below. If the total estimate of the cost of construction falls between the dollar levels designated in the Fee Curve, the Design Fee shall be interpolated on a straight line basis between the corresponding two dollar levels.

- (a) Components of the Estimate: The Design Consultant Guide sets forth the components to be included in the total estimate of the cost of construction of the Project at the conclusion of Design Development; however, for the purpose of calculating the Design Fee in accordance with the Fee Curve, the total amount of such estimate shall be reduced to exclude any amount in connection with the components set forth below.
- Design Contingency of 10%.
 - Overhead and Profit at 15%.
 - Construction Contingency of 10%.
- (b) Exclusions From the Estimate: For the purpose of calculating the Design Fee in accordance with the Fee Curve, the total amount of the estimate of the cost of construction of the Project shall be reduced to exclude any costs or expenses in connection with the items set forth below.
- Bonds, insurance, mobilization or special conditions for performance of the construction work.
 - New furniture and all equipment in connection with the Truck Scale System.
 - Existing equipment and/or material the Consultant is directed by the Commissioner to use for the Project. In such case, the estimate shall include only the cost of relocating such existing equipment and/or material.
 - Components of the Project for which design services are paid for on a time card basis.
 - Components of the Project for which design services are provided by the City.
 - Reimbursable Services, as set forth in Article 6.
 - Artwork, as set forth in Article 6.
- (c) No Increase: The Design Fee shall not be subject to any increase in the event either or both of the following occur: (1) in the event services are performed during non-regular business hours, or (2) in the event DDC directs the Consultant to prepare and organize design documents for the Project into multiple construction contacts.

EXHIBIT C: DESIGN FEE

Calculation: The Design Fee shall be calculated as a percent of the total estimated cost of construction for the Project in accordance with the Fee Curve set forth in this Exhibit C. For the purpose of calculating the Design Fee based on the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development; provided, however, the total amount of such estimate shall be reduced as set forth below. If the total estimate of the cost of construction falls between the dollar levels designated in the Fee Curve, the Design Fee shall be interpolated on a straight line basis between the corresponding two dollar levels.

Reduction in the Estimate: For the purpose of calculating the Design Fee based on the Fee Curve, the total estimate of the cost of construction for the Project approved in writing by the Commissioner at the conclusion of Design Development shall be reduced to comply with the terms and conditions set forth in Paragraph (2) of this Exhibit C.

TOTAL ESTIMATED CONSTRUCTION COST	DESIGN FEE AS A PERCENT OF ESTIMATED CONSTRUCTION COST	AMOUNT OF DESIGN FEE
\$ 50,000,000	_____ %	\$ _____
\$ 55,000,000	_____ %	\$ _____
\$ 60,000,000	_____ %	\$ _____
\$ 65,000,000	_____ %	\$ _____
\$ 70,000,000	_____ %	\$ _____
\$ 75,000,000	_____ %	\$ _____
\$ 80,000,000	_____ %	\$ _____
\$ 85,000,000	_____ %	\$ _____
\$ 90,000,000	_____ %	\$ _____
\$ 95,000,000	_____ %	\$ _____
\$100,000,000	_____ %	\$ _____
\$105,000,000	_____ %	\$ _____
\$110,000,000	_____ %	\$ _____
\$115,000,000	_____ %	\$ _____
\$120,000,000	_____ %	\$ _____
\$125,000,000	_____ %	\$ _____
\$130,000,000	_____ %	\$ _____
\$135,000,000	_____ %	\$ _____
\$140,000,000	_____ %	\$ _____

\$145,000,000	_____ %	\$ _____
\$150,000,000	_____ %	\$ _____
\$155,000,000	_____ %	\$ _____
\$160,000,000	_____ %	\$ _____
\$165,000,000	_____ %	\$ _____
\$170,000,000	_____ %	\$ _____
\$175,000,000	_____ %	\$ _____
\$180,000,000	_____ %	\$ _____
\$185,000,000	_____ %	\$ _____
\$190,000,000	_____ %	\$ _____
\$195,000,000	_____ %	\$ _____
\$200,000,000	_____ %	\$ _____
\$205,000,000	_____ %	\$ _____
\$210,000,000	_____ %	\$ _____
\$215,000,000	_____ %	\$ _____
\$220,000,000	_____ %	\$ _____
\$225,000,000	_____ %	\$ _____
\$230,000,000	_____ %	\$ _____
\$235,000,000	_____ %	\$ _____
\$240,000,000	_____ %	\$ _____
\$245,000,000	_____ %	\$ _____
\$250,000,000	_____ %	\$ _____

EXHIBIT D

TITLES OF PERSONNEL FOR ADDITIONAL PROFESSIONAL SERVICES

Titles of Personnel: A list of titles of personnel is set forth below. Such list specifies the titles of personnel which the Consultant may be required to provide for the following: (1) Additional Professional Services, and (2) other services the Consultant is directed to perform on a time card basis. The Consultant shall be required to provide such personnel through its own employees and/or through its Subconsultants.

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

ARCHITECTURAL DESIGN SERVICES:

TITLE

Project Manager (Architecture)
Project Architect
Senior Architectural Designer
Junior Architectural Designer
Senior Interior Designer
Junior Interior Designer
Senior Draftsperson/CAD
Junior Draftsperson/CAD

STRUCTURAL ENGINEERING DESIGN SERVICES:

TITLE

Project Engineer (Structural Engineering)
Project Manager (Structural Engineering)
Senior Structural Designer
Junior Structural Designer
Senior Engineering Draftsperson/CAD
Junior Engineering Draftsperson/CAD

BRIDGE AND HIGHWAY STRUCTURAL ENGINEERING DESIGN SERVICES:

TITLE

Project Engineer (Bridge / Highway Structural Engineering)
Project Manager (Bridge / Highway Structural Engineering)
Senior Structural Designer
Junior Structural Designer
Senior Engineering Draftsperson/CAD
Junior Engineering Draftsperson/CAD

MARINE ENGINEERING DESIGN SERVICES:

TITLE

Project Engineer (Marine Engineering)
Project Manager (Marine Engineering)
Senior Structural Designer
Junior Structural Designer
Senior Engineering Draftsperson/CAD
Junior Engineering Draftsperson/CAD

CIVIL ENGINEERING DESIGN SERVICES:

TITLE

Senior Civil Engineer
Junior Civil Engineer
Draftsperson/CAD

ENVIRONMENTAL ENGINEERING DESIGN SERVICES:

TITLE

Project Manager (Environmental Engineering)
Project Engineer
Environmental Technician
Draftsperson/CAD

GEOTECHNICAL ENGINEERING SERVICES:

TITLE

Project Manager (Geotechnical Engineering)
Senior Geotechnical Engineer
Junior Geotechnical Engineer
Draftsperson/CAD

HVAC AND FIRE PROTECTION DESIGN SERVICES:

TITLE

Project Engineer (HVAC Engineering)
Project Manager (HVAC Engineering)
Senior HVAC Designer
Junior HVAC Designer
Senior Fire Protection Designer
Junior Fire Protection Designer
Senior Engineering Draftsperson/CAD
Junior Engineering Draftsperson/CAD

ELECTRICAL ENGINEERING DESIGN SERVICES:

TITLE

Project Engineer (Electrical Engineering)
Project Manager (Electrical Engineering)
Senior Electrical Designer
Junior Electrical Designer
Fire Alarm Specialist
Senior Engineering Draftsperson/CAD
Junior Engineering Draftsperson/CAD

PLUMBING ENGINEERING DESIGN SERVICES:

TITLE

Project Engineer (Plumbing Engineering)
Project Manager (Plumbing Engineering)
Senior Plumbing Designer
Junior Plumbing Designer
Senior Engineering Draftsperson/CAD

Junior Engineering Draftsperson/CAD

**COMMUNICATIONS / DATA SYSTEMS DESIGN SERVICES:
TITLE**

Project Engineer (Communications Engineering)
Project Manager (Communications Engineering)
Senior Communications Designer
Junior Communications Designer
Senior Engineering Draftsperson/CAD
Junior Engineering Draftsperson/CAD

**LIGHTING DESIGN SERVICES:
TITLE**

Senior Lighting Designer
Draftsperson/CAD

**LANDSCAPE ARCHITECTURAL DESIGN SERVICES:
TITLE**

Senior Landscape Architect
Junior Landscape Architect
Senior Landscape Architectural Designer
Junior Landscape Architectural Designer
Draftsperson/CAD

**SUSTAINABLE DESIGN SERVICES:
TITLE**

LEED Specialist

**BUILDING INFORMATION MODELING SERVICES:
TITLE**

Project Manager / BIM Specialist

**PROGRAMMING SERVICES:
TITLE**

Programming Specialist

**SPECIFICATION SERVICES:
TITLE**

Specification Writer

**COST ESTIMATING SERVICES:
TITLE**

Senior Estimator
Junior Estimator

**WASTE MANAGEMENT DESIGN SERVICES:
TITLE**

Project Engineer (Waste Management Engineering)
Senior Waste Management Designer
Draftsperson/CAD

**TRAFFIC ENGINEERING DESIGN SERVICES:
TITLE**

Project Engineer (Traffic Engineering)
Senior Civil Engineer
Junior Civil Engineer
Engineering Technician
Draftsperson/CAD

**SIGNAGE AND WAYFINDING DESIGN SERVICES:
TITLE**

Signage and Wayfinding Specialist

**FILING / ZONING / CODE CONSULTING SERVICES:
TITLE**

Code Specialist

**COMMUNITY RELATIONS CONSULTING SERVICES:
TITLE**

Community Relations Liaison

EXHIBIT E: MINIMUM REQUIREMENTS PER TITLE

Minimum Requirements Per Title: Personnel provided by the Consultant and/or its Subconsultants must satisfy the minimum requirements for the title in question, as set forth below. 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.

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 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

ARCHITECTURAL DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Manager (Architecture).....	10	RA
Project Architect.....	10	RA
Senior Architectural Designer.....	7	RA
Junior Architectural Designer.....	4	
Senior Interior Designer	7	
Junior Interior Designer	4	
Senior Draftsperson/CAD.....	3	
Junior Draftsperson/CAD.....	2	

STRUCTURAL ENGINEERING SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Structural Engineering).....	10	PE
Project Manager (Structural Engineering).....	7	PE
Senior Structural Designer	7	PE
Junior Structural Designer	5	
Senior Engineering Draftsperson/CAD.....	3	
Junior Engineering Draftsperson/CAD.....	2	

BRIDGE AND HIGHWAY STRUCTURAL ENGINEERING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Bridge / Highway Structural Engineering)	10	PE
Project Manager (Bridge / Highway Structural Engineering)	7	PE
Senior Structural Designer	7	PE
Junior Structural Designer	5	
Senior Engineering Draftsperson/CAD.....	3	
Junior Engineering Draftsperson/CAD.....	2	

MARINE ENGINEERING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Marine Engineering).....	10	PE

Project Manager (Marine Engineering).....	7	PE
Senior Structural Designer.....	7	PE
Junior Structural Designer.....	5	
Senior Engineering Draftsperson/CAD.....	3	
Junior Engineering Draftsperson/CAD.....	2	

**CIVIL ENGINEERING DESIGN SERVICES:
TITLE**

MINIMUM REQUIREMENTS

	Number of Years of Experience	Professional License or Certification
Senior Civil Engineer.....	10	PE
Junior Civil Engineer.....	5	
Draftsperson/CAD.....	3	

**ENVIRONMENTAL ENGINEERING DESIGN SERVICES:
TITLE**

MINIMUM REQUIREMENTS

	Number of Years of Experience	Professional License or Certification
Project Manager (Environmental Engineering)....	10	PE
Project Engineer.....	5	PE
Environmental Technician.....	3	
Draftsperson/CAD.....	2	

**GEOTECHNICAL ENGINEERING SERVICES:
TITLE**

MINIMUM REQUIREMENTS

	Number of Years of Experience	Professional License or Certification
Project Manager (Geotechnical Engineering).....	10	PE
Senior Geotechnical Engineer.....	7	PE
Junior Geotechnical Engineer.....	5	
Draftsperson/CAD.....	2	

**HVAC AND FIRE PROTECTION DESIGN SERVICES:
TITLE**

MINIMUM REQUIREMENTS

	Number of Years of Experience	Professional License or Certification
Project Engineer (HVAC Engineering).....	10	PE
Project Manager (HVAC Engineering).....	7	PE
Senior HVAC Designer	7	
Junior HVAC Designer	5	
Senior Fire Protection Designer	7	PE
Junior Fire Protection Designer	5	
Senior Engineering Draftsperson/CAD.....	3	
Junior Engineering Draftsperson/CAD.....	2	

**ELECTRICAL ENGINEERING DESIGN SERVICES:
TITLE**

MINIMUM REQUIREMENTS

	Number of Years of Experience	Professional License or Certification
Project Engineer (Electrical Engineering).....	10	PE
Project Manager (Electrical Engineering).....	7	PE
Senior Electrical Designer	7	
Junior Electrical Designer	5	
Fire Alarm Specialist:	7	
Senior Engineering Draftsperson/CAD.....	3	

Junior Engineering Draftsperson/CAD..... 2

PLUMBING ENGINEERING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Plumbing Engineering).....	10	PE
Project Manager (Plumbing Engineering).....	7	PE
Senior Plumbing Designer	7	
Junior Plumbing Designer	5	
Senior Engineering Draftsperson/CAD.....	3	
Junior Engineering Draftsperson/CAD.....	2	

COMMUNICATIONS / DATA SYSTEMS DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Communications Engineering)...	10	PE
Project Manager (Communications Engineering)...	7	PE
Senior Communications Designer.....	7	
Junior Communications Designer.....	5	
Senior Engineering Draftsperson/CAD.....	3	
Junior Engineering Draftsperson/CAD.....	2	

LIGHTING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Senior Lighting Designer	5	LEED
Draftsperson/CAD.....	2	

LANDSCAPE ARCHITECTURAL DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Senior Landscape Architect.....	10	RLA
Junior Landscape Architect.....	5	
Senior Landscape Architectural Designer.....	7	
Junior Landscape Architectural Designer.....	4	
Draftsperson/CAD.....	3	

SUSTAINABLE DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
LEED Specialist.....	5	LEED AP

BUILDING INFORMATION MODELING SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Manager / BIM Specialist.....	5	

PROGRAMMING SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Programming Specialist.....	7	

SPECIFICATION SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Specification Writer.....	10	

COST ESTIMATING SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Senior Estimator.....	10	
Junior Estimator.....	3	

WASTE MANAGEMENT DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Waste Management).....	10	PE
Waste Management Designer.....	7	
Draftsperson/CAD.....	3	

TRAFFIC ENGINEERING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Traffic Engineering).....	10	PE
Senior Civil Engineer.....	5	
Junior Civil Engineer.....	1	
Engineering Technician.....	3	
Draftsperson/CAD.....	3	

SIGNAGE AND WAYFINDING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Signage and Wayfinding Specialist.....	7	

FILING / ZONING / CODE CONSULTING SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Code Specialist.....	10	

COMMUNITY RELATIONS CONSULTING SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Community Relations Liaison	10	

EXHIBIT F

PROJECT OBJECTIVES

**FOR THE SERVICES OF A DESIGN CONSULTANT
FOR PRE-SCHEMATIC SERVICES, DESIGN SERVICES (PREPARATION of
DESIGN DOCUMENTS) AND SERVICES DURING CONSTRUCTION**

FOR

**NEW GANSEVOORT MARINE TRANSFER STATION
FOR THE NEW YORK CITY DEPARTMENT OF SANITATION**

CITY of NEW YORK – BOROUGH of MANHATTAN



PROJECT OBJECTIVES

FMS ID: S216-404A

PROJECT: NEW GANSEVOORT MARINE TRANSFER STATION
NEW YORK CITY DEPARTMENT OF SANITATION (DSNY)

SITE LOCATION: 2 BLOOMFIELD STREET, NY. NY 10014

BUDGET: To Be Determined

I. INTRODUCTION:

In July of 2002, Mayor Bloomberg announced a plan to establish a new citywide waste management system in response to the closure of Fresh Kills Landfill. The New York City comprehensive Solid Waste Management Plan (SWMP) for the period of 2006 through 2025 was adopted by the New York City Council in July 2006 and accepted by New York State in October 2006.

The SWMP establishes a comprehensive framework for managing the City's solid waste with an emphasis on reducing, reusing and recycling. The goal of the SWMP is to dramatically reduce the number of truck trips associated with City waste export while establishing an environmentally sound waste export system for managing the City's waste over the next 20 years. Transition from a truck-based commercial waste network to a barge and rail-dependent system is an environmentally responsible solid waste management plan. New facilities and public education efforts are intended to reduce solid waste volume over the next 20 years. The new Gansevoort Marine Transfer Station is included as part of the SWMP.

II. PROJECT OBJECTIVES:

The New York City Department of Design and Construction (DDC), on behalf of the Department of Sanitation (DSNY), pursuant to New York City's approved SWMP, is managing the design and construction of a new Marine Transfer Station (MTS) at Gansevoort Peninsula. This MTS will be used for transfer of recyclable materials, such as glass, metal, plastic, and paper from truck to barges.

The site for the new Gansevoort MTS, as defined in the New York State Legislature's Hudson River Park Act 2008 Amendment, is located on the Hudson River, east of the U.S. Pierhead Line and west of the Bulkhead Line beyond the western edge of Gansevoort Peninsula. Gansevoort Peninsula is bounded by Bloomfield and Gansevoort Streets on the north and south and Route 9A on the east. The peninsula and MTS site, owned by the State of New York, are under long-term lease to Hudson River Park Trust (HRPT), a City/State public benefit corporation. This site is part of the larger Hudson River Park that is being developed by HRPT from Battery Place to West 59th Street. It is the intent of DSNY that the new Gansevoort MTS be designed to be as compatible as possible with the "Park Plan", which is still under development. Coordination with HRPT will be essential to the success of this project. Please refer to attached "Exhibit L" for the text of the Hudson River Park Act 2008 Amendment.

The new Gansevoort MTS will replace an existing inactive Marine Transfer Station which is located entirely over the water at Pier 52 (see cover page photo). The existing MTS, its T-shaped truck approach ramp, as well as existing DSNY facilities on the peninsula itself will be abated and demolished under a separate contract. The MTS will be demolished down to and including the pile caps; however, the existing piles will remain.

It is anticipated that the new Gansevoort MTS will occupy and incorporate a layout similar to that of the existing MTS, which is a multi-level facility with two barge slips framed by three parallel finger pier structures on piles at pier level. In addition to the barge slips, the facility will include a tipping floor above the barge slips, where trucks will deposit materials into the barges below. It will also include offices for

administrative support and a small environmental education center. The facility will be equipped with state-of-the-art odor and environmental control systems. Most spaces will be un-tempered; except for control booths, the administrative staff's support suite, and the environmental education center.

The environmental center will provide a recycling learning experience for schools and community visitors. Located on the tipping floor level, it will consist of a space with an observation window overlooking transfer station operations. It will have an entrance separate from MTS recycling operations.

Trucks will access the tipping floor via a ramp and elevated roadway. The majority of the access road will be constructed over land, except for the piece of the roadway connecting to the tipping floor of the facility which will bridge over water. The Hudson River Park Act 2008 Amendment outlines the land on the Gansevoort Peninsula to be used for operation of a New York City Department of Sanitation water-dependent Marine Transfer Station and includes an approximately 25-foot-wide access/egress ramp and elevated roadway. The design of the MTS facility and the access structure will take into account slope and turning radii constraints imposed by DSNY vehicles that will use the facility.

DDC is currently proceeding with a project for site clearance and clean-up of the Gansevoort Peninsula. As part of this current clean-up project, most of the future parkland, including most of the land to be occupied by the ramp and elevated roadway, will be inspected for contaminants. The Consultant shall, as part of this project, provide for the inspection of any area of the site which was not inspected under the current clean-up project. If any contaminants are discovered within the project limits, they will be remediated prior to the start of construction of the new MTS.

The elevation of the pier level shall be in accordance with barge loading requirements. The elevation of elements critical to uninterrupted MTS operations shall be in accordance with requirements of New York City Building Code "Appendix G" amended in consideration of Federal Emergency Management Agency (FEMA) Advisory Base Flood Elevation Maps. Tug boats will transport barges to and from the facility. The new building will be supported on piles and will be an enclosed structure.

The Consultant is responsible for obtaining approvals and complying with all Federal, State, and Local laws, rules and regulations. The Consultant is required to perform the City's Uniform Land Use Review Procedure (ULURP).

State and City Environmental Quality Reviews (SEQR and CEQR), United States Army Corp of Engineers (USACE), New York State Department of Environmental Conservation (DEC) reviews and applications will be performed by the Client Agency. The Consultant will be required to provide information, as necessary, pertaining to the project necessary to complete any application processes. MTS design shall conform to applicable DEC requirements.

This project shall achieve at least LEED Silver Certification and a minimum of 25-30% reduction from the base energy cost established by ASHRAE 90.1-2007. The use of sustainable energy sources such as wind and solar is highly recommended.

III. **BACKGROUND:**

The Gansevoort Peninsula was created from landfill in 1837. The site is part of Manhattan block 651, Lot 1 and is zoned M3-2 (zoning map 8b). It is in a Federal Flood Plain Zone and Coastal Erosion Hazard Area. The immediate area is a fragile estuarine sanctuary designated by the DEC.

The Gansevoort Peninsula, housing the former DSNY Destructor Plant and original Gansevoort Marine Transfer Station, was used for decades for DSNY truck garbage delivery, incineration and removal from the City via New York City waterways. Destructor Plant operations were discontinued in 1981, and the original MTS operations were discontinued in the 1990's. In 1998, the property was transferred to HRPT to create a continuous Greenway along the western edge of Manhattan. In 2008, the Hudson River Park Act was amended to allow for construction and operation of a new MTS on the site of the original, along with an

associated access roadway and ramp. Refer to chapter 596 of the laws of New York State for the full text of the Act.

The HRPT will oversee the design and construction of parkland and recreational activities on the Gansevoort Peninsula and will operate the park. Public use of the Hudson River Park bikeway and pedestrian path along the eastern edge of peninsula (adjacent to Route 9A) must not be interrupted during construction of the MTS and its access roadway and ramp.

Access to FDNY pier and building shall remain clear of any obstruction through the construction process.

Construction of a new natural gas pipeline along the southern edge of the Gansevoort Peninsula was designated, authorized and approved by Federal Energy Regulatory Commission (FERC). The construction schedule calls for completion of installation by October 31, 2013. HRPT has signed a lease with the Spectra Energy gas company permitting this construction in the park. The pipeline project also includes the relocation of a combined sewer outfall (CSO) to the bulkhead at the southwest corner of peninsula.

IV. APPROACH AND MAJOR DESIGN CONSIDERATIONS:

- A. The Consultant shall perform all work in conformance with all provisions of the contract, and the DDC “Design Consultant Guide” dated November 2012. The Consultant shall use DDC’s Mission Statement as the guiding principle: “to deliver the City’s construction projects in a safe, expeditious, and cost-effective manner, while maintaining the highest degree of architectural, engineering, and construction quality”.
- B. All design services shall be in accordance with the items listed below. If there is a conflict between the Project Objectives and the Design Consultant Guide, the Project Objectives shall govern.
 - (1) These Project Objectives
 - (2) Design Consultant Guide (the Guide), dated November 2012
 - (3) All applicable local, state and federal laws, rules and regulations
 - (4) Requirements of New York State Department of Environmental Conservation (DEC)
- C. DDC and DSNY will provide existing survey information and site specific studies. The existing information is not comprehensive.
- D. The Consultant is responsible for obtaining any required data to define the project’s design requirements, including without limitation, operational, geotechnical, topographical, bathymetric, and environmental data.
- E. The Consultant shall attend all required meetings with the Client Agency (DSNY), HRPT, and DDC.
- F. The Consultant shall be required to provide Building Information Modeling (BIM) services for the project. BIM services provided by the Consultant shall be in accordance with the DDC BIM Guidelines (Exhibit I). The link to the DDC BIM Guidelines is:
http://www.nyc.gov/html/ddc/downloads/pdf/DDC_BIM_Guidelines.pdf.
- G. The Consultant is responsible for filing complete applications and for obtaining all approvals of the design in accordance with the requirements of regulatory agencies, except that DSNY will secure the following approvals of the design: USACE, DEC and HRPT. The Consultant is also responsible for providing all expediting services necessary and required to secure such regulatory approvals.
- H. Available, original MTS (previous building) construction documents will be provided to the Consultant by DDC and DSNY for reference.
- I. The Percent for Art Program will apply to this project. The services the Consultant will be required to provide in connection with the Percent for Art Program are set forth in Article 6 of the Contract.
- J. The Consultant shall provide Architectural Design Services for the Project. The Consultant shall be required to provide subconsultants (or in-house expertise) for other areas of design services required for the Project, including without limitation, the services listed below.
 - 1. Structural Engineering Design Services

2. Bridge and Highway Structural Engineering Design Services
3. Civil Engineering Design Services,
4. Geotechnical Engineering Services,
5. Marine Engineering Design Services,
6. HVAC and Fire Protection Design Services,
7. Plumbing Engineering Design Services,
8. Electrical Engineering Design Services,
9. Communications / Data Systems Design Services,
10. Landscape Architectural Design Services,
11. Environmental Engineering Design Services,
12. Waste Management Design Services,
13. Signage and Wayfinding Design Services,
14. Traffic Engineering Design Services (traffic analysis and planning),
15. Sustainable Design Services,
16. Lighting Design Services,
17. Building Information Modeling Services,
18. Programming Services,
19. Specification Services,
20. Cost Estimating Services,
21. Community Relations Consulting Services,
22. Filing/Zoning/Code Consulting Services

V. SCOPE OF WORK:

A. PRE-SCHEMATIC SCOPE OF WORK:

The program and space requirements for DSNY's MTS operations will be developed by the Consultant during Pre-Schematic Design. The Hudson River Park Act of 1998 is provided as attachment "Exhibit M". The Memorandum of Understanding referenced in the Hudson River Park Act 2008 Amendment will be provided as an attachment to this document, if and when it becomes available. The scope of the Pre-Schematic Phase includes:

1. Development of a comprehensive schedule and task list that identifies all project tasks to be performed for all phases of the project. The task list shall include a list of deliverables directly related to each project task, as well as a task completion and deliverables schedule.
2. Comprehensive project program development includes, but is not limited to: new MTS, including environmental education space, with its public access requirement; new MTS access road and access ramp; coordinated with HRPT and other affected stakeholders.
3. Review *Inspection Report for Department of Sanitation of New York Marine Transfer Station Gansevoort Street*, dated 01/02/2013, for information regarding piles that will remain following demolition of the existing MTS.
4. Study of queuing patterns for DSNY vehicles, with the objective to reduce impact of idling on surrounding park land. MTS tipping floor should be able to accommodate a minimum of 30 trucks an hour.
5. Study of parking criteria (required parameters) for DSNY staff and environmental center visitors to be approved by HRPT.
6. Identification of all regulatory agency requirement, responsible party, and submission of initial application.
7. Feasibility study for alternative energy sources.

B. ARCHITECTURAL DESIGN:

The size and layout of MTS structure will be based on the requirements of truck and barge movements and agreed upon by HRPT and DSNY. DSNY will provide the height requirement for each level, size and number of trucks, turning radii, and specifications for all required equipment.

The tipping floor height shall accommodate trucks with their bodies in the raised position. An interior mezzanine will be required for HVAC equipment. A storage area for heavy maintenance equipment is also required.

A Marine Transfer Station typically has two levels, a tipping level and a barge level. The DSNY vehicle is prompted to drive onto the inbound scale at the MTS to be weighed. Once on the scale, the driver will make some selection on a module to complete this transaction. All vehicles will either be retrofitted with a Radio Frequency Identification tag or they will have a transaction card. After the vehicle is weighed, it is prompted to proceed to the tipping floor. Once the vehicle is on the tipping floor of the facility, it will be prompted where to dump either by DSNY staff on the floor or by traffic signals. The vehicle operator then backs up to the designated location and dumps the contents of the vehicle into the barge located below. Once the vehicle operator has finished that process, he/she will drive the vehicle out of the facility and onto the outbound scale where the vehicle is again weighed. Again, the driver is expected to make a few selections to complete this process and upon completion, he/she will receive a slip which is a record of the transaction. Once the weighing transaction is completed, the driver will depart the facility.

The facility will require an operations management plan including dust and noise control measures to prevent waste debris from entering the waterway, and the downtime/ shutdown strategies (storm and other emergencies, barge storage, etc.). Protection of NYC waters from any pollution is paramount.

The Consultant shall:

1. Prepare all regulatory applications and review documents. The development of the site will be subject to ULURP, and environmental reviews. The Client agency will be responsible to secure USACE, DEC, and SEQRA approvals.
2. Analyze water levels and associated water current velocities at the project site to develop an accurate elevation for the barge deck with respect to Mean High Water or any other Datum.
3. Confirm barge berth utility requirements (water, electric, and others), and barge handling equipment requirements (capstans, oil/water separator, sump, etc.)
4. Provide for the Client's security requirements.
5. Identify the structural stability of existing piles and coordinate with the new foundation design. All diving shall be in accordance with Occupational Safety & Health Administration (OSHA) and United States Coast Guards (USCG) regulations.
6. Address pedestrian safety and uninterrupted access to the Hudson River Greenway. Plan for secure passage of the bicyclists via the park bicycle lane between peninsula and Route 9A. Identify and design any required detour.
7. Identify any "work zone traffic control plan" that is required and provide detailed information about traffic control devices, signage, and lane closures. Coordinate with New York State Department of Transportation (NY DOT which oversees route 9A), NYC DOT concerning traffic management, and possibly New York City Police Department (NYPD) and FDNY.
8. Coordinate work with the bulkhead stabilization project currently in design and provide for further stabilization if required by design of the new ramp and access road.
9. Provide for new borings to determine the soil bearing capacity of peninsula for the design of the foundation of the new roadway/ramp/elevated roadway.
10. Ensure that all the construction materials are appropriate for a marine environment.
11. Provide specifications for all required safety plans and mitigation plans, such as dust and noise control measures, fire safety, etc.
12. Identify the locations of the existing and proposed combined sewer outfalls (CSO) and whether they will have any effect on the MTS barge area, or vice versa [in compliance with the New York City Department of Environmental Protection (DEP)].
13. Evaluate project data, including but not limited to, site conditions, traffic patterns, and operational and other requirements for recycling at the new MTS. Develop and incorporate waste management design criteria into the new MTS in order to achieve DSNY's goals for recycling.

14. Identify and fulfill all MTS operational requirements, including but not limited to:
 - a. Staff accommodations
 - b. Heavy equipment maintenance
 - c. Storage
 - d. Truck Scale System:
 - i. Truck Scale system will be designed by another Consultant, who is under separate contract with DSNY.
 - ii. The DSNY Truck Scale Consultant shall specify all components of the truck scale system, including the components of the computerized operating system located within MTS office space.
 - iii. The Consultant and its subconsultants shall work with the Truck Scale Consultant to coordinate the truck scale system design into the MTS architectural, structural, mechanical, electrical, communications / data and plumbing design work. The Consultant and its subconsultants shall incorporate all requirements for the truck scale system into the MTS construction documents in order to provide a design for a fully operational and functioning truck scale system inclusive of all necessary components.
 - e. Truck operations and truck counts
 - f. Tipping floor signal
 - g. Dust suppression
 - h. Radiation detection
 - i. Bird and rodent control
 - j. Barge fendering system
 - k. Water filtration
 - l. Ice suppression
 - m. Barge staging and operation (the waters are part of Hudson River Park and are not available for MTS operation).
 - n. Dredging surveys and any new dredging requirement to secure proper depth for the barge operation.
 - o. Marine planning for barge operation:
 - i. Number of barges
 - ii. Peak travel time
 - iii. Required maneuverability of barge
 - iv. Fence, screen, fender, and capstan requirements
 - v. Navigational lighting/signaling/signage requirements
15. Ensure the following are included in construction documents:
 - a. Ensure that all existing utilities under the Bloomfield Street on the peninsula are protected during the construction.
 - b. Provide construction fence design (in compliance with DSNY and HRPT requirement).
 - c. Identify any requirements and/or limitations for construction working hours (in compliance with NYC DOT, NYPD, and other agencies).
 - d. Prepare a stormwater pollution prevention plan and containment plan to prevent migration of hazardous material and ground and estuarine water contamination during construction.

C. LANDSCAPE ARCHITECTURAL / SITE DESIGN:

The Consultant will produce site design and contract documents that shall:

1. Reconcile the goals of the HRPT, the DSNY to advance community acceptance and facilitate implementation.
2. Make note of and be responsive to the palette of existing, interdependent natural systems and infrastructure of the Gansevoort Marine Transfer Station (MTS) project site and its pertinent adjacencies, including:
 - a. Topographic, storm drainage, and storm drainage structures (see sub-item “e” below).
 - b. Soils and other geotechnical conditions.

- c. Bathymetric and tidal conditions.
 - d. Anticipation and accommodation of the continuing impacts of sea-level rise and climate change.
 - e. The locations, sizes, capacities, and condition of all utilities – both above ground and subsurface.
 - f. Locations, extent, condition, and types of materials comprising all existing outdoor structures, surfaces, site and security lighting, walkways, curbs, ramps, bicycle routes, gates, fences, roadways and vehicular parking, etc.
 - g. Vehicular access, traffic movements. In this context, particular attention shall be paid to:
 - i. Determining whether Bloomfield Street is active or demapped.
 - ii. Sight lines.
 - iii. Route 9A traffic volumes
3. Be compliant with the regulatory requirements of all entities and agencies having jurisdiction over the project site, proper, its immediate adjacencies, and the Hudson River, including but not limited to the HRPT, Army Corps of Engineers , the United States Coast Guard (USCG), the NYC DEP, NYS DEC, NYC Department of City Planning, NYC DOT, and NYSDAM. Compliance in this context shall include securing all permits, proactively, as required.
 4. Facilitate a joint design effort between the MTS design team and HRPT so that the implementation of the MTS and ramp / elevated roadway design and the park design can be fully coordinated. Encourage active involvement of other key project stakeholders at all major design milestones, and incorporate related, reasonable input from them.

D. SUSTAINABLE DESIGN:

1. Local Law 86 Compliance
 - a. It is the intent of the City that the new Gansevoort MTS be a model green building, and that design of the facility be in compliance with the standards set forth in the Green Building Law, Local Law 86 of 2005 (LL86).
 - b. Although industrial properties are not subject to LL86, the Consultant shall design the new Gansevoort MTS as a new construction project that complies with all applicable LL86 requirements.
 - c. In light of the applicability of LL86 requirements, this project will not be subject to Environmentally Preferable Purchasing (EPP) requirements.
2. Local Law 86 Requirements
 - a. The project shall be registered with LEED as New Construction (LEED NC).
 - b. This project shall achieve at least LEED Silver certification, following the latest LEED rating system cited by LL86 and utilizing the U.S. Green Building Council's LEED Online website for administration.
 - c. The completed project shall achieve an energy cost reduction of at least 25-30% beyond the base building defined by ASHRAE 90.1-2007.
 - d. The completed project shall achieve a potable water use reduction of at least 20-30% beyond the base building, if the construction cost of domestic plumbing work (including fixtures) exceeds \$500,000.
3. Other Consultants and Sub-consultants
 - a. The Consultant is required to provide the services of a LEED accredited professional in order to effectively administer LEED registration, reporting, and certification for this project as required by LL86.
 - b. Due to the significant impact of lighting on the project's budget and energy profile as well as the effective use of the space, the Consultant is also required to provide the services of a Lighting Consultant unless in-house expertise can be demonstrated.
 - c. The Consultant shall also provide all services necessary to support the Commissioning Agent to be hired under a separate contract by DDC.
4. General Scope of Work
 - a. The scope of work shall include the sustainable design services defined in the DDC *Design Consultant Guide* and in the Local Law 86/2005 LEED Project Timeline

- at <http://www.nyc.gov/html/ddc/html/design/86.shtml>, including all tasks, submittals, filing/registration activities, and fees required to receive formal LEED Silver certification, from Schematic Design through post construction.
- b. Design services shall include all plans, energy models, analyses, projections, and reports required by LL86 and/or the USGBC to indicate how the stated goals are expected to be reached. Services during construction shall include tracking and recordkeeping required to show compliance with LEED.
 - c. Draft LEED Plan: At the beginning of Schematic Design the Consultant shall prepare a draft LEED plan showing how Silver certification and any additional performance criteria will be achieved. This base plan, to be updated with each phase of design, shall be supported by an energy analysis plan proposing the modeling software and/or other methodologies to be used to determine predicted energy performance, and a comparison of potential energy efficiency measures. Examples of a LEED plan and other required deliverables can be viewed at <http://www.nyc.gov/html/ddc/html/design/forms.shtml>.
 - d. LEED Workshop: Early in Schematic Design the Consultant shall organize and facilitate an all-inclusive workshop to review and solicit comments and input on the drafts of the LEED plan and other deliverables.
 - e. Environmental Programming Matrix: During Schematic Design, the Consultant shall work with the client to develop an environmental programming matrix delineating the size, occupancy, and hours of use for each type of space planned for the project, as well as its temperature, ventilation, lighting, and acoustical parameters.
 - f. Early in Construction Administration the Consultant shall organize and facilitate an all-inclusive meeting to describe the project's sustainable design and construction requirements.
 - g. All concerned parties including Consultant, Sub-consultants, Construction Manager, Contractor, Commissioning Agent, Client Agency, and DDC shall participate in the workshop, construction kick-off, and other LEED strategy, tracking, and compliance meetings to be held periodically throughout design and construction.
5. Programming Considerations
- a. While LEED and LL86 requirements will apply to the entire facility, the new Gansevoort MTS will primarily comprise an enclosed, non-conditioned space, with a much smaller amount of fully conditioned space.
 - b. Conditioned space: Occupied spaces will include the tipping floor control booth, bathrooms and locker rooms, an environmental education center, and ancillary spaces. The environmental education center will include a multipurpose classroom, exhibit hall, and viewing area overlooking the tipping floor, and is not intended to accommodate enough people to qualify as a place of assembly.
 - c. Non-conditioned space: While this area will not be air-conditioned, there will be significant ventilation and air filtration requirements to handle emissions from barges and heavy trucks; extensive lighting requirements, as the facility will be in use 24 hours a day; seasonal heating requirements; and some non-standard plumbing requirements, such as a dust-suppression system for the tipping floor.
6. Possible Environmental Permitting Considerations
- a. Processing of solid waste
 - b. Storage of petroleum and hazardous waste
 - c. Construction and/or reconstruction in navigable waters
 - d. Construction within a tidal wetland, designated coastal zone, and Special Flood Hazard Area
 - e. Construction and operation of a new source of air contamination and high ambient noise levels
 - f. Construction of a stormwater point source discharging into the Hudson River
 - g. Discharge of stormwater associated with industrial activities
7. Other Environmental Priorities
- a. Waterfront access and recreational activity: Siting and massing of the facility, and especially its vehicular circulation elements, shall harmonize with the design of the adjacent Hudson River Park landscape, facilitate uninterrupted pedestrian and bicycle circulation along the Hudson River Greenway, and invite public access to all edges of the Gansevoort Peninsula.

- b. Environmental awareness and education: The facility as a whole, and not just the environmental education center within, shall be designed in part to maximize the visibility and public appreciation of key sustainable design features.
 - c. Climate change: Program layout, structure, building systems, architectural finishes, and access shall allow for continued operation or rapid recovery in the event of future sea level rise, heavier precipitation, higher temperatures, and more powerful storm surges.
 - d. Bird mortality: Fenestration, interior and exterior lighting, air intake and exhaust, wind turbines (if any), and other exterior features should deter bird collisions, exclude birds from the building's interior, and minimize disruption to the Atlantic migratory flyway.
8. Other Sustainable Design Priorities
- a. Heat island effect: Both the roof and roadway/bridge shall be designed to minimize heat island effect.
 - b. Materials: The large amounts of concrete and steel associated with this facility shall be specified to reduce greenhouse gas emissions and help meet goals for recycled content and regional materials.
 - c. Renewable power: The site's potential for wind power, solar power, and solar thermal technologies shall be analyzed. At least some renewable power generation is expected for this facility.
 - d. Energy conservation: Daylighting, automated lighting controls, natural ventilation, insulation, management of plug loads, intelligent placement of fenestration, and right-sizing of HVAC equipment shall be used to minimize energy demand.
 - e. Stormwater quantity: Stormwater capture and re-use, perhaps for cooling equipment water make-up, dust suppression spray, or irrigation of the adjacent parkland, shall be used to minimize potable water demand.
 - f. Stormwater quality: Sediment, oil, and other contaminants will have to be removed from floor, field, and area drain effluent, and safely stored for periodic removal.
 - g. Air quality: Ventilation, air filtration, dust suppression, air monitoring, and other measures will be required to handle truck exhaust, airborne particulate generation from the tipping of materials into barges, and odors.
 - h. Night sky protection: Lighting shall comply with "dark-sky" design principles.
9. Submittal to USGBC and Final Report
- a. The Consultant is encouraged to submit to USGBC for certification of LEED design credits no later than early construction, when all design decisions have been finalized.
 - b. Submittal of LEED construction credits may wait until preparation of the final commissioning report and any additional measurement and verification reporting undertaken one year post completion of construction.
 - c. At this time the Consultant shall provide a report to DDC including finalized versions of all LL86 deliverables.

E. STRUCTURAL ENGINEERING:

All structural work shall conform to the latest edition of the NYC Building Code. Deliverables are per the latest edition of the DDC Design Consultant Guide. All structural design efforts must be coordinated with the Hudson River Park Trust and Marine Company 1 of the New York City Fire Department, whose existing structures occupy the Gansevoort Peninsula and Pier 53. Upon request by the Commissioner the structural sub-consultant is to participate in value engineering reviews conducted by the NYC OMB.

The scope of work for structural engineering design shall include but is not limited to the following items:

- 1. Superstructure:
 - a. Provide the structural design services for a multi-story Marine Transfer Station /Environmental Center located over the water and all required substructures and

foundations. The upper level also known as the ‘tipping floor’ is where garbage trucks will release their cargo into DSNY barges moored below at the ‘slip level’.

- b. Provide the structural design services for an approximately 20 ft. tall and 25 ft. wide access ramp and elevated roadway to the MTS including its substructure and foundations. The location and extent of the ramp is to be coordinated with the HRPT and the DSNY. Foundation layout is to be coordinated with the existing as well as new below grade infrastructure of the peninsula.
 - c. For the structural design of those areas of the superstructures with vehicle access consider the most onerous vehicle placement and configuration resulting from standard AASHTO truck and/or standard DSNY garbage collection truck loads. Coordinate structural design with installation and operational requirements of the truck scale system.
 - d. Design all structures at water level for the appropriate impact loads resulting from boat traffic and ice loading. Provide appropriate marine structure/construction protection.
 - e. All reinforcement for concrete below grade and exposed to water shall be epoxy coated.
2. Foundations:
- a. Utilize existing reports as well as perform probes necessary to establish the structural adequacy of the existing sea wall on the west side of the peninsula. Should remediation measures be required to make safe any areas of the sea wall that affect the long term performance of the new structures the sub-consultant shall provide all necessary design work.
 - b. Previous geotechnical investigations have shown that a thick layer of compressible soil on bed rock underlies this as well as other sites along the Hudson River. The following challenges for the foundation design need to be considered by the subconsultant for geotechnical engineering or marine engineering.
 - i. Deep pile foundations extending 100’-200’ may be required to develop the required compression strength to support the new structures.
 - ii. This compressible layer of silty clay may offer little resistance to lateral forces necessitating the use of battered piles.
 - iii. Varying water levels above the mud line can cause corrosion of driven steel piles.
 - iv. Due to the presence of boulders within the silty clay the installation of driven piles may pose challenges.
 - v. Surface fill may result in additional settlement of said compressible soil layer and also in related drag down forces on piles.
 - vi. This deposit of silty clay may result in a seismic site class of ‘E’ which could impact the structural design.
 - c. The Subconsultant for Structural Engineering shall conduct an independent review of the issues listed in paragraph (b) above and shall determine whether these issues exist with respect to the site for this project. If the review confirms that these issues do exist, such subconsultant shall indicate how they are to be addressed. All new footings are to be coordinated with any foundations left in place after demolition of the old facility.
 - d. All utility infrastructures above and below grade where settlement could have detrimental effects on facility operations, health and safety shall be supported on adequate foundations.

F. HVAC AND FIRE PROTECTION:

General Criteria: Scope of work is to design the heating, cooling and ventilating systems, including controls, and fire protection systems to be installed at the Gansevoort Marine Transfer Station. The heating, cooling and ventilation systems shall provide an acceptable air quality environment for waste storage and processing, the operating personnel and the other occupied spaces. The consultant shall consider energy conservation in all aspects of this project and provide an energy efficient design.

Codes and Standards: All mechanical work is to be designed based on the 2008 NYC Building Code (NYC BC), Mechanical Code (NYC MC), Fuel gas Code (NYC FGC), Fire Code (NYC FC), the 2011 New York City Energy Conservation Code (NYC ECC) and the following Standards, including but not limited to: the DDC Design Consultant Guide, the City of New York Department of

Sanitation, the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), Occupational Safety and Health Administration (OSHA), Underwriters Laboratories (UL) and good design practice.

Climate Data: The design of the heating and cooling systems shall be based on the outdoor air temperatures indicated in the table below.

Season	Dry Bulb (°F)	Wet Bulb (°F)
Winter	10	N/A
Summer	89	73

As per the 2011 NYC ECC, the interior design temperatures used for heating and cooling load calculations shall be a maximum of 72°F for heating and a minimum of 75°F for cooling.

SCOPE OF WORK:

1. The Consultant shall submit heating and cooling load calculations as per Section MC 312 of the 2008 NYC Mechanical Code and Section 503.2 of the 2011 NYC ECC. Heating and cooling equipment and systems capacity shall not exceed the calculated loads and must be right-sized as per Section 503.2.2 of the 2011 NYC ECC.
2. Provide a Professional Statement of energy code compliance by the design professional, an Energy Analysis demonstrating such compliance and a Drawing Set supporting the Energy Analysis as per the 2011 NYC ECC.
3. Mechanical equipment efficiencies shown on the drawings shall comply with the minimum efficiency requirements as per Section 503.2.3 of the 2011 NYC ECC.
4. The Consultant shall locate all new equipment in secure locations. Interior equipment shall be designed with ample space for routing piping and ductwork, access for maintenance, removal and replacement.
5. Confirm that any mechanical equipment capable of communicating noise to the building exterior; satisfies the requirements of MC 926 and NYC Local Law 113-2005, Subchapter 5, Sections 24-227 and 24-232. Testing and reporting shall be performed to establish ambient baseline noise level conditions before the new equipment is installed. The Consultant shall evaluate potential conditions affecting the unwanted sound (noise) propagation from the site property to nearby residential and commercial properties and propose noise control measures designed to adequately address the requirements MC 926 and NYC Local Law 113 of 2005.
6. Tipping floor, and Pier areas interior spaces only:
Mechanical ventilation shall be provided (100% outdoor air) for all interior areas using centrifugal supply fans interlocked with associated in-line or propeller type exhaust fans. Provide continuous air monitoring detection systems for the carbon monoxide and combustible gases generated on the tipping floor by the truck dumping operations.
7. At least three options shall be considered for the cooling, heating and ventilation systems design for the Environmental Learning Center, Offices and other occupied building spaces. The following options may be considered:
 - a. Alternative 1:
Provide indoor unit DX air conditioning systems with gas-fired furnace and return/spill air fans, ductwork (with hot water or electric heating coils serving perimeter zones for individual temperature control) and supply and return air registers.
 - b. Alternative 2:
Provide two (2) air-cooled chillers. Each chiller will be sized for 80 percent of the calculated cooling load. Primary and secondary pumps will distribute chilled water to ducted, zoned air handling units (with hot water or electric heating coils serving perimeter zones for individual temperature control) with supply and return air registers.

8. New gas-fired hot water boilers are the recommended option to provide heat to the Environmental Learning Center, offices and other occupied spaces. Pumps will distribute hot water to heating coils in air-conditioning units and to hot water unit heaters in the stairwells and vestibules.
9. Economizers shall be provided as per Section 503.3.1 of the 2011 NYC ECC. Outdoor air will be preheated by hot water or electric heating coils integral with the air-conditioning systems if feasible. Provide fire/smoke dampers at all outdoor air intake openings as per Section MC 401.5.1.
10. Heating and cooling equipment controls to be integrated with a BMS capable of monitoring and controlling inputs from a remote location.
11. Automatic sprinkler systems will be provided. Tipping floors, Ramps and Pier areas will be served by dry type systems. The Environmental Learning Center, Offices and other occupied building spaces will be provided with wet type systems. Water supplies, fire department connections, standpipes, fire pumps, water flow Indicators, supervisory switches, alarms, zones of control, riser diagrams, floor control valve assemblies with system/zone inspectors test connections, emergency power and all needed accessories shall be provided as per BC Chapter 9 and NFPA 13-2002.
12. The Consultant shall submit a DEP hydrant flow test letter and provide system hydraulic calculations as per BC 903.1.2 and NFPA 13-2002.
13. NYC DEP standards permit the use of approved double detection check valve assemblies for the fire service connections to a potable water supply. The design shall provide a fire water service detail that is consistent with DEP requirements. Review and confirm the Contractor's responsibilities to obtain all necessary permits to perform the work required and to provide all required equipment to make the connection to the city water main in accordance with DEP requirements.

G. PLUMBING:

Provide for all utilities including but not limited to sanitary, storm water, gas, domestic hot and cold water and combination fire standpipe/sprinkler service. Include associated water meters and backflow Preventers. All services shall terminate beyond the building to the existing street line or as directed by the utility company requirements. The consultant shall consider water conservation in all aspects of this project and provide an economical design.

1. Provide a complete sanitary and vent system, storm water system including roof drains, and related piping. The storm water control flow shall be in accordance with the Department of Environmental Protection (DEP) guidelines and requirements. Any plumbing fixtures drainage which cannot be conveyed by gravity out to the street sewer shall be piped to a duplex sewage ejector pump pit. The discharge shall then connect into the gravity system. A separator/interceptor shall be provided in any areas where it is determined that fats, oils, grease and/or sand exist and may be discharged into the sanitary system. The system shall be designed as per DEP rules and regulations, and a separator/interceptor of adequate size shall be provided before any discharge having oils, fats, grease and sand enters the main sewer line. Vehicular areas shall have a sand/oil/water separator on all catch basins and or area drains, including, as required, area drains for truck scale pits.
2. Provide one incoming service for domestic water and fire services including water meters and backflow preventers for both systems. Provide a complete domestic water distribution system to all plumbing fixtures and to any equipment required to receive water including equipment specified under another contract. Include a duplex water booster pumping system that is capable of delivering adequate water pressure at furthest plumbing fixture or piece of equipment, if the available water pressure in the street main is not adequate. Also include a fire pump if the water main in the street is not adequate to provide the calculated water pressure at the most remote area for sprinkler and or fire standpipe systems.
3. Provide a complete hot water distribution system to all plumbing fixtures and equipment that require hot water including but not limited to duplex gas fired water storage type heaters, hot

water and hot water circulation piping, circulation pumps and controls. Showers shall have master thermostatic mixing valves limiting the delivered water temperature. Where water temperature requirements exceed 140 degrees provide a hot water booster heater.

4. Provide a new incoming gas service including connection to existing street main, gas meter, and distribution piping to gas operated equipment. This needs to be coordinated with HRPT. Where gas pressure is not adequate provide a gas booster that will meet the volume and maximum pressure range to any gas fired equipment. If pressure in the street main exceeds the maximum pressure to any gas fired equipment include pressure regulators and regulator vents where required.
5. Provide insulation on all domestic cold water, hot water, hot water circulation piping and horizontal storm water piping. Include electric heat traced piping for any other piping systems and appurtenances that are subject to freezing conditions.
6. Provide all new plumbing fixtures, accessories all related piping and all necessary plumbing work in toilets, showers, kitchens, janitor's closet, floor drains, where required by applicable codes or by other Authorities having jurisdiction.
7. Provide handicap accessible plumbing fixtures and accessories where required by applicable codes or where required by other authorities having jurisdiction.
8. Provide self-contained electric water coolers and all associated plumbing work as required.
9. Provide exterior hose bibbs (non-freeze type) for ground maintenance operations and in the vehicular areas. Provide a complete dust control system.
10. Provide plumbing work for all water cooled HVAC equipment. Provisions shall be made for the disposal of condensate from cooling equipment as required.
11. The Consultant shall coordinate the level of redundancy with Department of Sanitation for all required plumbing equipment and services.
12. Provide a complete compressed air system for the filling of tires and operation of required tools at the proper pressure, volume and duration of operation, including all required pumps, receiver tanks, controls, descant dryer and any required filters and related piping. The consultant shall verify the requirement as per DSNY program at the pre-schematic phase of the project.
13. The consultant shall provide for the testing of all plumbing systems and connections to equipment as required by NYC Building Code or by other Authorities having Jurisdiction.
14. The consultant shall provide services, fixtures, and equipment capable of lasting in a salt water environment and provide protection for piping and equipment exposed to wave action, high water levels, and storm surge.

H. ELECTRICAL:

1. General criteria:

The work shall consist of studies of the electrical systems for the project including lighting, power, low voltage systems, and any other work to establish the basic design. Clear documentation including study worksheets, background data, calculations, drawings, specifications, catalog data, etc. shall be presented to DDC and DSNY with all reports, drawings, and analysis. The consultant shall consider energy conservation in all aspects of this project and provide an economical design.

The electrical work for this project shall be designed under the supervision of a qualified Electrical Engineer who shall formally attest that the electrical design is in conformance with the New York City Electrical Code, NYC Building Code, New York City Energy Conservation Code, IESNA, NFPA, UL, DDC Design Consultant Guide, DSNY, HRPT (Hudson River Park Trust), ADA, LEED compliance, New York City latest Fire Department Specification and Technical Standards. The Electrical Engineer shall be available when requested to attend meetings and shall respond to review comments timely.

2. The work shall include as a minimum the following items:
 - a. Coordination with utility companies
 - b. Electric service entrance equipment, switchboard with metering
 - c. Service grounding system

- d. Equipment grounding system
 - e. Motor control center
 - f. Control Booth power, lighting and low voltage systems
 - g. Building power distribution, lighting and low voltage systems
 - h. Emergency generator for essential systems
 - i. Emergency lighting
 - j. Lightning and surge protection
 - k. Building exterior lighting and security lighting
 - l. Roadway, vehicular circulation and parking lighting
 - m. Lighting fixtures
 - n. Exit lights
 - o. Regular and special outlets
 - p. Conduit and wiring systems for power, lighting and low voltage
 - q. Power and control wiring for machinery, appliances, and motorized equipment such as truck scales, hoists, capstans, kitchen equipment etc.
 - r. Power for HVAC and Plumbing Equipment
 - s. Power for air monitoring system
 - t. Power for BMS system
 - u. UPS backup for critical equipment
 - v. Telephone, intercom, paging, doorbell and data systems
 - w. Cable TV
 - x. Fire and Sprinkler Alarm Systems
 - y. Security system, intrusion alarms, CCTV, card readers, gates, door locks etc. as required
 - z. Mobile phone battery charging outlets
 - aa. Seismic Design consideration
 - bb. Waterproofing and corrosion proofing as required for all electrical equipment in corrosive areas
3. Electric Service and Equipment:
The incoming electric service to the building shall be 480/277 volt 3 phase 4 wire 60 cycles. At the beginning of the project a service request shall be submitted to Con Edison (a copy of which shall be submitted to DDC, during the schematic design stage), consisting of the following:
- a. Floor plan showing the electric switchboard room and the desired point of entry.
 - b. Plot indicating curb, street and building lines with all necessary dimensions including a benchmark from an existing reference point of entry.
 - c. A schedule of:
 - i. The lighting load in KW
 - ii. Miscellaneous load-receptacles, etc.
 - iii. The motor load in HP
 - iv. Size of largest motor
 - v. Breakdown of the load in terms of size in KVA, KW or HP and designation of various equipment. This load breakdown shall include a minimum of 25% spare capacity for future loads.
 - vi. When the service layout is obtained from the Con Edison a copy shall be submitted to DDC for review and compliance.
4. Building Electrical Power Distribution System
- a. Power distribution system:
 - i. Incoming service end box with copper details
 - ii. Switchboard for incoming service shall have main disconnect switch, CT, and metering compartments. Switchboard shall be equipped with volt meter and amp meter switches.
 - iii. Provide main distribution board and related equipment
 - iv. Provide for receptacles & communication outlets.
 - b. Panel board main buses shall be copper 3 phase 4 wire.
 - d. Motor control center positions shall have a disconnect switches with “hand off automatic “switch and pilot lights

- c. K rated heavy duty step down 480-120/208 volt transformer
 - d. All wires shall be copper, sized suitable for its intended use
 - e. Conduit shall be minimum 3/4 inch galvanized steel with threaded RGS fittings and PVC coated where subject to water or corrosive environment.
 - f. Provide power connections to all electrically operated equipment furnished under the other contracts, including mounting details and installation of all starting and control equipment, unless furnished integrally with the equipment
 - g. Avoid exposure to high levels of electromagnetic fields, office and workroom walls shall not be adjacent to electrical switchboard rooms/closets
 - h. Isolated ground computer panels shall have surge protection and double sized neutrals. The isolated ground shall be connected to the street side of the incoming water service
 - i. Provide load summaries given connected, spare and demand loads
5. Interior Lighting System
 - a. Lighting levels as specified by DSNY and IESNA standards and the NYC ECC.
 - b. Submit catalog cuts for the fixtures with the fixture types and tables of coefficients of utilization during the Schematic Design Phase. Submit foot-candle calculations. Identify the fixture type on each catalog sheet and on the calculation sheet.
 - c. Conduit and wiring shall be concealed in finished spaces.
 - d. Exit lights shall be light emitting diode type (LED).
 6. Exterior Lighting: Provide exterior lighting and lighting levels in accordance with DSNY, IESNA, and applicable LEED requirements
 7. Emergency Lighting: Provide exit and emergency fixtures in essential locations for proper egress as required by code.
 8. Regular and Special Outlets: Provide electrical outlets as required, with particular attention to supplying DSNY equipment.
 9. Communications/Data Telephone System: Provide a telephone/data conduit system in accordance with the requirements of the Telephone Company and DSNY.
 10. Conduit System and Outlets for DSNY Equipment: Provide conduits and electrical outlets at locations as directed by DSNY.
 11. Fire Safety System
 - a. Provide engineering services for the planning, design and specifications for an effective and efficient fire detection, /fire alarm system as required by code.
 - b. Determine which codes and standards are applicable.
 - c. Prepare plans showing the fire safety system.
 - d. Provide 25% spare capacity.
 - e. Define the fire safety system and develop design drawings and specifications as noted:
 - i. Provide scaled floor plans and riser diagram showing location of all items including controls, wiring, initiating devices, remote and the auxiliary equipment. Tie to remote central station alarm monitoring system. Complete specifications including descriptions, ratings and listing of all equipment.
 - ii. Describe sequence of operation.
 - iii. Submit fire protection plans to the NYC Fire Department for approval.
 - iv. Provide operating and testing procedures. Consultant shall witness the initial acceptance test.
 12. Emergency Generator System: Provide emergency generator, transfer switch, load bank, etc. for essential systems.
 13. Intercom and Paging Systems, Cable TV, Door Annunciator and security systems: Provide push button door annunciator system, card reader system, stand-alone intercom system, security system, and cable TV installations as required by DSNY.
 14. Truck Scales: Provide for communications/electric system that monitors and runs the truck scale system. E-Z Pass style equipment that identifies the in-coming or out-going truck. Field equipment is required that is accessed by the truck driver, and office computer system in the main office that monitor the system and records activity, and generates reports.
 15. General Design Requirements:

- a. Power panels and lighting panels shall be of the circuit breaker type and in general arranged for three (3) phase, four (4) wire. All panels shall be provided with 25% spare circuits to permit future expansion. All new panels shall have door in door trim with Yale lock and #47 key.
 - b. Separate riser diagrams shall be provided for power, telephone and low voltage systems.
 - c. Electric contract plans shall include separate drawings for electrical power, emergency power, panel schedules, fire alarm system, lighting, convenience receptacles, telephone and other low voltage systems. A symbol list with general notes shall be included in the drawings.
 - d. Spaces in the building shall be identified with room numbers and names and all columns shall be given consecutive numbers or other identifications.
 - e. Lighting and power panels shall have complete schedules giving the circuit number, circuit breaker type and trip rating, load in watts and circuit designation for each circuit.
 - f. Home runs shall be shown and properly indexed as to number and size of conduit and wires and destination.
 - g. Fixture outlets shall be marked with the fixture type and control point.
 - h. Lighting fixtures shapes with details of construction and supports shall be shown on the drawings.
 - i. Lighting fixture schedules and summaries shall be shown on the drawings.
 - j. Drag wire shall be included in all empty conduits that are installed.
 - k. All cable connectors shall be of the copper pressure plate type, as approved. Connections to bus bars for cable sizes No. 1/0 and larger shall be made with 2 cadmium or zinc-plated bolts.
16. Explore the use of alternative energy systems such as but not limited to wind turbines, tidal power, and photovoltaic. Submit a scheme and feasibility study at the pre-schematic phase of the project.

VI. REQUIRED AGENCY REVIEWS AND APPROVALS:

The Consultant shall identify all regulatory agencies that shall review, approve, and issue permits for MTS construction. The following list is a partial list of agencies required to review this project. The consultant shall identify all additional required agencies along with their submission procedures and requirements:

- A. U.S. Army Corp of Engineers
- B. U.S. Coast Guard (review of pier lighting and markings during and after construction).
- C. U.S. Environmental Protection Agency.
- D. Threatened and Endangered Species Review (National Marine Fisheries service, U.S. Fish and Wildlife Service).
- E. New York State Department of Environmental Conservation (Tidal Wetland, Petroleum Storage, Storm Water Permit, Protection of Waters, Clean Water Act, Rivers and Harbors Act, and other required filing).
- F. New York City Department of City Planning (ULURP, Waterfront Revitalization Program).
- G. New York State Department of State (Coastal Policy Consistency).
- H. New York City Department of Environmental Protection (Industrial Process, Industrial Wastewater Quality Control, etc.)
- I. Mayor's Office of Environmental Coordination.
- J. New York State Department of Transportation (roadway, bikeway, traffic signal, etc.).
- K. New York City Department of Transportation.
- L. New York City Fire Department
- M. New York City Department of Small Business Services.
- N. Federal Communication Commission (two way radio on site)

VII. SUBMISSION REQUIREMENTS:

- A. Public Design Commission (PDC): This project will require approval of the PDC. The Consultant shall refer to the PDC Website for Design Review and Presentation Guidelines. In addition to the presentations for Preliminary and Final Approvals, presentation to the PDC for Conceptual Approval will be required. Should the PDC not accept the initial Conceptual, Preliminary and/or Final submission, the Consultant shall make additional submissions necessary to obtain approval.
- B. Submit final cost estimate, drawings, and BIM model to DDC on CD, and paper.
- C. Specifications and cost estimates are required to be in the latest CSI Masterformat.
- D. This project will be bid as a single contract pursuant to a Project Labor Agreement (PLA).
- E. Schedule of deliverables (prints and copies):

Contract Stage	Reports	Dwg	Specs	Estimate
Pre-Schematic Phase	12	As Req'd		12
Schematic Design	-	12	-	12
Design Development	-	12**	12*	12
50% Construction Documents	-	12**	12	
100% Construction Documents	-	12**	12	12
Compliance***(CD)	-	12	12	12

- * Outline spec is required at this submission.
- ** These submissions shall include requested half size drawings.
- *** Resubmissions will be required until the documents are acceptable.

VIII. SUBMISSION SCHEDULE:

- A. Pre- Schematic Phase: The time frame for completion of all required services for the Pre-Preliminary Phase is 90 consecutive calendar days. Such time frame shall commence as of the date of the written notice of award and shall not include any review time by agencies whose approval the Consultant is required to obtain. During the Pre-Schematic Phase, the Consultant shall submit deliverables in accordance with the requirements set forth in the DDC Design Consultant Guide.
- B. Design Phase: The time frame for completion of all required services for the Design Phase is 570 consecutive calendar days (ccds). Such time frame shall commence as of the date on which the Consultant is directed to proceed with the Design Phase and shall not include any review time by agencies whose approval the Consultant is required to obtain. During the Design Phase the Consultant shall submit deliverables as set forth in the DDC design Consultant Guide in accordance with the requirements set forth below:

Schematic Design Documents	90 ccds
Design Development Documents	180 ccds
Construction Documents	300 ccds

AERIAL VIEW OF SITE EXISTING CONDITION: THE DEMOLITION OF THE DSNY BUILDINGS ON THE GANSEVOORT PENNINSULA AND THE EXISTING MTS BUILDING IS UNDER A SEPARATE CONTRACT AND IS EXPECTED TO BE COMPLETED BY MID-2016.



EXHIBIT G

SCHEDULE B: M/WBE UTILIZATION PLAN

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

EXHIBIT H

DESIGN CONSULTANT GUIDE (November 2012)

The Design Consultants Guide (November 2012) is available at the website below.

<http://www.nyc.gov/html/ddc/html/home/home.shtml>

EXHIBIT I

DDC BIM GUIDELINES (July 2012)

The DDC BIM Guidelines (July 2012) are available at the website below.

<http://www.nyc.gov/html/ddc/html/home/home.shtml>

EXHIBIT J

APPENDIX A

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

APPENDIX A

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

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions.....1

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement.....1

Section 2.02 Conflicts of Interest.....2

Section 2.03 Fair Practices.....2

Section 2.04 VENDEX.....2

Section 2.05 Political Activity.....3

Section 2.06 Religious Activity.....3

Section 2.07 Unlawful Discriminatory Practices: City Admin. Code § 6-123.....3

Section 2.08 Bankruptcy and Reorganization.....3

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment.....3

Section 3.02 Subcontracting.....4

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status.....5

Section 4.02 Employees.....5

Section 4.03 Removal of Individuals Performing Work.....5

Section 4.04 Minimum Wage.....5

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e.....5

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

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity.....6

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records.....7

Section 5.02 Retention of Records.....7

Section 5.03 Inspection.....8

Section 5.04 Audit.....8

Section 5.05 No Removal of Records from Premises.....8

Section 5.06 Electronic Records.....8

Section 5.07 Investigations Clause.....8

Section 5.08 Confidentiality.....10

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS AND ANTITRUST

Section 6.01 Copyrights.....11

Section 6.02 Patents and Inventions.....12

Section 6.03 Pre-existing Rights.....12

Section 6.04 Antitrust.....12

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure.....12

Section 7.02 Commercial General Liability Insurance12

Section 7.03 Professional Liability Insurance.....12

**Section 7.04 Workers' Compensation, Disability Benefits, and
Employer's Liability Insurance13**

Section 7.05 Unemployment Insurance13

Section 7.06 Business Automobile Liability Insurance.....13

Section 7.07 General Requirements for Insurance Coverage and Policies.....13

Section 7.08 Proof of Insurance.....13

Section 7.09 Miscellaneous14

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions.....15
Section 8.02 Protection of City Property.....15
Section 8.03 Indemnification15
Section 8.04 Infringement Indemnification15
Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation.....15
Section 8.06 Actions By or Against Third Parties.....15
Section 8.07 Withholding of Payments.....16
Section 8.08 No Third Party Rights.....16

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes.....16
Section 9.02 Changes Through Fault of Contractor.....16

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause.....16
Section 10.02 Reductions in Federal, State and/or City Funding.....17
Section 10.03 Contractor Default17
Section 10.04 Force Majeure18
Section 10.05 Procedures for Termination.....19
Section 10.06 Miscellaneous Provisions19

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment.....19
Section 11.02 Electronic Funds Transfer.....20

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law.....20
Section 12.02 Jurisdiction and Venue.....20
Section 12.03 Resolution of Disputes.....20
Section 12.04 Claims and Actions23

Section 12.05 No Claim Against Officers, Agents or Employees.....23

Section 12.06 General Release.....24

Section 12.07 No Waiver.....24

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules.....24

Section 13.02 All Legal Provisions Deemed Included.....24

Section 13.03 Severability / Unlawful Provisions Deemed Stricken.....24

Section 13.04 Compliance With Laws.....24

Section 13.05 Americans with Disabilities Act (ADA).....24

Section 13.06 Not Used25

Section 13.07 Participation in an International Boycott.....25

Section 13.08 MacBride Principles.....25

Section 13.09 Not Used.....25

Section 13.10 Not Used.....25

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent.....25

Section 14.02 Merger.....25

Section 14.03 Headings.....25

Section 14.04 Notice.....26

Section 14.05 Monies Withheld.....26

Section 14.06 Whistleblower Expansion Act Rider.....26

AFFIRMATION.....28

CERTIFICATION BY BROKER.....29

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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.

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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).

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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,

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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.

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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.

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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;

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

- 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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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.

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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.

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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.

Section 14.06 Whistleblower Protection Expansion Act Rider

(1) In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

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

(b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

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

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

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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

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

(e) This rider is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

(2) Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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.

Appendix A (Architects, Engineers and Surveyors) March 2013 Final

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