



DAVID J. BURNEY, FAIA
Commissioner

CAROL DIAGOSTINO
Agency Chief
Contracting Officer

May 19, 2010

ADDENDUM NO. 3

PROJECT: HWDRWALLF, REQUIREMENTS CONTRACT FOR ENGINEERING DESIGN AND RELATED SERVICES FOR RETAINING WALLS, CITYWIDE

PIN: 8502010RQ0002P

THE ADDENDUM IS ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THE REQUEST FOR PROPOSALS AND IS HEREBY MADE A PART OF SAID REQUEST FOR PROPOSALS TO THE SAME EXTENT AS THOUGH IT WERE ORIGINALLY THEREIN.

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REQUEST FOR PROPOSAL

The Request for Proposals (RFP) is amended as follows:

- (1) Submission Deadline: The proposer shall deliver the Proposal on or before 4:00 P.M. on June 2, 2010.
- (2) Section III F: Delete in its entirety and replace with new Section III F set forth below.

F. Payment Provisions:

The terms and conditions regarding payment to the consultant are set forth in Article 7 of the attached contract. The method of payment for the performance of services by the consultant shall be specified by the Commissioner in the Task Order. The methods of payment are set forth below. Multipliers for Overhead and Profit applicable to the Consultant and each subconsultant shall be negotiated with the selected proposer.

1. Services Based on Design Fee:

If the method of payment for the performance of services, or any portion thereof, is through a Design Fee, such Design Fee shall be negotiated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit. Direct salary rates per hour for required personnel shall be determined by the Commissioner in accordance with Article 7 of the attached contract.

2. Services on a Time Card Basis:

If the method of payment for the performance of services, or any portion thereof, is on a time card basis, payment shall be calculated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit. Direct salary rates per hour for required personnel shall be determined by the Commissioner in accordance with Article 7 of the attached contract.





(3) Section VI A: Delete in its entirety and replace with new Section VI A set forth below.

A. Selection Process:

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

(4) Attachment 4: Delete in its entirety and replace with revised Attachment 4 attached to this Addendum.

(5) Attachment 5: Delete in its entirety and replace with revised Attachment 5 attached to this Addendum.

CONTRACT

(1) Contract (Dated January 2010): Delete in its entirety and replace with revised Contract (Dated May 2010) attached to this Addendum.

Contact: John Katsorhis, katsorhjo@ddc.nyc.gov
Phone No.: 718-391-2263

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By signing in the space provided below, the Proposer acknowledges receipt of this Addendum.

THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER FOR THE CONTRACT AND ATTACHED TO THE TECHNICAL PROPOSAL.

Carol DiAgostino

Agency Chief Contracting Officer

Name of Proposer

By _____

Title _____



ATTACHMENT 4

FEE PROPOSAL

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

Negotiation: DDC will attempt to negotiate the items listed below on a fair and reasonable basis with the highest ranked proposer. If negotiations are not successful, DDC will enter into negotiations with the next highest ranked firm.

- Multipliers for Overhead and Profit applicable to the Consultant and each Subconsultant
- Maximum Allowable Direct Salary Rates Per Hour for All Required Titles. The negotiation of such rates shall be based on the Actual Direct Salary Rates Per Hour submitted by the proposer, as well as the projected increase per year in such rates, based on the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index").

Increases in Rates: Increases in rates shall be in accordance with Article 7 of the attached contract.

The proposer shall submit the following:

(A) Multipliers for Overhead and Profit: The proposer shall submit a Proposed Multiplier for Overhead and Profit applicable to itself as Consultant. In addition, the proposer shall submit a Proposed Multiplier for Overhead and Profit applicable to each subconsultant listed in Attachment 2. Such Multipliers are subject to negotiation.

- (1) The proposer shall submit the following information on behalf of itself as Consultant and for each subconsultant listed in Attachment 2.
 - (a) If the proposer, or its subconsultant(s), 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. The proposer is advised that DDC has **NO OBLIGATION** to accept an Audited Multiplier for Overhead, even if such multiplier has been approved by a governmental agency.
 - (b) If the proposer, or its subconsultant(s), 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.

ATTACHMENT 4 (Continued)

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

(B) Direct Salary Rates: For each title listed in this Attachment, the proposer shall provide the following:

- (1) Actual Direct Salary Rate per Hour for each individual the proposer intends to provide for the specified title. For titles of Key Personnel set forth in Attachment 3, the proposer shall provide the Actual Direct Salary Rate per Hour of the specific individual identified for such title in Attachment 3. An individual's Actual Direct Salary Rate per Hour shall be defined as follows:
- Actual Annual Direct Salary: An individual's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) 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.
 - Actual Annual Direct Salary on an Hourly Basis: To compute an individual's actual annual direct salary on an hourly basis, the individual's actual annual direct salary, as defined above, shall be divided by 2080.
 - Payroll Register: To verify the actual direct salary information described above, the proposer must submit the firm's payroll register for the six (6) months prior to submission of the proposal.
- (2) Proposed Maximum Allowable Direct Salary Rate Per Hour. For each title listed in this Attachment, the proposer shall provide a Maximum Allowable Direct Salary Rate Per Hour. Such Maximum Allowable Direct Salary Rate Per Hour shall set the upper limit of the amount payable for the specified title throughout the base term of the Contract.

ATTACHMENT 4 (Continued)

TITLE	DIRECT SALARY RATE	
	Actual Direct Salary Rate per Hour	Maximum Allowable Direct Salary rate per Hour
STRUCTURAL ENGINEERING SERVICES		
Project Manager		
Senior Structural Engineer		
Junior Structural Engineer		
Senior Engineering Drafter/CADD Operator		
Junior Engineering Drafter/CADD Operator		
ARCHITECTURAL DESIGN SERVICES		
Senior Project Architect/Designer		
Junior Project Architect/Designer		
Senior Architectural Drafter/CADD Operator		
Junior Architectural Drafter/CADD Operator		
ELECTRICAL DESIGN SERVICES		
Senior Electrical Engineer		
Junior Electrical Engineer		
Drafter/CADD Operator		
GEOTECHNICAL ENGINEERING SERVICES		
Senior Geotechnical Engineer		
Junior Geotechnical Engineer		
Drafter/CADD Operator		
CIVIL ENGINEERING SERVICES		
Senior Civil Engineer		
Junior Civil Engineer		
Drafter/CADD Operator		
LANDSCAPE ARCHITECTURAL DESIGN SERVICES		
Senior Landscape Architect		
Junior Landscape Architect		
Drafter/CADD Operator		
URBAN DESIGN/PLANNING SERVICES		
Senior Urban Designer/Planner		
Junior Urban Designer/Planner		
Drafter/CADD Operator		
TOPOGRAPHIC SURVEY SERVICES		
Surveyor		
Party Chief		
Instrument Person		
Rod Person		
Senior Drafter/CADD Operator		
Junior Drafter/CADD Operator		

ATTACHMENT 4 (Continued)

TITLE	DIRECT SALARY RATE	
	Actual Direct Salary Rate per Hour	Maximum Allowable Direct Salary Rate per Hour
ENVIRONMENTAL ENGINEERING/HAZMAT SERVICES		
Senior Environmental Engineer		
Junior Environmental Engineer		
Technician / Inspector		
Monitor		
Certified Industrial Hygienist		
Drafter/CADD Operator		
MARINE ENGINEERING SERVICES		
Senior Structural (Marine/waterfront) Engineer		
Junior Structural (Marine/waterfront) Engineer		
Diving Inspector / Engineer		
TRAFFIC/TRANSPORTATION ENGINEERING SERVICES		
Senior Traffic/Transportation Engineer		
Junior Traffic/Transportation Engineer		
Drafter/CADD Operator		
TREE CONSULTING SERVICES		
Arborist / Forester		

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

_____ Name of Proposer

By: _____
Signature of Partner or Corporate Officer

_____ Date

_____ Print Name

_____ Title

_____ Firm

_____ EIN#

ATTACHMENT 5**MINIMUM REQUIREMENTS PER TITLE**

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

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

ATTACHMENT 5 (Continued)

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

Notes:

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

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

- (c) M.S. in forestry, arboriculture, horticulture, or related plant science field, and one year of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (d) Arborist certification from the N.Y.S. Arborists/International Society of Arboriculture Chapter, Inc., and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (e) Other state arborist certification recognized by the International Society of Arboriculture or the National Arborist Association, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction.
- (5) The minimum requirements for the specified title of Certified Industrial Hygienist (CIH) shall be the requirements set forth below:
- (a) **Certified Industrial Hygienist (CIH)** - shall possess a CIH license granted by the American Board of Industrial Hygiene (ABIH) for at least five (5) years. An advanced degree (M.S., M.E., and PhD) in science or engineering is preferred. This individual will demonstrate at least fifteen (15) years of experience in this field of expertise with not less than 5 years practical experience in the environmental engineering / science fields.
 - (b) **Duties:** The CIH will act as the lead and provide expert opinion on matters of industrial hygiene, site safety, and environmental compliance. This individual will review and interpret data, author environmental reports and site specific health and safety plans; and shall be responsible for all aspects, including execution and monitoring, of the health and safety program.
- (6) No Payment for Principal or Executive: The Consultant shall not be entitled to payment for any time a principal or executive spends performing oversight or management duties. This prohibition on payment shall not apply if the following criteria are met: (1) the principal or executive is qualified to perform services in accordance with one of the titles set forth in Exhibit D, and (2) the principal or executive is included in the approved Staffing Plan for such title.

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

BOROUGH: City Wide – All Five Boroughs

FMS NUMBER: HWDRWALLF

REGISTRATION NUMBER: _____

PIN NUMBER: 8502010RQ0002P

CONSULTANT: _____

Telephone: _____

Facsimile: _____

Standard Requirements Contract
Engineering Design and Related Services
May 2010

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

WITNESSETH:

WHEREAS, the City desires to have engineering design and related services performed on a requirements basis for various infrastructure construction projects, and

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

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

ARTICLE 1 Definitions

1.1 "Agreement" shall mean this Agreement which has been signed by the parties, including (1) the Request for Proposals for the Contract ("RFP"); (2) the Consultant's Proposal for the Contract, and (3) the Exhibits set forth below. In the event of any conflict between the Specific Requirements and any other component, the Specific Requirements shall prevail.

Exhibit A	Contract Information
Exhibit B	Subconsultants and Key Personnel
Exhibit C	Staffing Requirements: Titles and Maximum Allowable Direct Salary Rates
Exhibit D	Minimum Requirements Per Title
Exhibit E	M/WBE Subcontractor Utilization Plan
Exhibit F	Specific Requirements
Exhibit G	DDC's High Performance Infrastructure Guidelines (October 2005). These Guidelines can be downloaded from DDC's website at http://www.nyc.gov/html/ddc/downloads/pdf/hpig.pdf
Exhibit H	Requirements for Federal Aid Projects

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

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

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

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

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

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

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

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

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

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

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

1.13 "Law(s)" shall mean each and every law, rule, regulation, order or ordinance of any kind whatsoever issued by any Government Entity, in effect from the date of this Agreement through the conclusion or termination hereof, applicable to or affecting the Project and all employees engaged hereunder.

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

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

1.16 "Project" shall mean the Project, or portion thereof, for which engineering design and related services are required, as specified by the Commissioner on a Task Order basis. The services the Consultant may be required to provide for the Project are set forth in Article 6 and the Specific Requirements (Exhibit F).

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

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

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

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

1.21 "Subconsultant" shall mean any person, firm, or corporation, other than employees of the Consultant, who or which contracts with the Consultant or his subconsultants to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All Subconsultants are subject to the prior written approval of the Commissioner.

1.22 "Treasurer" shall mean the Commissioner of the Department of Finance of the City of New York.

ARTICLE 2 Compliance with Laws

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

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

2.3 The Consultant shall comply with Section 24-216(b) of the Administrative Code of the City of New York and with

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

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

ARTICLE 3 Agreement to Serve

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

ARTICLE 4 Task Order Process

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

4.2 Method of Payment: The method of payment for the performance of engineering design and related services by the Consultant shall be specified in the Task Order. The methods of payment for the performance of services are set forth in Article 7.

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

- 4.3.1 Description of the Project for which services are required
- 4.3.2 Services to be performed by the Consultant
- 4.3.3 Method of Payment for the performance of services
- 4.3.4 Requirements for scheduling and/or phasing of the services
- 4.3.5 Time frame for the completion of services
- 4.3.6 Overall Not to Exceed amount for the services to be performed. Depending on the required services and the method(s) of payment specified in the Task Order, such overall Not to Exceed amount may include the following: (1) Amount for Design Fee, (2) Allowance for Services on a Time Card Basis, and (3) Allowance for Reimbursable Services.

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

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

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

Order shall take precedence over Article 6 of this Contract.

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

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

ARTICLE 5 The Consultant's Personnel

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

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

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

5.3 Staffing Requirements: Staffing Requirements are set forth in Exhibit C. Such Staffing Requirements specify the titles of personnel which the Consultant may be required to provide, through its own employees and/or through its Subconsultants, and the maximum allowable direct salary rate per hour per title.

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

5.3.2 Maximum Allowable Direct Salary Rates: Maximum Allowable Direct Salary Rates Per Hour for all titles of personnel that may be required for the Project are set forth in Exhibit C. Such Maximum Allowable Direct Salary Rates Per Hour shall be used for the purposes set forth in Article 7.

5.3.3 Additional Required Titles: If the Project requires any additional titles of personnel that are not listed in Exhibit C, the Task Order shall specify: (1) additional required titles, (2) minimum requirements per title, and (3) maximum allowable direct salary rate per hour per title. Any additional titles specified in the Task Order, including minimum requirements per title and maximum direct salary rate per hour per title, shall be deemed included in Exhibit C.

5.4 Staffing Plan: A Staffing Plan shall be established for the Project specified in the Task Order. Such Staffing Plan must be approved by the Commissioner prior to commencement of the Consultant's services. Such Staffing Plan shall include only those personnel necessary for performance of the required services. The contents of the Staffing Plan are set forth below.

5.4.1 Services Based on Design Fee: If the method of payment for the performance of services, or any portion thereof, is through a Design Fee, the Staffing Plan shall include the following: Required titles of Key Personnel and specific individual for each title, as identified in Exhibit B.

5.4.2 Services on a Time Card Basis: If the method of payment for the performance of services, or any portion thereof, is on a time card basis, the Staffing Plan shall include the following:

- (a) Key Personnel: Required titles and specific individual for each title, identified in Exhibit B
- (b) Other Personnel: Required titles and specific individual for each title
- (c) Direct Salary Rate per hour for each specified individual, as determined by the Commissioner. The Direct Salary Rate per hour shall be the **LESSER** of (1) the individual's actual annual direct salary, computed on an hourly basis in accordance with Article 7, or (2) the Maximum Allowable Direct Salary Rate per hour set forth in Exhibit C for the title for which the Commissioner determines the individual meets the qualification requirements.
- (d) Total estimated hours and amount per title
- (e) Total estimated amount for all required personnel

5.4.3 Payment: The terms and conditions of applicable to each method of payment, as well as limitations thereon, are set forth in Article 7.

5.4.4 Proposed Staffing Plan: Within the time frame directed by the Commissioner, the Consultant shall submit a proposed Staffing Plan for the Project. Such proposed Staffing Plan shall include the items set forth above. With respect to each proposed individual, the Consultant shall provide the individual's resume, as well as any other information detailing his/her technical qualifications and expertise. If the method of payment is on a time card basis, the Consultant shall also provide direct salary information for each proposed individual, including the individual's current actual annual direct salary, as defined in Article 7, and direct salary history for the past three years.

5.4.5 Review and Approval of Staffing Plan: The Commissioner shall review the Consultant's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of such review, the Commissioner shall determine whether each proposed individual meets the qualification requirements for the applicable title. If the method of payment is on a time card basis, the Commissioner shall determine the direct salary rate per hour to be paid for each specific individual, 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.

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

5.4.7 Night Differential / Overtime: (Applicable only if the method of payment is 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.

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

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

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

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

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

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

ARTICLE 6 Scope of Services

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

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

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

6.1.3 The Consultant shall ascertain the standard practices of the City prior to the performance of services required by this Contract, and all such services shall be performed in accordance with these standard practices. If the Consultant is advised that the Project is a Federal Aid Project, the Consultant shall be familiar with the Federal Process.

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

6.3 Submission and Approval of Deliverables: The Consultant shall submit all required deliverables in accordance with the time frames specified in the Task Order. All required deliverables, including cost estimates, are subject to review and written approval by the Commissioner. All design documents are subject to approval by all regulatory agencies whose approval of the design is required, including without limitation, (1) the New York City Departments of Transportation,

Environmental Protection, and Parks; (2) the Landmark's Preservation Commission; (3) the Public Design Commission, and (4) the New York State Departments of Transportation and Environmental Conservation.

6.4 Provisions Regarding Engineering Design and Related Services

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

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

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

6.5 Additional Professional Services: The Consultant may be directed in writing by the Commissioner to provide Additional Professional Services for the Project. The Consultant shall provide such Additional Professional Services, if so directed. The Consultant shall provide such services through its own professional employees or through its Subconsultants, as directed in writing by the Commissioner. Additional Professional Services shall be services which the Commissioner determines are required for the Project and are in addition to or outside of the necessary and usual services set forth in this Article 6.

6.6 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project, as set forth below. The Consultant shall provide such Reimbursable Services, if so directed in writing by the Commissioner. The Consultant shall provide such Reimbursable Services through entities approved by the Commissioner, and shall utilize the method of procurement and form of payment directed by the Commissioner. If so directed, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$5,000. Payment for Reimbursable Services shall be in accordance with Article 7.

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

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

6.7 Non-reimbursable Services: Throughout the Project and regardless of whether specified in any Task Order issued hereunder, the Consultant shall be responsible for providing the non-reimbursable services set forth below. All costs for such services are deemed included in payments to the Consultant as set forth in Article 7 hereof.

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

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

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

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

6.9 Provisions Regarding Changes to the Design Documents

6.9.1 Changes Not Involving Scope:

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

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

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

ARTICLE 7 Payment Terms and Conditions

7.1 General

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

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

7.1.3 Task Orders: Task Orders issued hereunder shall specify an overall Not to Exceed amount for the services to be performed. Depending on the required services and the method(s) of payment specified in the Task Order, such overall Not to Exceed amount may include the following: (1) Amount for Design Fee, (2) Allowance for Services on a Time Card Basis, and (3) Allowance for Reimbursable Services. In the event the allowance amounts set forth in the Task Order are not sufficient, as determined by the Commissioner, to cover the cost of required services for which allowance amounts are specified, the Commissioner will increase the amounts of such allowances.

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

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

7.2 Method of Payment: The method of payment for the performance of engineering design and related services by the Consultant shall be specified in the Task Order. The methods of payment for the performance of required services are set forth below.

7.2.1 Services Based on Design Fee: If the method of payment for the performance of services, or any portion thereof, is through a Design Fee, such Design Fee shall be negotiated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit, as set forth in Exhibit A. Direct salary rates per hour for required personnel shall be determined by the Commissioner in accordance with Article 7.4.

7.2.2 Services on a Time Card Basis: If the method of payment for the performance of services, or any portion thereof, is on a time card basis, payment shall be calculated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit, as set forth in Exhibit A. Direct salary rates per hour for required personnel shall be determined by the Commissioner in accordance with Article 7.4.

7.3 Payment for Services Based on Design Fee

7.3.1 Application: The provisions set forth below shall apply in the event the Task Order specifies that the method of payment for the performance of services, or any portion thereof, shall be thorough a Design Fee. In such case, the Task Order shall specify a Design Fee for the required services.

7.3.2 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 amount of which shall be set forth in the Task Order. 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, as set forth in the Task Order, including all expenses related to management, overhead and any anticipated profit.

7.3.3 Payment of Design Fee: The Design Fee shall be broken down into a schedule of lump sum fees for the required deliverables. Such schedule is subject to prior written approval by the Commissioner. Upon written approval by the Commissioner of each required deliverable, the Consultant shall be paid the lump sum fee for that deliverable, in accordance with the approved schedule. Partial payments of the lump sum fee for any deliverable set forth in the approved schedule 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 that deliverable in a satisfactory and timely fashion; provided, however, partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work.

7.4 Payment for Services on a Time Card Basis

7.4.1 Application: The provisions set forth below shall apply in the event the Task Order specifies that the method of payment for the performance of services, or any portion thereof, shall be on a time card basis. In such case, the Task Order shall specify an Allowance for Services on a Time Card Basis. Such allowance is established for payment of the Consultant's staffing expenses for those personnel who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner (the "Assigned Personnel" or the "Assigned Employee"). Payment to the Consultant is subject to the limitations set forth below.

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

7.4.2 Maximum Price: The amount of the Allowance for Services on a Time Card Basis shall be based on the total estimated amount for performance of the specified services by the required personnel set forth in the approved Staffing Plan. Such Allowance amount shall constitute the maximum price to be paid to the Consultant for providing the required personnel for performance of the specified services. The Consultant shall not be entitled to payment in excess of the Allowance amount, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

7.4.3 Payment: For any week during which an Assigned Employee performs services for the Project on a time card basis, payment to the Consultant for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in paragraph (a) by the number set forth in paragraph (b), and then multiply the result by the applicable Multiplier for Overhead and Profit set forth in Exhibit A; provided, however, the Multiplier shall **NOT** apply to any increase in the Assigned Employee's Direct Salary Rate per hour for 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 this Article 7. If the Consultant receives written authorization from the Commissioner to have an Assigned Employee perform services during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for the Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for this Project for which the Consultant is not entitled to compensation, and (5) any hours other than regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
- (c) Non-billable hours shall be defined as any hours set forth time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed for this Project. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.
- (d) The costs deemed included in the Multiplier are set forth in Article 7.5 below.

7.4.4 Equitable Reduction: The amount of payment to the Consultant for services performed for the Project by an Assigned Employee, calculated as set forth above, shall be subject to an equitable reduction if, for the week during which an Assigned Employee performed services for the Project, the total number of hours for which the Assigned Employee was actually paid by the 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 the 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 paragraph (a) below by the number set forth in paragraph (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 the Project.

7.4.5 Direct Salary Rates: The Direct Salary Rate per hour for each Assigned Employee shall be determined and approved by the Commissioner in accordance with the provisions 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) For each Assigned Employee, the Commissioner shall determine and approve in writing the Direct Salary Rate per hour to be paid for such employee. An Assigned Employee's Direct Salary Rate per hour shall be whichever of the following is **LESS**: (1) Actual Annual Direct Salary Rate per hour for the Assigned Employee, computed as described below, or (2) Maximum Allowable Direct Salary Rate per hour for the Assigned Employee's title, as set forth in Exhibit C.
- (b) For each Assigned Employee, the Consultant shall submit such employee's actual annual direct salary, as defined below. In addition, the Consultant shall submit any records or documentation requested by the Commissioner to verify the Assigned Employee's actual annual direct salary rate, including without limitation, the Consultant's payroll register for the past twelve (12) months.
 - (1) 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) To compute an Assigned Employee's actual annual direct salary on an hourly basis, the Assigned Employee's actual annual direct salary, as defined in subparagraph (1) above, shall be divided by 2080.
- (c) 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 7.4.7 below. Any such increase must be approved in writing by the Commissioner.
- (d) The Direct Salary Rate per hour for an Assigned Employee, determined and approved in accordance with this section, may be adjusted in accordance with Article 7.4.6 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.

7.4.6 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:

- (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.

- (d) The premium payment shall not be subject to any multiplier whatsoever.

7.4.7 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, except as otherwise provided below. The first such increase shall be made one (1) year after the date on which the Task Order for the Project was issued to the Consultant. Thereafter, for the remaining duration of the Task Order, increases in the Direct Salary Rate(s) shall be made on a yearly basis, on the anniversary date of issuance of the Task Order. Any increase in the Direct Salary Rate(s) shall be based on an increase in the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). 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. Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only and shall have no impact on rates paid to date.

- (a) Throughout the base term of the Contract, set forth in Exhibit A, increase(s) to an Assigned Employee's Direct Salary Rate per hour shall only be permitted to the extent such increase(s) do not result in a Direct Salary Rate per hour that exceeds the Maximum Allowable Direct Salary Rate per hour for the employee's title set forth in Exhibit C. Increase(s) to an Assigned Employee's Direct Salary Rate per hour shall not be permitted if such increase(s) would result in a Direct Salary Rate per hour that exceeds the Maximum Allowable Direct Salary Rate per hour for the employee's title set forth in Exhibit C.
- (b) The Maximum Allowable Direct Salary Rates per hour set forth in Exhibit C shall apply to the three year base term of the Contract. If the base term of the Contract is extended and/or renewed, the City may issue a change order to the Consultant revising the Maximum Allowable Direct Salary Rates per hour. If no such change order is issued, the Maximum Allowable Direct Salary Rates per hour applicable to the base term shall remain in effect throughout the extension and/or renewal term.
- (c) 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.

7.5 Multipliers: Multipliers for overhead and profit applicable to the Consultant and each subconsultant are set forth in Exhibit A. If the method of payment is through fee(s), such fee(s) shall be negotiated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit. If the method of payment is on a time card basis, payment shall be calculated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit. The Multipliers for overhead and profit set forth in Exhibit A shall be deemed to include the items listed below:

7.5.1 Profit

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

- (a) All expenses for compensation paid to personnel of the Consultant (other than personnel identified in the approved Staffing Plan, except for the Project Executive). Such other personnel of the Consultant shall include without limitation all officers, principals, employees and personnel of the Consultant, serving in whatever capacity, including any Project Executive(s). Compensation for such other personnel is deemed included in the Multiplier. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, social security and medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.
- (b) All expenses for compensation paid to 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 Rate payable hereunder; (2) all payments mandated by law, including without limitation, social security and medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (2) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (3) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (4) costs for any and all other fringe and/or supplemental benefits.

- (c) All expenses in connection with the performance of services, including without limitation: (1) expenses for non-reimbursable services, as set forth in Article 6, (2) meals, and (3) lodging.
- (d) All expenses for home office general facilities, including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls to the job site and DDC (except for long distance calls to other locations as specifically required by the Commissioner), sales, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, copying, postage, and any other office expenses or overhead costs, except as otherwise expressly provided in this Agreement.
- (e) All expenses for applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.
- (f) All expenses for insurance coverage determined by the Consultant to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required by this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the Consultant, including without limitation, burglary and theft, general fidelity and payroll insurance.
- (g) All expenses in connection with losses due to theft or robbery sustained by Consultant.
- (h) All expenses in connection with fixed capital or moneys borrowed, including interest.
- (i) All expenses incurred by the Consultant with respect to routine legal services for the firm.
- (j) All management, administrative or overhead expenses of any kind whatsoever, including such expenses in connection with providing Reimbursable Services.

7.6 Payment for Reimbursable Services

7.6.1 Allowance: In the event the Commissioner directs the Consultant to provide Reimbursable Services, the provisions set forth below shall apply. In such case, the Task Order shall specify an Allowance for Reimbursable Services. Reimbursable Services shall be as defined in Article 6. No Reimbursable Services shall be provided by the Consultant, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$150, such written authorization must be provided in advance of the expenditure.

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

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

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

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

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

7.6.7 In the event the Consultant is directed, as a Reimbursable Service, to purchase any items and/or equipment, such items and/or equipment shall, unless otherwise directed by the Commissioner, be the sole property of the City upon delivery to the designated location. The Consultant shall prepare and maintain an accurate inventory of all items

and/or equipment which it is directed to purchase pursuant to the Allowance for Reimbursable Services. Such inventory shall be provided to the City upon request. Upon completion of the required work, as directed by the Commissioner, the Consultant shall turn such items and/or equipment over to the City.

7.7 Requisitions for Payment

7.7.1 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 various categories, depending on the required services and the method of payment specified in the Task Order. Such payment categories may include the following: (1) Services Based on Design Fee, (2) Services on a Time Card Basis, and (3) Reimbursable Services. The Consultant shall submit one original and two (2) copies of each requisition for payment.

7.7.2 Requisitions must be accompanied by the documentation set forth below.

- (a) Project Progress Report: The Consultant shall submit a current report indicating (1) the percentage of completion of all required Work for the Project, and (2) the services the Consultant provided during the payment period.
- (b) Services Based on Design Fee: For any period for which the Consultant is requesting payment for services based on a Design Fee, the Consultant shall provide one of the statements set forth below.
 - (1) Statement that the Consultant has received the Commissioner's written approval of the required deliverable.
 - (2) Statement that the Consultant is progressing the required work for the deliverable in a satisfactory and timely fashion. Partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work.
- (c) 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) Applicable Multiplier set forth in Exhibit A.
 - (5) Number of hours worked each day by the Assigned Employee for the week(s) in question. The number of hours per day shall be broken down to indicate the number of regular business hours and the number of non-regular business hours. The applicable 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 the Project, (2) actual hours during which the employee performed services for other projects, (3) non-billable hours, as defined above, (4) actual hours, if any, during which the Assigned Employee performed services for the Project for which the Consultant is not entitled to compensation, and (5) any non-regular business hours.
 - (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) If applicable, copy of the Commissioner's approval of the Consultant's policy regarding payment of a premium for services performed during other than regular business hours.
- (c) Reimbursable Services: For any period for which the Consultant is requesting reimbursement for

expenses incurred for Reimbursable Services, the Engineer shall submit: (1) a report describing the services the Consultant was directed to provide, and (2) receipted bills or any other data required by the Commissioner.

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

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

7.9 **Final Payment:** The acceptance by the Consultant or its assignees of the final payment under this contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release to the City from any and all claims of and liability to the Consultant, of which the Consultant was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

7.10 **Electronic Funds Transfer:** In accordance with Section 6-107.1 of the New York City Administrative Code, the Consultant agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Consultant shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" (available at <http://www.nyc.gov/dof>) in order to provide the Commissioner of Finance with information necessary for the Consultant to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Consultant shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Consultant to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

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

ARTICLE 8 Time Provisions

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

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

ARTICLE 9 Ownership of Documents

9.1 Any and all material, records or documents prepared by or for the Consultant pursuant to this Contract, including, but not limited to, notes, designs, drawings, CAD files, electronic files, tracings, specifications, estimates, reports, schedules, charts, graphs, maps, and/or photographs, shall be the property of the City. During the term of this Contract and at any time within seven years thereafter, the Consultant shall, upon demand, promptly deliver such material, records or documents to the Commissioner, or make such records available to the Commissioner or his authorized representative for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such material, records or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the Consultant.

9.2 Should such documents prepared under this Contract be re-used by the City for other than the Project originally created, it is understood that the Consultant bears no responsibility whatsoever for such re-use except in those instances where he is re-employed for re-use of the documents.

ARTICLE 10 Patented and Proprietary Items

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

10.2 The Consultant's obligation to indemnify and hold the City harmless from claims for infringement by the Consultant of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party is set forth in Article 12.

ARTICLE 11 Insurance

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

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

- (a) The City of New York, together with its officials and employees, is an Additional Insured under this policy.
- (b) Notice under the Policy to the Additional Insured shall be addressed to the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101.
- (c) Notice of Accident shall be given to the Company by the Insured within one hundred twenty (120) days after notice of such accident has been sent to the Commissioner of the Department of Design and Construction.
- (d) Notice of Claim shall be given to the Company within one hundred twenty (120) days after such notice shall be filed with the Comptroller of the City of New York.
- (e) Notice of Claim to the Company by the Insured of an accident or claim on the site shall constitute notice by the City to the Company.
- (f) Notice of Cancellation of Policy as set forth in Article 11.2.4 below.
- (g) The presence of representatives of the City at the Site shall not invalidate this policy.

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

Article 11.2.4 below.

11.1.3 Worker's Compensation and Disability Benefits Insurance: The Consultant shall provide, and ensure that each Subconsultant provides, Worker's Compensation Insurance and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

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

11.2 General Requirements for Insurance Policies

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

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

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

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

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

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

11.3 Proof of Insurance

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

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

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

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

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

ARTICLE 12 Protection of Persons and Property and Indemnification

12.1 Reasonable Precautions: The Consultant 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 Consultant's and/or its subconsultants' operations under this Agreement.

12.2 Protection of City Property: The Consultant 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 Laws by the Consultant, its officers, employees, agents or subconsultants.

12.3 Indemnification: The Consultant shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) 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 Consultant and/or its subconsultants 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 Consultant, the City shall be partially indemnified by the Consultant to the fullest extent permitted by Law.

12.4 Infringement Indemnification: The Consultant 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 subjected or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Consultant of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Consultant in the performance of this Agreement. The Consultant shall defend, indemnify and hold the City harmless regardless of whether or not the 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 Consultant, the City shall be partially indemnified by the Consultant to the fullest extent permitted by Law.

12.5 Indemnification Obligations Not Limited By Insurance Obligation: The indemnification provisions set forth in this Article shall not be limited in any way by the Consultant's obligations to obtain and maintain insurance as provided in this Agreement.

12.6 Actions By or Against Third Parties: 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 Consultant, the Consultant shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Consultant. The Consultant shall report to the Department in writing within five (5) business days of the initiation by or against the Consultant of any legal action or proceeding in connection with or relating to this Agreement.

12.7 Withholding of Payments: In the event that any claim is made or any action is brought against the City for which the Consultant 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.

12.7.1 In the event that any City property is lost or damaged as set forth in Article 12.2, 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.

12.7.2 The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 11 has accepted the City's tender of the claim or action without a reservation of rights.

12.7.3 The Department may, at its option, withhold for purposes of set-off any monies due to the Consultant under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Consultant or to the amount of any overpayment to the Consultant with regard to this Agreement.

12.7.4 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.

12.8 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 Consultant or the City or their respective officers and employees.

ARTICLE 13 Consultant Independent Contractor

13.1 The relationship of the Consultant to the City shall be that of independent contractor, and not that of an employee of the City. In accordance with such status as independent contractor, the Consultant covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including, but not limited to, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

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

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

ARTICLE 14 Suspension or Termination of Performance

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

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

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

ARTICLE 15 Resolution of Disputes

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

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

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

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

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

4. Presentation of Dispute to Commissioner.

(a) Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Commissioner within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the detailed written submission comprising the complete Notice of Dispute, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Commissioner all materials he or she deems pertinent to the dispute. Following initial submissions to the Commissioner, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

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

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

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

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

- (a) Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Commissioner, the Contractor shall submit to the Comptroller and to the Commissioner a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the decision of the Commissioner, and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.
- (b) Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Commissioner in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.
- (c) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.
- (d) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

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

- (a) the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
- (b) the City Chief Procurement Officer ("CCPO") or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and
- (c) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

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

- (a) Form and Content of Petition by Contractor. The Contractor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if

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

- (b) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Commissioner and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.
- (c) Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- (d) CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a written decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
- (e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the Corporation Counsel, the Comptroller, the CCPO, and the PPB. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
- (f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with this Article.

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

ARTICLE 16 Consultant's Report Information

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

matters related to construction or to the Director of the Mayor's Office of Operations for all other matters.

ARTICLE 17 Contract Changes

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

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

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

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

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

ARTICLE 18 Accounting Records

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

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

ARTICLE 19 Audit and Examination

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

ARTICLE 20 Moneys Withheld

20.1 When the Commissioner shall have reasonable grounds for believing that: (1) the Consultant will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will

exist against the Consultant or the City arising out of the negligence of the Consultant or the Consultant's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Consultant, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold moneys. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

ARTICLE 21 Assignments

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

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

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

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

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

ARTICLE 22 Consultant's Performance

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

ARTICLE 23 Claims - Limitation of Action

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

ARTICLE 24 No Claim Against Officer, Agents or Employees

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

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

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

ARTICLE 25 Notices

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

ARTICLE 26 Investigations

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

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

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

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

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

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

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

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

City.

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

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

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

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

26.3.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 26.2 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 26.1.3 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

26.4 Definitions Used in this Article

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

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

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

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

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

ARTICLE 27 Unlawful Provisions

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

ARTICLE 28 Modification

28.1 This Contract may be modified from time to time in a writing signed by both parties in order to carry out and

complete more fully and perfectly the services agreed to be performed under this Contract; provided, however, in no event shall such modification exceed the cost limitation approved by the Office of Management and Budget.

ARTICLE 29 Errors

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

ARTICLE 30 Representations, Warranties and Affirmations

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

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

30.2 Conflict of Interest: The Consultant represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Consultant represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

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

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

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

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

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

30.4 Affirmations: The Consultant affirms and declares that it is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts.

ARTICLE 31 No Discrimination

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 32 Equal Employment Opportunity

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

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

32.1.2 When it subcontracts, the Consultant will not engage in any unlawful discrimination in the selection of

subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status;

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

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

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

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

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

32.3 The Consultant agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000.00 to which it becomes a party, unless exempted by E. O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance.

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

ARTICLE 33 All Prior Written or Oral Agreements Excluded

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

ARTICLE 34 Head Notes and Marginal Notations

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

ARTICLE 35 Dust Hazards

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

ARTICLE 36 Participation in an International Boycott

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

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

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

ARTICLE 37 Effective and Binding

37.1 This contract shall neither be binding nor effective unless:

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

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

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

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

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

ARTICLE 38 Choice of Law, Consent to Jurisdiction and Venue

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

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

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

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

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

United States Court outside the City of New York.

38.2.4 If the Consultant commences any action against the City in a court located other than in the City and State or New York, upon request of the City, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

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

ARTICLE 39 Waiver

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

ARTICLE 40 All Defenses Reserved

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

ARTICLE 41 MacBride Principles Provisions

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

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

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

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

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

operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

41.6 For purposes of this section, the following terms shall have the following meanings: "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of work place opportunity which require employers doing business in Northern Ireland to:

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

41.7 The contractor agrees that the covenants and representations in Paragraph 41.5 above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirement contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

ARTICLE 42 Vendex Questionnaires

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

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

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

contact person for this contract.

ARTICLE 43 Ultra Low Sulfur Diesel Fuel

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

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

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

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

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

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

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

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

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

II. Ultra Low Sulfur Diesel Fuel

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

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

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

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

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

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

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

III. BEST AVAILABLE TECHNOLOGY

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

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

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

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

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

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

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

V. COMPLIANCE

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

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

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

VI. REPORTING

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

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

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

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

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

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

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

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

funded in whole or in part with federal funding.

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

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

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

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

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

NOTICE TO ALL PROSPECTIVE CONTRACTORS

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

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

The Contractor must comply with all applicable M/WBE requirements for this Contract. Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

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

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

A prospective contractor may seek a full or partial pre-award waiver of the Target Subcontracting Percentage in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the Target Subcontracting Percentage, a prospective contractor must complete the Subcontractor Utilization Plan (Part III), and must submit such

request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at poped@ddc.nyc.gov or via facsimile at (718) 391-1885. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The Subcontractor Participation Goals established for this Contract are set forth in the Subcontractor Utilization Plan (Part I) included in this Contract [see First Page, line (2) and/or line (3)]. The Subcontractor Participation Goals represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1 million.

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

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

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

5. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/getcertified, by emailing DSBS at MWBE@sbs.nyc.gov, by calling the DSBS certification hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

7. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment,

the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

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

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

10. Pre-award waiver of Target Subcontracting Percentage. Agency may grant a full or partial waiver of the Target Subcontracting Percentage to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts for under one million dollars represented by the Target Subcontracting Percentage. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.

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

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

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

12. If Subcontractor Participation Goals have been established for this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B: Miscellaneous

1. The Contractor shall take notice that, if this solicitation requires the establishment of a Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.
2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.
4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required Subcontractor Participation Goals.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements this Section 6-129, including, but not limited any Subcontractor Utilization Plan, Agency may determine that one of the following actions should be taken:
 - (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
 - (b) revoking the contractor's pre-qualification to bid or make proposals for future contracts;
 - (c) making a finding that the contractor is in default of the contract;
 - (d) terminating the contract;
 - (e) declaring the contractor to be in breach of contract;
 - (f) withholding payment or reimbursement;
 - (g) determining not to renew the contract;
 - (h) assessing actual and consequential damages;
 - (i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;
 - (j) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or
 - (k) take any other appropriate remedy.
4. Whenever Agency has reason to believe that an MBE or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129), or has violated

any provision of Section 6-129, Agency shall notify the commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate, the day and year first above written, one copy to remain with the Commissioner, one copy to be filed with the Comptroller of the City of New York and one copy to be delivered to the Consultant.

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

CONSULTANT:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY CORPORATION

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

EXHIBIT A

CONTRACT INFORMATION

- Division: Division of Infrastructure
- Type of Projects: Engineering Design and Related Services for Retaining Wall Projects
- Total Amount: Not to Exceed: \$5,000,000
- Contract Time Frame:
 - Contract Term: 1,095 consecutive calendar days (“ccds”)
 - Renewal of Contract Term: duration: 730 consecutive calendar days
increase: up to \$2,000,000
 - Extension of Contract Term: duration: 365 consecutive calendar days
- Multipliers: Multipliers for overhead and profit applicable to the Consultant and each subconsultant are set forth below. If the method of payment is through a Design Fee, such Design Fee shall be negotiated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit. If the method of payment is on a time card basis, payment shall be calculated based on the Direct Salary Rates per hour of the required personnel, subject to the applicable Multiplier for overhead and profit.

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EXHIBIT B

SUBCONSULTANTS & 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.

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

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

Project Manager

Senior Structural Engineer

Senior Project Architect / Designer

Senior Electrical Engineer

Senior Geotechnical Engineer

Senior Civil Engineer

Senior Landscape Architect

Senior Urban Design/Planner

Surveyor (R.L.S.)

Senior Environmental Engineer

Certified Industrial Hygienist

Senior Traffic/Transportation Engineer

Senior Structural (Marine/Waterfront) Engineer

Diving Inspector / Engineer

Arborist / Forester

EXHIBIT C

STAFFING REQUIREMENTS: TITLES AND MAXIMUM ALLOWABLE DIRECT SALARY RATES

STAFFING REQUIREMENTS: Staffing requirements for the Project are set forth below, including: (1) required titles of personnel which the Consultant may be required to provide, through its own employees and/or through its Subconsultants, and (2) Maximum Allowable Direct Salary Rate per Hour per Title. Minimum requirements per title are set forth in Exhibit D.

ADDITIONAL TITLES: If any additional titles of personnel are required for the Project, the Task Order shall specify the following: (1) Additional Required Titles, (2) Minimum Requirements per Title, and (3) Maximum Allowable Direct Salary Rate per Hour per Title. Any additional titles, minimum requirements per title and maximum direct salary rate per hour per title specified in the Task Order shall be deemed included in this Exhibit C.

STRUCTURAL ENGINEERING DESIGN SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Project Manager	_____
Senior Structural Engineer	_____
Junior Structural Engineer	_____
Senior Engineering Drafter/CADD Operator	_____
Junior Engineering Drafter/CADD Operator	_____

ARCHITECTURAL DESIGN SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Project Architect/Designer	_____
Junior Project Architect/Designer	_____
Senior Architectural Drafter/CADD Operator	_____
Junior Architectural Drafter/CADD Operator	_____

ELECTRICAL DESIGN SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Electrical Engineer	_____
Junior Electrical Engineer	_____
Drafter/CADD Operator	_____

GEOTECHNICAL ENGINEERING DESIGN SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Geotechnical Engineer	_____
Junior Geotechnical Engineer	_____
Drafter/CADD Operator	_____

CIVIL ENGINEERING DESIGN SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Civil Engineer	_____
Junior Civil Engineer	_____
Drafter/CADD Operator	_____

LANDSCAPE ARCHITECTURAL DESIGN SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Landscape Architect	_____
Junior Landscape Architect	_____
Drafter/CADD Operator	_____

URBAN DESIGN/PLANNING SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Urban Designer/Planner	_____
Junior Urban Designer/Planner	_____
Drafter/CADD Operator	_____

TOPOGRAPHIC SURVEY SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Surveyor	_____
Party Chief	_____
Instrument Person	_____
Rod Person	_____
Senior Drafter/CADD Operator	_____
Junior Drafter/CADD Operator	_____

ENVIRONMENTAL ENGINEERING / HAZMAT SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Environmental Engineer	_____
Junior Environmental Engineer	_____
Technician / Inspector	_____
Monitor	_____
Certified Industrial Hygienist	_____
Drafter/CADD Operator	_____

MARINE ENGINEERING SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Structural (Marine/waterfront) Engineer	_____
Junior Structural (Marine/waterfront) Engineer	_____
Diving Inspector / Engineer	_____

TRAFFIC/TRANSPORTATION ENGINEERING SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Senior Traffic/Transportation Engineer	_____
Junior Traffic/Transportation Engineer	_____
Drafter/CADD Operator	_____

TREE CONSULTING SERVICES

Title	Maximum Allowable Direct Salary Rate Per Hour
Arborist / Forester	_____

EXHIBIT D

MINIMUM REQUIREMENTS PER TITLE

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

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

EXHIBIT D (Continued)

MINIMUM REQUIREMENTS PER TITLE

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

Notes:

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

existing trees from the negative impacts of construction; or

- (c) M.S. in forestry, arboriculture, horticulture, or related plant science field, and one year of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (d) Arborist certification from the N.Y.S. Arborists/International Society of Arboriculture Chapter, Inc., and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (e) Other state arborist certification recognized by the International Society of Arboriculture or the National Arborist Association, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction.
- (5) The minimum requirements for the specified title of Certified Industrial Hygienist (CIH) shall be the requirements set forth below:
- (a) **Certified Industrial Hygienist (CIH)** - shall possess a CIH license granted by the American Board of Industrial Hygiene (ABIH) for at least five (5) years. An advanced degree (M.S., M.E., and PhD) in science or engineering is preferred. This individual will demonstrate at least fifteen (15) years of experience in this field of expertise with not less than 5 years practical experience in the environmental engineering / science fields.
 - (b) **Duties:** The CIH will act as the lead and provide expert opinion on matters of industrial hygiene, site safety, and environmental compliance. This individual will review and interpret data, author environmental reports and site specific health and safety plans; and shall be responsible for all aspects, including execution and monitoring, of the health and safety program.
- (6) No Payment for Principal or Executive: The Consultant shall not be entitled to payment for any time a principal or executive spends performing oversight or management duties. This prohibition on payment shall not apply if the following criteria are met: (1) the principal or executive is qualified to perform services in accordance with one of the titles set forth in Exhibit D, and (2) the principal or executive is included in the approved Staffing Plan for such title.

EXHIBIT E

M/WBE SUBCONTRACTOR UTILIZATION PLAN

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

EXHIBIT F

SPECIFIC REQUIREMENTS

I. PROJECT INTENT

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

II. SCOPE OF SERVICES

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

Staffing Plan: For all services pursuant to this Contract, the Consultant shall be required to submit a Staffing Plan in accordance with Article 5 of the Contract. Such Staffing Plan must indicate the personnel who will perform the services specified in the Task Order. Staffing requirements for personnel are set forth in Exhibit C. Such staffing requirements specify the titles of personnel which the Consultant may be required to provide, through its own employees and/or through its Subconsultants. Minimum requirements for personnel are set forth in Exhibit D. Personnel provided hereunder must satisfy such minimum requirements.

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

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

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

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

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

1. EMERGENCY RAPID RESPONSE SERVICES:

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

A. Initial Response:

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

B. Initial Investigation:

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

C. Temporary Stabilization Measures:

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

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

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

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

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

E. Monitoring Survey And Monitoring Inspection:

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

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

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

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

F. Photographic Record:

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

G. Emergency Inspection Report:

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

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

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

2. NON-EMERGENCY RAPID RESPONSE SERVICES:

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

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

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

3. ENGINEERING DESIGN SERVICES:

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

4. CONSTRUCTION SUPPORT SERVICES:

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

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

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

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

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

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

1. Areas of design services:

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

2. Other Services

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

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

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

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

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

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

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

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

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

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

2. Design Development

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

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

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

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

3. Construction Documents (Final Design):

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

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

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

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

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

4. Bid Assistance and Analysis:

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

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

5. Submission of Final Contract Documents Records:

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

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

IV. GENERAL REQUIREMENTS AND PROJECT COORDINATION

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

A. General:

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

B. Progress Reports:

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

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

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

C. Meetings and Coordination:

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

D. Public and Private Utilities:

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

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

E. Permits:

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

F. Environmental Services:

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

G. Railroads:

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

V. DETAILED REQUIREMENTS

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

A. Schematic Design – Detailed Requirements:

1. Research and Collection of record data:

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

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

2. Site Inspection/Access:

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

B. Design Development – Detailed Requirements

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

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

b. Performance of Inspection:

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

c. Flagged Conditions:

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

d. Traffic Data Review:

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

e. Substandard Features:

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

f. Hazmat Services:

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

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

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

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

h. Planning Statements:

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

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

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

j. Soil (subsurface) Investigation Program:

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

i. Scope of Soil Investigation Program:

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

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

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

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

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

k. Seismic Design:

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

l. Land Use Assessment:

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

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

m. Original Color Photos:

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

n. Conclusions:

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

3. Submission of Design Report:

a. Draft Design Report:

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

b. Final Design Report:

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

4. Preliminary Design:

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

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

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

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

C. Construction Documents – Detailed Requirements:

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

1. Preparation of Advanced Plans:

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

a. Advanced Plans Requirements:

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

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

b. Maintenance and Protection of Traffic:

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

c. Suggested Construction Schedule:

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

d. Standard Specifications:

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

e. Special Specifications:

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

f. Special Provisions:

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

g. Specification Books:

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

2. Mass Mailing No. 2:

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

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

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

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

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

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

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

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

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

6. The Construction Documents Submission:

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

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

D. Bid Assistance and Analysis – Detailed Requirements:

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

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

2. Preparation of Record Drawings and Electronic Media:

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

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

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

E. Submission of Final Contract Document Records:

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

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

VI. CONSTRUCTION SUPPORT SERVICES

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

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

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

EXHIBIT H

REQUIREMENTS FOR FEDERAL AID PROJECTS

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

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

- (1) **Amendments to the Contract:** Since the Project is a Federal Aid Project, the Contract is amended by deleting the requirements for participation by MWBEs, as set forth in Article 45 and Exhibit E.

- (2) **Opportunities for DBEs:** Since the Project is a Federal Aid Project, the Consultant is required to provide the maximum possible contracting opportunities for Disadvantaged Business Enterprises (“DBEs”). The Consultant must use its best efforts to afford DBEs the maximum practicable opportunity to participate in the Project.
 - (a) **DBE Goal:** The Consultant is required to use its best efforts to achieve an overall DBE utilization goal, expressed as a percent of the total dollar value of the Task Order. DDC will provide written notification to the Consultant specifying the overall DBE utilization goal.

 - (b) **Certified DBEs:** To qualify as a “Disadvantaged Business Enterprise” (“DBE”), a business enterprise must be certified by the New York State Department of Transportation (“NYSDOT”).

 - (c) For the Department to periodically monitor compliance with DBE requirements, the Consultant and subconsultants shall submit information as required by Chapter 13 and Appendix 13 of NYSDOT Procedures for Locally-Administered Federal Aid Projects, available at the following website: <https://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects>

- (2) **Required Provisions:** Since the Project is a Federal Aid Project, the following provisions, attached to this Exhibit H, are included in the Contract. Any and all references in the provisions set forth below to “NYCDOT” are deleted and replaced with “NYCDDC”.
 - (a) FHWA Boiler Plate / US DOT Requirements

 - (b) Standard Clauses for all NYS Contracts

 - (c) US DOT Contracting Requirements

FHWA BOILER PLATE
US DOT REQUIREMENTS

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts
(Included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6 Selection of Labor: During the performance of this contract, the contractor shall not:

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

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

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

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

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

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

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

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

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

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1381. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1485) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made.

or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification

from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1826.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by

engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation, or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**STANDARD CLAUSES FOR ALL NEW YORK STATE
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STANDARD CLAUSES FOR NYS CONTRACTS

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

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or

Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term

STANDARD CLAUSES FOR ALL NYS CONTRACTS

specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

Appendix A

Buy America Certification

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

DISCLOSURE OF LOBBYING ACTIVITIES

I _____ hereby certifies on behalf of _____
name and title of company representative name of company

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

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

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

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND
OTHER RESPONSIBILITY MATTERS

The Contractor _____, certifies to the best of its knowledge and belief, that it and its principals:

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

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

THE CONTRACTOR, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

Date

**CERTIFICATION OF A SUBCONTRACTOR/SUPPLIER REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The Subcontractor/Supplier _____, certifies to the best of its knowledge and belief, that it and its principals:

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

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

THE SUBCONTRACTOR/SUPPLIER, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

Date

Contractor Note:

Contractor must require all Subcontractors/Suppliers to complete this certification and Contractor shall submit the certifications to NYCDOT as they are received.

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION GOALS
for
Federal Transit Administration Projects
New York City Department of Transportation

The New York City Department of Transportation has established the following Disadvantaged Business Enterprise (DBE) utilization goal for this contract. The goal is expressed as a percentage of the total federal share of the contract. It is the Contractor's responsibility to secure DBE participation in the contract work to satisfy this goal, and to document acceptable good-faith efforts taken to fulfill the goal. Utilization is measured as the amount actually paid to DBE's, not the contract bid price for the work.

Disadvantaged Business Enterprise Utilization Goal ~~100%~~ _____ %

A list of currently certified Disadvantaged Business Enterprises can be obtained by contacting the Unified Certification Program for NYS on the web: <http://biznet.nysucp.net/>

Disadvantaged Business Enterprise Officer

The Bidder shall designate and enter below the name of the Disadvantaged Business Enterprise Officer who will have the responsibility for effectively administering and promoting an active Disadvantaged Business Enterprise Program at its firm and who must be assigned adequate authority and responsibility to do so.

Bidder Designated DBE Officer: _____

Name, Title

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

RETURN THIS PAGE WITH BID

All applicants and recipients shall agree to abide by the statements in paragraphs (1) and (2) listed below:

- 1 **"Policy.** It is the policy of USDOT that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement."
- 2 **"DBE Obligation.** The recipient or its contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that

DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of US DOT-assisted contracts."

New York City Department of Transportation
ACCO, Office of Contract Compliance
40 Worth Street, Room 1228
New York, NY 10013
Telephone: (212) 442-7597
Facsimile: (212) 442-7587
Attention: Charles Bartolotta, DBE Representative

**NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
DBE UTILIZATION WORKSHEET**

CONTRACT No.	COUNTY	F. A. PROJECT No.	PAGE No. ____ OF ____	DATE SUBMITTED
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<p align="center">CONTRACTOR</p> <p>NAME _____</p> <p>ADDRESS _____</p> <p>_____</p> <p>PHONE _____</p> <p>FED. ID No. _____</p>	<p align="center">SUBCONTRACTOR</p> <p>NAME _____</p> <p>ADDRESS _____</p> <p>_____</p> <p>PHONE _____</p> <p>FED. ID No. _____</p>
---	--

<p>The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc. are to be submitted in the same manner and number as required of the Prime Contractor.</p>	<p align="center">EST. BEGINNING DATE</p> <p>(Mo & Yr) ____/____/____</p>	<p align="center">EST. COMPLETION DATE</p> <p>(Mo & Yr) ____/____/____</p>
--	--	---

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No Work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the City for the related work.

No work shall be started by the Subcontractor prior to filling the required insurances. The contractor and Subcontractor hereby certify that the subcontract is in writing, and contains all the pertinent provisions of the prime contract in regard to Federal, State, and City Laws and Regulations.

Contractor's Signature	Date	Subcontractor's Signature	Date
-------------------------------	-------------	----------------------------------	-------------

	ITEM No.	NAME	< 100 %	BID AMOUNT		AGREED AMOUNT \$	% to CNT
				\$ SPECIALTY	\$ NON-SPECIALTY		
1							
2							
3							
4							
5							
6							
7							
8							
9							
TOTALS: \$					\$	\$	

The Subcontractor named above is approved for utilization under the DBE General Provisions. Approval of this worksheet conveys only the Department's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goals of the contract. Regional approval of an Approval to Subcontract form AAPHC 89 is required prior to subletting or otherwise assigning any part of the contract.

APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY:	DATE APPROVED ____/____/____
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AAPHC 89 (3/08)

NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
DBE UTILIZATION WORKSHEET

New York City Department of Transportation DBE General Provisions requires that prior to contract award, Prime Contractors must obtain written consent of the Department to a utilization plan that identifies certified disadvantaged owned business enterprises that have committed to perform work on a proposed contract. Authority for approval of utilization has been delegated to the Office of Contract Compliance (OCC). The DBE Utilization Worksheet is used to describe in item detail the utilization plan for each proposed subcontractor.

DBE Provisions require Prime Contractors to obtain written consent of the Department prior to subletting or otherwise assigning any part of the contract. Authority for approval to subcontract has been delegated to the office of Contract Compliance.

The DBE Utilization Worksheet has been designated for use as form AAPHC 89. When submitting forms for firms included in the Contractor's Utilization Plan, prepare a signed copy as described below. All DBE Utilization Worksheets are to be submitted directly to OCC as attachments to a revised Utilization Plan, form AAP 19.

CONTRACT No.: Enter New York City contract number. (Example: BRC100)

COUNTY: Enter name of county or counties of this project. (Example: Bronx)

F.A. Project No.: Enter only for Federal Aid Projects. (Example: I-87-3(177))

PAGE No.: Enter 1 of 1, 1 of 2, or 2 of 2 etc. Use additional forms as needed.

DATE SUBMITTED: Enter date completed forms are submitted to OCC (MM/DD/YY)

CONTRACTOR AND SUBCONTRACTOR DATA: Enter names, and addresses (including ZIP code), telephone numbers (including area codes) and Federal Identification Numbers for both the Contractor and Subcontractor.

EST. BEGINNING DATE: Enter estimated month and year in which subcontractor work will begin.

EST. COMPLETION DATE: Enter estimated month and year in which subcontractor work will completed.

SIGNATURES: Authorized representatives of both the prime and subcontractor sign and date.

ITEM No. AND NAME: Enter each item or specification number and name. If only part of an item is to be subcontracted check the "less than 100%" box and attach a description of the specific work to be performed.

BID AMOUNT: Enter the prime contractor total bid price for items of work being subcontracted, item by item, under appropriate heading of "Specialty" or Non-Specialty" and enter totals for each "Specialty" items, if any, are designated in the contract proposal. If only part of an item is to be subcontracted enter the amount of the prime contractor bid amount that represents the portion of the item that is being subcontracted: For other than subcontract work, i.e. material supplier and off-site trucking or other services no entry is required under "Specialty" or "Non-Specialty" headings.

DBE ONLY AGREED AMOUNT: In addition to completing the appropriate bid amount columns as described above on the utilization worksheet enter the agreed amount for each item of work to be performed by a certified DBE. Indicate if the contractor's Utilization Plan whether subcontractor, material supplier, trucker or provider of other services

TOTALS: Enter the sum of all Bid Amounts and DBE Agreed Amounts, if any.

Subcontractor Approvals and Approval Amendments will be sequentially numbered for each prime contract in the order that may be approved. An approved copy will be provided to the prime contractor and the Engineer-in-Charge of the contract in each instance.

**NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
DBE UTILIZATION WORKSHEET AMENDMENT**

CONTRACT No.	COUNTY	F. A. PROJECT No.	PAGE No. OF	DATE SUBMITTED
---------------------	---------------	--------------------------	------------------------	-----------------------

CONTRACTOR	SUBCONTRACTOR
NAME _____	NAME _____
ADDRESS _____	ADDRESS _____
PHONE _____	PHONE _____
FED. ID No. _____	FED. ID No. _____

The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc. are to be submitted in the same manner and number as required of the Prime Contractor.

EST. BEGINNING DATE	EST. COMPLETION DATE
(Mo & Yr) / /	(Mo & Yr) / /

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the City for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The contractor and Subcontractor hereby certify that the subcontract is in writing, and contains all the pertinent provisions of the prime contract in regard to Federal, State, and City Laws and Regulations.

Contractor's Signature _____	Date _____	Subcontractor's Signature _____	Date _____
-------------------------------------	-------------------	--	-------------------

ONLY LIST ITEMS TO BE ADDED, DELETED, INCREASED OR DECREASED: See Instructions.

ITEM No.	NAME	Previous or New Entry	< 100%	BID AMOUNT		AGREED AMOUNT \$	% to CNT
				\$ SPECIALTY	\$ NON-SPECIALTY		
1		PREV					
		NEW					
2		PREV					
		NEW					
3		PREV					
		NEW					
4		PREV					
		NEW					
5		PREV					
		NEW					
TOTALS				\$	\$	\$	\$

The Subcontractor named above is approved for utilization under the DBE General Provisions. Approval of this worksheet conveys only the Department's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goals of the contract. Regional approval of an Approval to Subcontract (Amended) form AAPHC 89-1 is required prior to subletting or otherwise assigning any new work shown on this worksheet.

APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY: _____	DATE APPROVED / /
--	-----------------------------

AAP 89-1 (03/08)
REVERSE

**INSTRUCTIONS FOR COMPLETING FORM AAPHC 89-1
DBE UTILIZATION WORKSHEET AMENDMENT**

New York City Department of Transportation DBE Provisions requires that prior to contract award, Prime Contractors must obtain written consent of the Department to a utilization plan that identifies certified disadvantaged owned business enterprises that have committed to perform work on a proposed contract. Authority for approval of utilization has been delegated to the Office of Contract Compliance (OCC). The DBE Utilization Worksheet is used to describe in item detail the utilization plan for each proposed subcontractor. The DBE Utilization Worksheet Amendment is used to describe in item detail any change (addition, subtraction, increase and/or decrease) to a previously approved worksheet.

DBE Provisions require Prime Contractors to obtain written consent of the Department prior to subletting or otherwise assigning any part of the contract. Authority for approval to subcontract has been delegated to the Office of Contract Compliance.

The DBE Utilization Worksheet Amendment has been designed for use as form AAPHC 89-1, when submitting forms for firms included in the Contractor's Utilization Plan, prepare a signed copy as described below. All DBE Utilization Worksheet Amendments are to be submitted directly to OCC as attachments to a revised Utilization Plan, form AAP 19.

Approval of the Utilization Worksheet Amendment conveys only the Department's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goals of the contract.

Only one DBE Utilization Worksheet is to be submitted for each subcontractor on this prime contract. DO NOT submit amendments to the item(s) or amount(s) of work proposed for a subcontractor on another form AAPHC 89. After initial forms have been filed for a given subcontractor, any amendments to the item(s) or amount(s) of work to be performed by this subcontractor will be submitted on form AAPHC 89-1.

Examples: (1) To add or delete items of work and/or increase or decrease the value of an item of work on a previously approved Utilization Worksheet: complete form AAPHC 89-1.

(2) To transfer part of a previously approved Utilization Worksheet from one subcontractor to another previously approved subcontractor: complete two sets of forms AAPHC 89-1. On the first request approval to decrease previously approved value(s) and on the second request approval to increase previously approved value(s).

(3) To transfer part of a previously approved Utilization Worksheet from one subcontractor to a new, not previously approved subcontractor: complete form AAPHC 89-1 and one form AAPHC 89. On the form AAPHC 89-1, request approval to decrease the value of a previously approved subcontract; on the form AAPHC 89, request approval to execute an entirely new subcontract with a new subcontractor.

AN AMENDMENT THAT REDUCES THE UTILIZATION OF AN APPROVED DBE MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION (i.e., a letter of unavailability from the DBE).

CONTRACT NO.: Enter NYC contract number. Example: BRC100

COUNTY: Enter name of county or counties. Example: Manhattan & Brooklyn

F.A. PROJECT No.: Enter only for Federal-Aid projects. Example: I-87-3(177)

**NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
PRIME CONTRACTOR REPORT OF PAYMENTS TO DBE'S**

FINAL REPORT YES <input type="checkbox"/> NO <input type="checkbox"/>	CONTRACT NUMBER _____	COUNTY _____	REPORT DATE _____
CONTRACTOR NAME _____ ADDRESS _____ _____ PHONE _____ FED. ID No. _____		SUBCONTRACTOR NAME _____ ADDRESS _____ _____ PHONE _____ FED. ID No. _____	
TOTAL PAYMENTS DUE: \$ _____ * FINAL RETAINAGE OR OTHER WITHHOLDING: \$ _____ TOTAL PAYMENTS \$ _____			
* STATEMENT OF EXCEPTIONS (See Instructions) 			
CERTIFICATION AND NOTARIZATION			
I certify that the total payments above reflect the value of the work as stated on the original AAP 19, "Schedule of Utilization" or the most recently amended "Schedule of Utilization" and that the work was performed solely by the Subcontractor named above, through employees of the Subcontractor who were under direct supervision of employees of the Subcontractor; that payments have been made by the Contractor and received by the Subcontractor as specified above; that there were no rebates, refunds or offsets applied to any payments unless the same is noted above; and that it is known to me to be true of my own knowledge.			
Contractor's Signature Title: _____ _____		Subcontractor's Signature Title: _____ _____	
Sworn before me this _____ Day of _____, 20 _____		Sworn before me this _____ Day of _____, 20 _____	
Notary Public		Notary Public	
If this affidavit is verified by an oath administered by a Notary Public in a foreign country other than Canada, it must be accompanied by certificate authenticating the authority of the Notary who administered the oath.			

AAP 21 (3/08)
REVERSE

NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
PRIME CONTRACTOR REPORT OF PAYMENTS TO DBE'S

New York City Department of Transportation DBE General Provisions requires Prime Contractors to report payments made to Disadvantaged Business Enterprises (DBEs) that are utilized on construction contracts. Prime Contractor Report of Payments to DBE's, Form AAP21, is required when the DBE subcontractor has completed their work or when requested by the Department. Failure by the Prime Contractor to submit this report to the Department's Project Engineer-In-Charge in accordance with the above may result in the withholding of payments.

Prepare a signed copy of AAP21, obtain the cosignature of the subcontractor and notarization and submit the form to the Project Engineer-In-Charge.

FINAL REPORT: Check YES or NO, as appropriate, to indicate whether this AAP21 covers the month of final work performed by the Subcontractor.

CONTRACT No.: Enter New York City contract number. (Example: BRC100)

COUNTY: Enter name of county or counties of this project. (Example: Bronx)

REPORT DATE: Enter date (Month/Day/Year) to which payment amounts refer.

CONTRACTOR AND SUBCONTRACTOR DATA: Enter names, and addresses (including ZIP code), telephone numbers (including area codes) and Federal Identification Numbers for both the Contractor and Subcontractor.

TOTAL PAYMENTS DUE: Enter total of payments due to Subcontractor.

RETAINAGE OR OTHER WITHHOLDING: Enter amount (if any) due Subcontractor that is included in retainage not yet paid to the Prime Contractor, and/or other amounts (if any) paid to the Prime Contractor but not yet paid to the Subcontractor.

TOTAL PAYMENTS: Total value of Payments to Date, amount shown will be Total Payments Due less Retainage or Other withholding.

STATEMENT OF EXCEPTIONS: Prime Contractor will enter item number(s) of any work under dispute or the subject of exceptions or withholdings; and a brief description of the circumstances leading to the dispute or exception.

SIGNATURE: Authorized representatives of both the Prime Contractor and Subcontractor sign and date.

NOTARIZATION: The signatures must be notarized by a duly registered Notary Public.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION CONTRACTING
REQUIREMENTS**

ATTACHMENT B

1. FLY AMERICA (49 U.S.C. § 40118, 41 CFR Part 301-10)

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that the New York City Department of Transportation, (NYCDOT) of Federal funds and its Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA (49 U.S.C. 5323(j)(2)(C), 49 CFR Part 661.11)

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FHWA-funded projects are produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to NYCDOT the appropriate Buy America certification with its proposal on this contract.

3. CARGO PREFERENCE (46 U.S.C. 1241, 46 CFR Part 381)

The Contractor agrees: (a.) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b.) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to NYCDOT (through the Contractor in the case of a Subcontractor's bill-of-lading) (c.) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4. SEISMIC SAFETY REQUIREMENTS (42 U.S.C. 7701 et seq., 49 CFR Part 41)

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

5. ENERGY CONSERVATION (42 U.S.C. §§ 6321 et seq., 49 CFR 18)

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

6. CLEAN WATER (33 U.S.C. §§ 1251)

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to NYCDOT and understands and agrees that NYCDOT will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000.00.

7. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 5323(i) to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the bidder/offeror certifies compliance with Buy America, it shall submit documentation which lists a) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and b) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the specifications of the solicitation.

8. LOBBYING (31 U.S.C. 1352, 49 CFR Parts 19 & 20)

The Contractor who apply or propose for an award of \$100,000 or more shall file the certification required by 49 CFR Parts 19 & Part 20, "New Restrictions on Lobbying." Each tier of Contractor certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to NYCDOT.

9. ACCESS TO RECORDS AND REPORTS (49 C.F.R. 5325, 18 CFR 18.36(i))

The Contractor shall comply with the following access to records requirements:

1. In accordance with 18 CFR 18.36(i), the Contractor agrees to provide NYCDOT, the Federal Highway Administration ("FHWA") Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees to provide the FHWA Administrator or his/her authorized representatives access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where NYCDOT, in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the Contractor shall make available records related to the contract to NYCDOT, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NYCDOT, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (Reference 49 CFR 18.39 (i)(11).

10. FEDERAL CHANGES (49 CFR Part 18)

The Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

11. CLEAN AIR(42 U.S.C. §§ 7401 et seq, 40 CFR 15.61, 49 CFR Part 18)

(1) The Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall agree to report each violation to NYCDOT and understands and agrees that NYCDOT will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.

(2) The Contractor shall also agree to include these requirements in each subcontract exceeding \$100,000.00.

12. RECYCLED PRODUCTS (42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873)

The Contractor shall agree to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - NYCDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

14. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government

(1) NYCDOT and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NYCDOT, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

15. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (31 U.S.C. 3801 et seq, 49 CFR Part 31, 18 U.S.C. 1001, 49 U.S.C. 5307)

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FHWA assisted project for which this contract work is

being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FHWA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

16. TERMINATION (49 U.S.C. Part 18)

The Contractor agrees to include these provisions in all subcontracts in excess of \$10,000.

a. Termination for Convenience (General Provision) NYCDOT may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to NYCDOT to be paid the Contractor. If the Contractor has any property in its possession belonging to NYCDOT, the Contractor will account for the same, and dispose of it in the manner NYCDOT directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, NYCDOT may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by NYCDOT that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, NYCDOT, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) NYCDOT, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to NYCDOT's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within the period of time specified by NYCDOT after receipt by Contractor or written notice from NYCDOT setting forth the nature of said breach or default, NYCDOT shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude NYCDOT from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that NYCDOT elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by NYCDOT shall not limit NYCDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, NYCDOT may terminate this contract for default. NYCDOT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NYCDOT.

f. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, NYCDOT may terminate this contract for default. NYCDOT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, NYCDOT may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to NYCDOT resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by NYCDOT in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of NYCDOT, acts of another Contractor in the performance of a contract with NYCDOT, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the Contractor, within [10] days from the beginning of any delay, notifies NYCDOT in writing of the causes of delay. If in the judgment of NYCDOT, the delay is excusable, the time for completing the work shall be extended. The judgment of NYCDOT shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of NYCDOT.

g. Termination for Convenience of Default (Cost-Type Contracts) NYCDOT may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of NYCDOT or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from NYCDOT, or property supplied to the Contractor by NYCDOT. If the termination is for default, NYCDOT may fix the fee, if

the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to NYCDOT and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of NYCDOT, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, NYCDOT determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, NYCDOT, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

17. CIVIL RIGHTS REQUIREMENTS (29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Part 60 et seq.)

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

(b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

(b) Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities

~~the design, and at 25%, 50%, 75% and 100% completion of the construction.~~

The Contractor must promptly notify NYCDOT, whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of NYCDOT.

Determining Good Faith Efforts: In determining whether or not a bidder/proposer not in compliance with NYCDOT's DBE contract goal may be awarded a NYCDOT contract, NYCDOT must decide if the efforts the bidder/proposer made to obtain DBE participation and attainment of specific contract goals were made in good faith. Efforts to meet the established goals that are unsubstantiated or insubstantial are not good faith efforts.

In order to award a contract to a bidder/proposer that has failed to meet the stated contract goal, NYCDOT must determine that a competitor actively and aggressively sought to meet the goal. Kinds of efforts that are considered demonstrative of a "good faith effort" include, but not limited to the following documented actions pursuant to 49 CFR Part 26:

1. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform DBEs of contracting and subcontracting opportunities;
2. Whether the contractor advertised in general circulation, trade associations, and minority-focus media concerning the subcontracting opportunities;
3. Whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
4. Whether the contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
5. Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract;
7. Whether the contractor negotiated in good faith with interested DBEs, not rejecting DBES as unqualified without sound reasons based on a thorough investigation of their capabilities;
8. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and
9. Whether the contractor effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

The DBE Representative will review the data submitted under this section to determine whether the DBE requirements have been satisfied through good faith efforts.

19. NATIONAL ENVIRONMENTAL POLICY ACT ("NEPA") REQUIREMENTS

This contract is subject to NEPA. The Contractor shall be permitted to proceed with preliminary design upon registration of the contract. The contractor shall also be allowed to proceed with final design and construction for any projects, or portions thereof, for which the NEPA process has been completed, and may be permitted to perform any design and engineering to be undertaken for the purposes of defining the project alternatives and completing the NEPA alternatives analysis and review process; complying with other related environmental laws and regulations; supporting agency coordination, public involvement, permit applications, or development of mitigation plans; or developing the design of the preferred alternative to a higher level of detail when the lead agencies agree that it is warranted in accordance with 23 U.S.C. 139(f)(4)(D). Under no circumstances shall the Contractor proceed with final design activities and physical construction prior to the completion of the NEPA process, and until NYCDOT gives notice to proceed thereafter. Violation of this provision shall be considered a material breach of the contracts.