NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION

RAMON RODRIGUEZ
Acting Agency Chief
Contracting Officer

March 18, 2014

ADDENDUM NO. 2

PROJECT: PW348-63, PW348-64, Requirement Contracts for CM/Design/Build Services for Remediation of Petroleum Contaminated Sites, Boroughs of Manhattan, the Bronx, Brooklyn, Queens, Staten Island and Upstate New York

PIN: 8502014VP0027-28P

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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Contract

- **8502014VP0027P:** Please delete the Contract in its entirety and replace with the revised Contract attached to this addendum.

- **8502014VP0028P:** Please delete the Contract in its entirety and replace with the revised Contract attached to this addendum.

Contact: Maritza Ortega, ortegama @ddc.nyc.gov
Phone No.: 718-391-1542

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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.

_____
Veronica Nnabugwu
Deputy Agency Chief Contracting Officer

_____
Name of Proposer

By _____ **Title** _____

THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF PUBLIC BUILDINGS

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

REQUIREMENTS CONTRACT FOR CONSTRUCTION MANAGEMENT / DESIGN / BUILD SERVICES

PROJECT:	**Remediation of Petroleum Contaminated Sites and Replacement of Storage Tanks Boroughs of Manhattan, the Bronx and Upstate New York**
FMS NUMBER:	**PW348-63**
REGISTRATION NUMBER:	**8502014VP00027P**
CONTRACTOR:	_____
	_____
	_____
	Telephone: _____
	Fax: _____

Construction Management / Design / Build Services
Storage Tanks Program
July 2013

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

WITNESSETH:

WHEREAS, the City desires to have design, construction, and construction management services performed on a requirements basis for various projects, as described in Exhibit A, to ensure compliance with all local state and federal laws, rules and regulations; and

WHEREAS, the Contractor has been selected based upon and in consideration of its representation that it can perform the required services and complete the Project in the time set forth herein,

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

ARTICLE 1 - DEFINITIONS

1.1 "Agreement" shall mean this Agreement which has been signed by the parties and each of the various parts of this Agreement set forth below, both as a whole and severally, whether or not existing in final approved form at the time of execution of this Agreement. In the event of any conflict between items 1.1.12 and 1.1.13, item 1.1.12 shall prevail.

1.1.1 The Agreement
1.1.2 The Budget Director's Certificate
1.1.3 The Construction Documents
1.1.4 Exhibit A: Contract Information
1.1.5 Exhibit B: Staffing Requirements and Estimated Direct Salary Rates
1.1.6 Exhibit C: Partial Payment for Stored Material
1.1.7 Exhibit D: Requirements for Project Office
1.1.8 Exhibit E: Safety Requirements
1.1.9 Schedule of Prevailing Wages
1.1.10 Notice of Award
1.1.11 Request for Proposals for the Contract
1.1.12 Contractor's Proposal submitted for the Contract
1.1.13 All provisions required by law to be inserted in this Agreement, whether actually inserted or not

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 "Allowance" shall mean those contract funds allocated for the payment of specific costs and expenses, in accordance with Article 42 hereof.

1.5 "Business Day" shall mean a day other than a Saturday, Sunday or a day on which the executive offices of the Department are not officially open for business.

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

1.7 "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).

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

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

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

1.11 "Construction Documents" shall mean the final plans, drawings and specifications and all modifications thereto prepared by consultant(s) engaged by the Contractor and approved in writing by the Commissioner. Upon such approval, the Construction Documents shall become part of this Agreement, as set forth in Article 1.1.3.

1.12 "Contract" or "Contract Documents" shall mean each of the various parts of the Agreement set forth in Article 1.1.

1.13 "Contract Work" shall mean everything required to be furnished and done by the Contractor pursuant to the Agreement, except Extra Work.

1.14 "Contractor" 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.

1.15 "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.

1.16 "Drawings" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.

1.17 "Extra Work" shall mean work not reasonably foreseeable at the time of the execution of this Agreement or not reasonably inferable from the Agreement.

1.18 "Final Acceptance" shall mean the final written acceptance of all Work required hereunder, as determined by the Commissioner. The Commissioner may also issue a written determination of Final Acceptance with respect to any subcontract hereunder.

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

1.20 "Law(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 hereof through Final Acceptance, applicable to or affecting the Project, the Site(s), the Construction Documents, the Work, and all employees engaged in Work hereunder.

1.21 "Lien" shall mean any and every lien, lease, security interest, or encumbrance of any kind whatsoever including, but not limited to, a Mechanic's Lien.

1.22 "Materialman" shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor or any Subcontractor to fabricate or deliver, or who actually fabricates or delivers, plant, material or equipment to be incorporated into the Work.

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

1.24 "Means and Methods of Construction" shall mean the labor, materials in temporary structures, tools, plant and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Agreement.

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

1.26 "Project" shall mean a Project for which the Contractor's services are required. The Commissioner shall, by written directive, assign various Projects to the Contractor for the performance of required services. The types of Projects for which the Contractor's services shall be required, as well as the location of such Projects, are set forth in Exhibit A.

1.27 "Project Executive" shall mean the person designated by the Contractor to provide, on an as needed basis, executive or management expertise and oversight with respect to the Project. The person so designated shall be identified as the Project Executive in Exhibit A and in the staffing plan approved by the Commissioner in accordance with Article 11.3.1. In accordance with Article 42, the Contractor shall not be entitled to payment for services provided by any Project Executive(s). Compensation for services provided by any Project Executive(s) is deemed included in the Multiplier(s).

1.28 "Safety Standards" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date hereof through Final Acceptance, pertaining to worker safety and accident prevention applicable to the Project and/or the 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).

1.29 "Samples" shall mean physical examples or specimens, intended to demonstrate workmanship or the characteristics of materials and equipment and/or to establish standards by which the Work will be judged. "Samples" includes (but is not limited to) raw materials, assemblies, completed items, working components or parts thereof, required under this Agreement or by the City to ascertain whether the kind, quality, assembly, construction, workmanship, finish, color, texture, grade or other characteristics of Work submitted by the Contractor conforms to the requirements of the Agreement.

1.30 "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 Work.

1.31 "Site(s)" shall mean the area(s) upon or in which the Contractor's operations hereunder are carried on, and such other areas adjacent thereto as may be designated by the Commissioner's Representative.

1.32 "Specifications" shall mean all of the directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.

1.33 "Subcontractor" shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his Subcontractors to furnish, or actually furnishes consulting services, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder. All Subcontractors are subject to the prior written approval of the Commissioner.

1.34 "Substantial Completion" shall mean the written determination by the Commissioner that all required Work for any subcontract is substantially complete. The terms and conditions that must be satisfied to achieve Substantial Completion are set forth in Article 10.

1.35 "Unavoidable Delay" shall mean any delay or obstruction whatsoever in the Work resulting from any act or event which has had (or may reasonably be expected to have) a material adverse effect on Contractor's ability to perform its obligations under this Agreement, if such act or event is beyond the reasonable control of Contractor and such act or event was not (and would not have been) separately or concurrently caused by a negligent or willful act or omission of Contractor and/or could not have been prevented by reasonable actions on Contractor's part. Unavoidable Delay shall include without limitation:

1.35.1 Acts of God;
1.35.2 Unforeseeably severe weather conditions;
1.35.3 Fire, earthquake, explosion, landslide, lightning or flood;
1.35.4 Epidemic;
1.35.5 Strikes or lockouts;
1.35.6 Riots, civil disturbance, insurrection, enemy action or war;
1.35.7 Injunctions or orders of any Government Entity;
1.35.8 Embargoes or blockades.

1.36 "Utilities" shall mean any and all utility services and installations whatsoever including, but not limited to, gas, water, electricity, telephone, other telecommunications, steam, sewer and storm sewer, and all piping, wiring, conduit and/or other fixtures of every kind whatsoever related thereto or used in connection therewith.

1.37 "Work" shall means everything expressly or implicitly required to be furnished and done by the Contractor for the Project pursuant to this Agreement, and shall include both Contract Work and Extra Work.

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 Contractor shall comply with all local, State and Federal laws, rules and regulations applicable to this Agreement and to the work to be done hereunder.

2.3 The Contractor shall give or cause to be given all necessary notices, obtain or cause to be obtained all permits, and pay or cause to be paid all fees required in connection with the Work, and comply with all local, state and federal laws, rules and regulations affecting work of this character. These laws, rules and regulations shall take precedence over any requirements of this Contract where a conflict occurs. Nothing herein contained shall, however, be construed as permitting the use of material and equipment of lesser quality than specified hereunder, unless the specified material or equipment violates such laws, rules or regulations.

2.4 The Contractor shall be responsible for applying for and obtaining the required approval of all federal, state and local agencies having jurisdiction over the subject matter hereof. As provided in Article 10.4, such approvals are required for a determination of Substantial Completion.

2.5 In accordance with Section 165 of the State Finance Law, the Contractor agrees that tropical hardwoods, as defined in Section 165 of the State Finance Law, shall not be utilized in the performance of this Contract, except as the same are permitted by the foregoing provision of law.

ARTICLE 3 - TIME OF ESSENCE

3.1 In performing the services hereunder, the Contractor and the City shall place emphasis on considerations which will aid in expediting the construction of the Project consistent with the construction standards and procedures of the City. The Contractor agrees to use all resources at its command so that the Project is completed in an expeditious fashion by the various Subcontractors and to this end, it shall give constant attention to the adequacy of its own and each Subcontractor's planning, personnel, equipment and the availability of materials and supplies. The Contractor and the City acknowledge that time will be of the essence for the Project and will use their best efforts to prevent delays. If a situation cannot be resolved, the Contractor shall bring it to the immediate attention of the Commissioner.

ARTICLE 4 - AGREEMENT TO SERVE

4.1 The City hereby retains the Contractor to perform the services hereinafter described, on the terms and conditions specified herein, and the Contractor hereby agrees to so serve. The Contractor is familiar with the terms of this Agreement, and the intended use of the Project upon completion of construction. The Contractor hereby certifies that it has the necessary experience, expertise, personnel and resources to fulfill its obligations under this Agreement competently and efficiently. The Contractor agrees to use its best efforts to complete this Project as soon as possible, in a manner meeting the highest professional standards.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

5.1 Responsibility and Competency: The Contractor warrants and represents as follows:

5.1.1 That it is financially solvent and sufficiently experienced and competent to perform the Work required by this Agreement, or to cause the same to be performed.

5.1.2 That its employees, agents, consultants, and subcontractors possess the requisite expertise, skill, experience and financial resources to perform the Work as required by this Agreement.

5.1.3 That (1) it is not in arrears to the City of New York upon debt, contract, or taxes; (2) it is not a defaulter, as surety or otherwise, upon any obligation of the City of New York; (3) it has not been declared not responsible or disqualified by any agency of the City of New York or State of New York, and (4) there is not any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts.

5.2 Procurement of Agreement: The Contractor 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 Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

5.2.1 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 Contractor 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.

5.3 Conflicts of Interest: The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further 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.

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

5.4.1 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 other proposer or with any competitor;

5.4.2 Unless otherwise required by law, the prices which have been quoted in this contract and in the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other proposer or to any other competitor, and

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

5.4.4 The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not, without more, constitute a disclosure within the meaning of the above.

ARTICLE 6 - TERM OF PERFORMANCE

6.1 Term of Contract: This Contract shall commence as of the date of registration by the Comptroller and shall remain in effect for a period of three years (1095 consecutive calendar days).

6.2 Extension of Contract: 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.

6.3 Continuation of the Contract: In the event (1) services are required for a Project, (2) the Commissioner assigns such Project to the Contractor 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 Project through the time frame for completion of the Project, as determined by the Commissioner. 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, or (2) the extended term of the Contract.

6.4 Impact on Multiplier: In the event the term of the Contract is extended, the Multipliers set forth in Exhibit A shall remain in full force and effect during such extension of the contract term.

ARTICLE 7 - OVERVIEW OF CONTRACTOR'S SERVICES

7.1 The Contractor shall provide construction management / design / build services on a requirements basis for the types of Projects described in Exhibit A. The Contractor's services shall include without limitation, investigation, planning, pre-construction, design, construction, management, supervision and coordination of all Work necessary and required for any Project assigned hereunder to effectuate its timely completion.

7.2 The Commissioner shall, by written directive, assign various Projects to the Contractor for the performance of required services. Regarding the assignment of Projects, the Commissioner reserves the following rights: (1) to determine the order of priority for the performance of services for the assigned Projects; (2) to increase or decrease the Projects assigned to the Contractor, and (3) to assign Projects to the Contractor in any of the locations set forth in Exhibit A.

7.3 Ownership of Documents: Any and all material records or documents prepared by or for the Contractor pursuant to this Agreement, including, but not limited to, office diaries, field diaries, daily records of labor, materials and equipment used, notes, reports, including laboratory and plant inspection reports, designs, drawings, tracings, estimates, specifications, schedules, and/or photographs, shall be the property of the City. During the term of this Agreement and at any time within 7 years thereafter, the Contractor shall, upon demand, promptly deliver such records or documents to the Commissioner, or make such records or documents available to the Commissioner or his authorized representatives for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such 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 Contractor.

ARTICLE 8 - PROGRESS SCHEDULE

8.1 To enable the Work to be performed in an orderly and expeditious manner, the Contractor, within twenty (20) days after commencement of the Contract, unless otherwise directed by the Commissioner, shall submit a proposed progress schedule per Project, indicating the information specified below:

8.1.1 The anticipated time of commencement and completion of each of the various operations to be performed;
8.1.2 The sequence and inter-relationship of each these operations with the others;
8.1.3 The estimated time required for fabrication or delivery, or both, of all materials and equipment required for the work.

8.2 The proposed schedule per Project shall be revised as directed by the Commissioner's Representative, until finally approved by him, and after such approval, shall, subject to the provisions of Article 17, be strictly adhered to by the Contractor.

8.3 If the Contractor shall fail to adhere to the approved progress schedule per Project, or to the schedule as revised pursuant to Article 17 hereof, he must promptly adopt such other or additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.

8.4 Responsibility for Delay: In the event the Project is not completed within the timeframe set forth in the original Project Schedule, the Commissioner shall prepare a report analyzing the causes of the delay and determining responsibility for the same.

8.4.1 If the report indicates that the Contractor, as a result of its actions or inactions, is responsible for the delay, or any

portion thereof, the Commissioner shall deduct from any amount due and owing to the Contractor under this Contract, the total amount of staffing expenses paid to the Contractor for the period of the delay, or any portion thereof, for which the Commissioner determines the Contractor is responsible. For the purpose of this deduction, staffing expenses shall mean the Direct Salary Rates for all Assigned Employees times the applicable Multiplier for Overhead and Profit set forth in Exhibit A. If the amount due and owing to the Contractor under this Contract is less than the total amount of the deduction described herein, the Contractor shall be liable for and agrees to pay the difference upon demand by the Commissioner.

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

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

ARTICLE 9 – PRE-DESIGN AND DESIGN SERVICES

9.1 General Description: The Contractor shall provide all pre-design and design services for the Project, as described below. The Contractor shall provide personnel for the Project, in accordance with the requirements of Article 11.3. The Contractor shall provide construction management personnel to conduct the bidding process. The Contractor shall, through its design consultant, provide design personnel to supervise the pre-design services described below.

9.2.1 Types of Projects: The types of Projects to be assigned to the Contractor pursuant to this Contract, as well as the pre-design services required for each type of Project, are set forth in Exhibit A. The Contractor shall engage subcontractors to provide the pre-design services required for the Project.

9.2.2 Initial Project Site Report: As authorized in a written directive from the Commissioner, the Contractor shall, through its design consultant, prepare an initial Project site report, including without limitation the following: (1) site history and operating characteristics; (2) examination of all site conditions; (3) verification of all existing site data provided by the City; (4) compilation of all site documentation; (5) identification of existing utilities, and (6) interviews with site operational staff. The site report shall be submitted to the Commissioner prior to the commencement of services described below.

9.2.3 Subcontracts for Pre-Design Services: Unless otherwise authorized in a written directive from the Commissioner, subcontracts for pre-design services shall comply with the provisions of Article 10 set forth below. Payment to subcontractors for pre-design services shall be made from the Allowance for Construction/Remediation Work set forth in Article 42.

(a)	Article 10.2.1	Competitive Bid Procedure – Bids for pre-design services shall be on a unit price basis, in accordance with format(s) provided by DDC.
(b)	Article 10.2.3	Subcontract Requirements – Unit prices for pre-design services shall not be subject to retainage. Subcontractors providing pre-design services shall not be required to submit payment and performance bonds.
(c)	Article 10.2.4	Payment to Subcontractors
(d)	Article 10.2.5	Approval of Subcontractors
(e)	Article 10.2.6	Contractor Responsibility for Subcontractors
(f)	Article 10.4	Liquidated Damages
(g)	Article 10.5	Extension of Time
(h)	Article 10.5	Extension of Time

9.2.4 Comprehensive Report and Recommendations: As authorized in a written directive from the Commissioner, the Contractor shall, through its design consultant, prepare a comprehensive report with respect to each Project site, including without limitation the following: (1) Site Specific Investigation Plans (SSIP), and (2) Investigative Site Remediation Plans (ISRP). Such report shall be based upon and incorporate information compiled from the initial site report, as well as the results of any required pre-design services. Such report shall include recommendations for all required work for the Project. The report and recommendations are subject to written approval by the Commissioner. The time frames for submission of the required report are set forth below.

9.3 Design Services: The Contractor shall, through its design consultant, provide all design services required for the Project, as directed by the Commissioner. The types of Projects to be assigned to the Contractor under this Contract are set forth in Exhibit A.

9.3.1 Approval of Consultants and Subconsultants: Professional design services required hereunder shall be provided by persons or firms licensed by the State of New York. All consultants performing such services are subject to the prior written approval of the Commissioner. If an approved consultant elects to subcontract any portion of its subcontract, the proposed subconsultant is subject to the prior written approval of the Commissioner. The Commissioner's approval of a consultant or subconsultant shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder.

9.3.2 Removal of Consultants: An approved consultant performing professional design services hereunder shall not be removed without the prior written approval of the Commissioner. The Commissioner reserves the right to require the Contractor to remove and replace an approved consultant.

9.3.3 Contractor's Responsibility for Consultants: The Contractor shall be solely responsible to the City for the acts, defaults, errors or omissions of its consultants and of such consultant's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.

9.3.4 Specific Design Services: Design Services required for the Project shall include without limitation the following:

(a) Preparation of coordinated final design documents for all required work for the Project (plans, drawings and specifications). Specifications prepared by the manufacturer are not acceptable.
(b) Obtaining all required regulatory approvals of the design
(c) Review and approval of shop drawings
(d) Preparation of supplementary drawings, if necessary
(e) Preparation of original drawings reflecting as-built conditions

9.3.5 Design Compliance: All required design services shall be in accordance with: (1) criteria provided by DDC, and (2) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code.

9.3.6 Approvals of Design: Final design documents are subject to: (1) written approval by the Commissioner, and (2) approval by all regulatory agencies whose approval of the design is required, including without limitation the New York State Department of Environmental Conservation, the New York City Department of Environmental Protection, the New York City Fire Department and the New York City Department of Buildings. All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect of Record, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.

9.3.7 Review of Design Documents: Throughout the design process, the Contractor shall review and comment on the design, with special attention to the following issues: (1) constructability; (2) coordination; (3) economy and efficiency; (4) minimization of impact on agency operations; (5) division of the work for bidding purposes; (6) time of performance; (7) compliance with the required scope of Work; (8) compliance with DDC criteria, and (9) avoidance of inconsistencies, problems, delays and change orders during the construction process. At the time of submission of final design documents, the Contractor shall provide written comments addressing the above issues.

9.3.8 Submission and Approval of Final Design Documents: The provisions set forth below shall apply to the submission, review and resubmission of final design documents.

(a) Within fourteen (14) consecutive calendar days of submission or resubmission of final design documents, the Commissioner shall: (1) approve the same in writing, or (2) approve the same as noted and indicate whether resubmission is required, or (3) disapprove the same and transmit changes or comments to the Contractor.
(b) In the event the final design documents are not approved, the Contractor shall, within ten (10) consecutive calendar days of receipt of the Commissioner's changes or comments, revise such documents and resubmit the same to the Commissioner for written approval.
(c) The day on which the final design documents are actually received by the respective party shall be considered the first consecutive calendar day for the purpose of calculating the submission, resubmission and review times set forth above; provided, however, documents received after 3:00 P.M. shall be deemed received the next consecutive calendar day.
(d) Upon resubmission of final design documents, the Contractor shall not make any changes from the original submission, unless such changes are in response to comments by the Commissioner or are specifically noted in a written cover letter.

9.3.9 Subcontract Requirements: The subcontract(s) between the Contractor and the consultant(s) for design services hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Commissioner.

(a) Such subcontracts shall require that all design services comply with all criteria and requirements set forth in this Contract.
(b) Such subcontracts shall contain provisions approved in advance by the Commissioner regarding the time for completion of all required design services.
(c) Such subcontracts shall require that the consultant carry the following types and amounts of insurance, unless an exemption is expressly authorized in advance in writing by the Commissioner: (1) comprehensive general liability insurance in the minimum amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate, with the City of New York named as an additional insured thereunder; (2) worker's compensation insurance, as required by New York State Law; (3) employer's liability insurance, in the minimum amount of $1,000,000 per occurrence, and (4) professional liability insurance, as set forth in Article 23. All policies shall be in compliance with the requirements of

Article 23 and shall be issued by companies that meet the criteria set forth in such article. Proof of Insurance shall be provided to the City in accordance with Article 23.

(d) Such subcontracts shall contain a provision regarding the resolution of disputes between the consultant and the Contractor. Such provision shall conform to the requirements set forth in Article 10.2.2(g).

(e) Such subcontracts shall require that the consultant agree not to make any claims against the City, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to disputes submitted by consultant pursuant to dispute resolution provisions contained in the subcontract.

(f) Such subcontracts shall include a provision requiring the Subcontractor to make payment to each of its Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth in Article 43 ("Prompt Payment").

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

9.4.1 The Contractor shall be liable to and hereby agrees to defend, indemnify and hold harmless the City against all claims against the City for infringement of any copyright or patent rights of systems, graphs, charts, designs, drawings or specifications furnished by the Contractor in the performance of this Contract.

9.5 Indemnification: The Contractor shall indemnify and hold the City of New York harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur arising out of any error, omission or negligent act in the performance of pre-design or design services.

ARTICLE 10 - CONSTRUCTION and/or REMEDIATION WORK

10.1 General: The Contractor shall provide all required construction and/or remediation Work for the Project, as directed by the Commissioner. The types of Projects to be assigned to the Contractor pursuant to this Contract are set forth in Exhibit A.

10.1.1 Required Approvals: The Contractor's provision of all required Work for the Project must comply with all federal, state and local requirements, including obtaining all required permits and approvals from regulatory agencies having jurisdiction over the Work, including without limitation the agencies set forth below.

(a) New York State Department of Environmental Conservation
(b) New York City Department of Environmental Protection
(c) United States Environmental Protection Agency
(d) New York City Fire Department, Bureau of Fire Protection (Certificate of Operation)
(e) New York City Department of Buildings
(f) New York City Department of Consumer Affairs

10.2 Subcontracts for Construction and/or Remediation Work: As authorized in a written directive from the Commissioner, the Contractor shall, on the basis of fully coordinated Construction Documents, enter into subcontracts for all construction and/or remediation Work required for the Project.

10.2.1 Competitive Bid Procedure for Construction and/or Remediation Work: Before entering into any subcontract for construction and/or remediation Work, the Contractor shall conduct a competitive bid procedure. Such competitive bid procedure shall be in accordance with all DDC requirements, including without limitation, the items set forth below:

(a) The Contractor shall prepare a Request for Bids ("RFB") for the required construction and/or remediation Work and shall submit the same to the Commissioner for review and approval prior to issuance. The RFB shall include the following items:

(1) Bid Form. If so directed, the Contractor shall use the Bid Form provided by DDC.
(2) Form of subcontract. Such subcontract shall comply with the requirements set forth below.
(3) Requirements applicable to bidders, as specified by DDC, including without limitation, requirements for MWBE participation and safety requirements. The Contractor shall comply with directions from DDC regarding the review of requirements included in the RFB. After the receipt of bids, DDC shall determine bidder compliance with such requirements.

(b) The Contractor shall prepare a list of contracting firms to receive the RFB (the "Selected Bidders List"). Selected Bidders must comply with the following items:

(1) Requirements specified by DDC, including without limitation, an acceptable Safety Questionnaire. DDC shall provide forms regarding these requirements and shall determine bidder compliance with the same.
(2) Criteria set forth in the PPB Rules (Criteria for Prequalification, as well as Criteria for Responsibility). Such

criteria are summarized below.

- Financial capability and availability of appropriate resources
- Technical expertise and experience with similar projects
- Organization, staffing and ability to undertake the work
- Satisfactory record of performance, confirmed by references
- Satisfactory record of business integrity
- Record of compliance with all laws, rules, regulations and executive orders applicable to the work
- Demonstration that the bidder has a valid license for the work, unless expressly authorized otherwise by the Commissioner (applicable to electrical and plumbing work only)
- Satisfactory safety record
- For Replacement Projects (i.e., tank installation, upgrade, or decommissioning) the bidder must be authorized or licensed by the tank manufacturer, and have a Certificate of Fitness from the New York City Fire Department.

(c) MWBE Participation: The Contractor shall include the following language in any advertisement or solicitation for the subcontract: "Companies who have been certified by the New York City Department of Small Business Services as Minority- or Women-Owned Business Enterprises ("M/WBE") are strongly encouraged to submit a bid. To find out more about M/WBE certification, please call 311 or go to www.nyc.gov/getcertified."

(d) The Contractor shall submit the following to the Commissioner for review and approval prior to issuance of the RFB: (1) list of criteria utilized for inclusion on the Selected Bidders List; (2) names of contracting firms included on the Selected Bidders List, and (3) documentation demonstrating the compliance of each contracting firm with the criteria for inclusion on the Selected Bidders List.

(e) The Contractor shall issue the RFB to a minimum of six (6) contracting firms and shall receive a minimum of three (3) sealed bids for the required construction services. The Contractor shall advise the Commissioner in writing not less than seven (7) business days in advance of the bid opening. The Commissioner's Representative must be present at the bid opening.

(f) Contracting firms submitting bids shall be required to complete and submit all forms or documentation the Commissioner may require.

(g) The Contractor shall submit a tabulation of the bids received to the Commissioner for his/her review and approval. If any bid received by the Contractor contains conditions and/or exclusions, the Contractor shall provide written notification of the same to the Commissioner. The Contractor shall proceed as directed by the Commissioner.

(h) The Contractor shall award the subcontract to the lowest responsive and responsible bidder approved in writing by the Commissioner.

(i) In the event less than three bids are received, no subcontract shall be awarded, unless the Contractor obtains the prior written approval of the Commissioner.

(j) Limitation: The Contractor shall not employ or otherwise engage, or cause or permit any subcontractor or sub-subcontractor at whatever tier to employ or otherwise engage (1) the Contractor, (2) any subsidiary, affiliate or parent of the Contractor, or (3) any person whose immediate family member is employed by the Contractor at a salary in excess of ten thousand dollars ($10,000.00) per annum, to perform work hereunder without the prior written approval of the Commissioner. For purposes of this Section, the term "immediate family member" shall mean a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild.

10.2.2 Exception: In order to ensure continuity of services at particular Project sites, the Commissioner reserves the right to direct the Contractor to enter into subcontracts with specific subcontractors at stipulated prices. In the event the Commissioner so directs the Contractor, the competitive bid procedure set forth above shall not apply.

10.2.3 Subcontract Requirements: Subcontracts between the Contractor and subcontractors for construction and/or remediation Work hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Commissioner.

(a) Such subcontracts shall require that all labor performed and all material furnished thereunder shall strictly comply with all requirements of this Agreement.

(b) Such subcontracts shall contain the DDC General Conditions, including the Addendum to the General Conditions, and the DDC Safety Requirements. Such subcontracts shall contain provisions approved in advance by the Commissioner regarding: (1) time for completion; (2) assessment of liquidated damages, and (3) warranties and/or guarantees.

(c) Such subcontracts shall contain the same terms and conditions with respect to: (1) method of payment and retained percentages, as set forth in Article 42; (2) substantial completion, as set forth in Article 10.4; (3) method of payment for extra work, as set forth in Article 28; (4) extension of time, as set forth in Article 10.5; (5) termination without cause, as set forth in Article 45; (6) termination for cause, as set forth in Article 46; (7) omitted work, as set forth in Article 31; (8) tax exemption, as set forth in Article 49, and (9) no damage for delay, as set forth below.

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

(d) Performance and payment bonds are not required for subcontracts hereunder, unless otherwise directed by the Commissioner.

(e) Such subcontracts shall require that the subcontractor carry the types and amounts of insurance set forth in Schedule A of the General Conditions, which will be provided by the City. All required policies shall be in accordance with the terms and conditions set forth in Article 23 of this Contract. Proof of Insurance shall be provided to the City in accordance with Article 23.3.

(f) Such subcontracts shall contain the following articles and shall require subcontractor compliance with the same.

(1) Article 38: Labor Law Requirements
(2) Article 39: Payroll Reports
(3) Article 41: Noise Control Code Provisions
(4) Article 43: Prompt Payment
(5) Article 51: Locally Based Enterprise Program (if applicable)
(6) Article 49: Supplies, Labor, Services Materials and Tax Exemption
(7) Article 65: Ultra Low Sulfur Diesel Fuel
(8) Article 66: Ultra Low Sulfur Diesel Fuel (Consolidated Construction Act)
(9) Article 68: Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement.

(g) Such subcontracts shall contain a provision regarding the resolution of disputes between the subcontractor and the Contractor. Such provision shall conform to the requirements set forth below.

(1) Such provision shall provide that all disputes the subcontractor may have of the kind delineated in Article 29 of this Agreement shall be resolved by the City in accordance with Article 29 and the PPB Rules. As set forth in Article 11, disputes submitted by a subcontractor to the Contractor must be submitted by the Contractor to the City for resolution in accordance with Article 29.
(2) Such provision shall provide that all terms, conditions, requirements and limitations set forth in Article 29, including the limitation on judicial review, shall apply to disputes submitted by the subcontractor, except as otherwise provided in paragraph (3) below.
(3) Such provision shall provide that subcontractor disputes and related material shall be submitted to the Contractor, not to the City. Such provision shall contain time frames specified by the Contractor for the submission of disputes and related material by the subcontractor to the Contractor. Such time frames shall be reasonable and substantially similar to the time frames set forth in Article 29.
(4) Such provision shall provide that the subcontractor agrees that it has no right to submit a dispute to the City.

(h) Such subcontracts shall require that the subcontractor agree not to make any claims against the City, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to (1) demands filed by subcontractors pursuant to Article 10.6 hereof, or (2) disputes submitted by subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in paragraph (g) above.

(i) Such subcontracts shall stipulate that the subcontractor, without any further notification or other process, gives its unconditional consent for its insurance carrier to release directly to the City documentation verifying its actual rate for workers' compensation insurance.

10.2.4 Payment to Subcontractors: Payment by the Contractor to subcontractors shall be in accordance with the provisions set forth below:

(a) The Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Commissioner, the Contractor shall submit satisfactory evidence that it has made such payment.

(b) The Contractor shall include on each requisition for payment the following data: subcontractor name, value of the subcontract, total amount previously paid to subcontractor for work previously requisitioned, and the amount, including retainage, to be paid to the subcontractor for work included in the requisition.

10.2.5 Approval of Subcontractors: All subcontractors and the dollar amounts of their subcontracts are subject to the prior written approval of the Commissioner. If an approved subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontractor and the dollar amount of its sub-subcontract are subject to the prior written approval of the Commissioner. No subcontractor or sub-subcontractor shall be permitted on the site until such written approval as required herein has been obtained. Any proposed change order to any subcontract(s) hereunder is subject to the prior written approval of the Commissioner. The Commissioner's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder.

10.2.6 Contractor's Responsibility for Subcontractors: In the event of default by any of the Contractor's Subcontractors, the

following conditions shall apply:

(a) The Contractor shall not be entitled to any payment whatsoever for any and all expenses, including without limitation staffing and/or administrative expenses, incurred by the Contractor in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required Work.

(b) The Contractor shall be responsible to compensate the City for any and all expenses, including without limitation administrative and/or professional design costs, incurred by the City in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required work. The Commissioner shall determine the amount of any such expenses incurred by the City and such determination shall be final, binding and conclusive upon the Contractor.

10.3 Liquidated Damages: The Commissioner shall specify an amount of liquidated damages to be included in each subcontract for Work hereunder. As directed by the Commissioner, the Contractor shall include such specified liquidated damage amount in each respective subcontract for Work hereunder.

10.3.1 Any and all moneys collected by the Contractor as liquidated damages from its Subcontractors shall be paid by the Contractor to the City.

10.3.2 In each subcontract for Work, the Contractor shall include a provision expressly giving the City a right of action against the Subcontractor in the event such subcontractor fails to pay any liquidated damages determined to be due and owing thereunder.

10.4 Requirements for Substantial Completion: Substantial Completion of the required Work for any subcontract shall occur when, in the sole determination of the Commissioner, all of the conditions set forth below have been satisfied.

(a) Contractor has obtained and delivered to the Commissioner: (1) the required written approval of any agency having jurisdiction over the work, and (2) all certificates of inspection for the Work.

(b) Contractor has completed all training sessions required by the City for equipment and/or systems installed for the Project.

(c) All utilities specified or required under the Contract are connected and function properly.

(d) The City can use and occupy the Project for the intended use and purpose.

(e) Contractor and the Commissioner's Representative have agreed in writing upon the Final Punch List and the date for Final Acceptance of all required Work, including completion of all Punch List items, or, if they are unable to agree, the Commissioner's Representative has prepared and issued in writing to the Contractor the Final Punch List and the date of Final Acceptance.

(f) All Work, except the items on the Final Punch List as approved by the Commissioner's Representative, is complete in all respects and is in compliance with the Contract to the satisfaction of the Commissioner's Representative.

(g) Contractor has delivered to the Commissioner's Representative a final verified statement of claims as described in Article 42 of the Agreement.

(h) Contractor has submitted to the Commissioner written certification that Contractor has paid all taxes and fees (including real property taxes and income or franchise taxes) due and payable by Contractor to the City prior to Substantial Completion.

(i) Contractor has submitted written certification that all of the foregoing conditions have been satisfied and the Commissioner has approved Contractor's certification.

Alternatively, Substantial Completion shall occur on any date certified by the Commissioner, who shall have discretion to waive any of the foregoing conditions.

10.5 Extensions of Time for Subcontracted Work: If the performance of Work performed by Subcontractors hereunder is delayed for a reason set forth in Article 10.5.1 below, the Contractor may be allowed a reasonable extension of time. An extension of time for subcontracted work may be granted only by the Commissioner, upon written application by the Contractor.

10.5.1 Grounds for Extension: If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of subcontracted work, if such delay is caused solely: (1) by the acts or omissions of the City, its officers, agents or employees; or (2) by the act or omissions of other contractors; or (3) by unavoidable delay, as defined in Article 1.35 hereof, or other supervening conditions entirely beyond the control of either party hereto.

The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Commissioner may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of Articles 8, 16, and 17 hereof.

10.5.2 Extension for Concurrent Causes of Delay: The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the subcontracted work as determined by the Commissioner, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of his Subcontractors or

materialmen, and would of itself (irrespective of the concurrent causes) have delayed the subcontracted work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. The determination made by the Commissioner shall be binding and conclusive on the Contractor. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Commissioner.

Permitting the Contractor to continue with the subcontracted work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the City of any of its rights under this Contract.

10.5.3 Application for Extension of Time: Before the Contractor's request for a time extension for subcontracted work may be approved, the Contractor must within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Commissioner identifying:

(a) Contractor; the Subcontractor; the Contract registration number; and Project description;
(b) Liquidated damage assessment rate, as specified in the subcontract;
(c) Original subcontract bid amount;
(d) Original subcontract start date and completion date;
(e) Any previous time extensions granted (number and duration); and
(f) Extension of time requested.

In addition, the application for extension of time shall set forth in detail:

(a) Nature of each alleged cause of delay in completing the work;
(b) Date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
(c) Statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and
(d) Statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of subcontract performance and payment for work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

10.5.4 Determination of Time Extensions: Time extensions for subcontracted work shall be determined in writing by the Commissioner.

10.5.5 Delay Analysis: For extensions of time for final completion payments for subcontracted work, the agency engineering staff shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Contract). The report shall be made a part of the agency contract file.

10.5.6 Assessment of Liquidated Damages: In the case of final completion payments for subcontracted work, liquidated damages shall be assessed as determined by the delay analysis. However, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension at final completion, shall operate as a waiver or release of any claim the City may have against the Subcontractor for either actual or liquidated damages.

10.6 Payment Guarantee

10.6.1 In the event the terms of this Contract do not require the Contractor or its Subcontractor(s) to provide a payment bond, the City shall, in accordance with the terms of this Article, guarantee payment of all lawful demands for: (a) wages and compensation for labor performed and/or services rendered, and (b) materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with the City as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of the City, the Contractor or its Subcontractor(s). For the purpose of this Article 10.6, Subcontractor shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor to furnish, or actually furnishes, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder.

10.6.2 The provisions of Article 10.6.1 are subject to the following limitations and conditions.

(a) The guarantee is made for the benefit of all beneficiaries as defined in Article 10.6.1, above, provided that those beneficiaries strictly adhere to the terms and conditions of this Article 10.6.2.
(b) Nothing in this Article shall prevent a beneficiary providing labor, services or material for the work from suing the Contractor or its Subcontractor(s) for any amounts due and owing the beneficiary by the Contractor or its Subcontractor(s).
(c) All demands made against the City pursuant to this Article shall be made within four (4) months from the date payment is due on the invoice or invoices submitted by the beneficiary to the Contractor or its Subcontractor(s) for labor or work

done or for materials or supplies delivered, or, if the demand is for wages, four (4) months from the date the wages were due to be paid to the beneficiary.

(d) All demands made against the City by such beneficiary shall be presented to the Commissioner's Representative along with all written documentation concerning the demand which the Commissioner's Representative deems appropriate or necessary, which may include, but shall not be limited to: the subcontract or sub-subcontract; any invoices presented to the Contractor or subcontractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Contractor or Subcontractor and that the demand has not been paid by the Contractor or Subcontractor within the time allowed for such payment by the subcontract or sub-subcontract, and copies of any correspondence between the beneficiary and the Contractor or Subcontractor concerning such demand. The City shall notify the Contractor or Subcontractor that a demand has been made. The Contractor or Subcontractor shall inform the City of any defenses to the demand, and shall forward to the City any documents the City requests concerning the demand.

(e) The City shall make payment only if, after considering all defenses presented by the Contractor or Subcontractor, it determines that the payment is due and owing to the beneficiary making the demand.

(f) The City will not initiate the payment process of this Article or make payment on a demand where the beneficiary making the demand has filed a lien against the Work or otherwise sues the City prior to receiving a written notice from the City that it will not pay the demand.

(g) No beneficiary shall be entitled to interest from the City, or to any other costs, including but not limited to attorney's fees.

10.6.3 Upon the receipt by the City of a demand pursuant to this Article, the City may withhold from any payment otherwise due and owing to the Contractor under this Contract an amount sufficient to satisfy the demand.

(a) In the event the City determines that the demand is valid, the City shall notify the Contractor of such determination and the amount thereof, and direct the Contractor to immediately pay such amount to the beneficiary. In the event the Contractor, within seven (7) days of receipt of such notification from the City, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the Contractor to the beneficiary for the amount of the demand determined by the City to be valid. The Contractor, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the City, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.

(b) In the event that the amount otherwise due and owing to the Contractor by the City is insufficient to satisfy such demand, the City may, at its option, require payment from the Contractor of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the City may have under Law or Contract.

(c) In the event the City determines that the demand is invalid, any amount withheld pending the City's review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a lien has been filed, the terms and conditions set forth in Article 24 shall apply.

10.6.4 The provisions of this Article shall not prevent the City and the Contractor from resolving disputes in accordance with the rules of the Procurement Policy Board, where applicable.

10.6.5 In the event the City determines that the beneficiary is entitled to payment pursuant to this Article, such determination and any defenses and counterclaims raised by the Contractor shall be taken into account in evaluating the Contractor's performance.

10.6.6 Nothing in this Article shall relieve the Contractor of the obligation to pay the claims of all persons with valid and lawful claims against the Contractor relating to the work.

10.6.7 The Contractor shall not require any performance, payment or other bonds of any Subcontractor, unless required by the Commissioner.

10.6.8 The payment guarantee made pursuant to this Article shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to the Contractor or his Subcontractors in the prosecution of the Work under this Contract all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the City on the payment guarantee provided by this Article within the one year limitations period set forth in Section 137(4)(b).

ARTICLE 11 - CONSTRUCTION MANAGEMENT SERVICES

11.1 General Description of Construction Management Services: The Contractor shall provide, to the satisfaction of the Commissioner, all services necessary and required for the inspection, supervision, management, coordination and administration of the Project, so that the required Work is properly executed, completed in a timely fashion and conforms to the requirements of the Construction Documents and to good construction practice. The Contractor shall provide construction management services as directed by the Commissioner. Such construction management services shall include without limitation the services set forth in this Article 11. The Contractor shall cooperate in all respects with representatives of the Commissioner concerning all aspects of the Project.

11.2 The Contractor's Personnel

11.2.1 Key Personnel: It is the intent of the City to secure the personal services of those key design and construction management personnel identified in Exhibit A for the titles set forth therein. Accordingly, the Contractor agrees to assign such key personnel for the entire duration of Project. Failure by the contractor to provide such key personnel will be considered a material breach of the Contract and grounds for termination for cause. Replacement of such key personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer in the employ of the Contractor, or (2) if the City fails to direct the Contractor to commence work on the Project within nine (9) months of the date the Contractor submitted its technical proposal. Replacement of such key personnel must comply with the conditions set forth in Article 11.3.4 below.

11.2.2 Staffing Requirements: Staffing requirements for personnel are set forth in Exhibit B. Such staffing requirements specify the following: (1) titles of design and construction management personnel that may be required for the Project, (2) minimum requirements per title, and (3) Estimated Direct Salary Rate per hour per title. The Contractor agrees, throughout the term of the Contract, to provide design and construction management personnel as directed by the Commissioner. The Contractor specifically agrees that its employees, agents and consultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

11.2.3 Minimum Requirements Per Title: Design and construction management personnel providing services hereunder must satisfy the minimum requirements for the specific title in which he/she is performing services, as set forth in Exhibit B. The Contractor shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the minimum requirements per title**.**

11.3 Staffing Plan: A Staffing Plan for the Project shall be established as set forth below. Such Staffing Plan must be established and approved by the Commissioner prior to commencement of the Contractor's services pursuant to this Contract.

11.3.1 Contents of Staffing Plan: The Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those titles of personnel necessary for the provision of the required services.

(a) Key Personnel: Individuals named in Exhibit A as Key Personnel
(b) Other Personnel: Required titles and specific individual for each title
(c) Direct Salary Rate per hour for each specified individual (except Project Executive), 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 42, or (2) the Estimated Direct Salary Rate per hour for the specified title set forth in Exhibit B.
(d) Total estimated hours per title
(e) Total estimated amount per title
(f) Total estimated amount for all required titles

The specific personnel identified in the approved Staffing Plan, except for any Project Executive(s), shall be considered assigned personnel for the purpose of the Contractor's entitlement to reimbursement for services performed by such personnel in accordance with Article 42.3. As specified therein, the Contractor shall not be entitled to payment for staffing expenses for: (1) any Project Executive(s), and (2) any personnel not assigned to the Project and not included in the approved Staffing Plan. In accordance with Article 42.2, compensation for such personnel is deemed included in the Multiplier(s).

11.3.2 Proposed Staffing Plan: Within seven (7) days after commencement of this Contract, the Contractor shall submit a proposed Staffing Plan for the Project. Such Staffing Plan shall include the items listed above. With respect to each proposed employee, the Contractor shall provide: (1) the employee's resume, as well as any other information detailing his/her technical qualifications and expertise, (2) the title in Exhibit B for which the employee meets the qualification requirements, and (3) direct salary information, including the employee's current actual annual direct salary, as defined in Article 42, and direct salary history for the past three years.

11.3.3 Review and Approval of Staffing Plan: The Commissioner shall review the Contractor's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of his/her review, the Commissioner shall determine (1) whether each specific employee meets the qualification requirements for the applicable title, and (2) the direct salary rate per hour to be paid for each specific employee, in accordance with Article 42. The Contractor shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

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

(a) Replacement Personnel: No substitutions for assigned personnel shall be permitted unless the proposed replacement has received the prior written approval of the Commissioner. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced. As set forth above, replacement of key design and construction management personnel will not be permitted unless the designated individual is no longer in the employ of the Contractor.

(b) Changes by the Commissioner: The Commissioner reserves the right to direct changes to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Project and increasing or decreasing the personnel assigned to the Project, based upon the scope of the required Work. The Contractor shall increase or decrease the personnel assigned to the Project, as directed by the Commissioner.

(c) Removal of Personnel: At the Commissioner's request at any time, the Contractor shall remove any personnel and substitute another employee of the Contractor reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his/her sole discretion.

(d) Revisions Due to Delay: In the event completion of the Project is delayed for any reason, including without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the Contractor, the Commissioner shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The Contractor shall be reimbursed for the cost of the staffing it is directed by the Commissioner to maintain. Upon termination of the delay, the Contractor shall restore the level of staffing as directed by the Commissioner.

11.3.5 Night Differential / Overtime: The Contractor 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 Contractor'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 Contractor'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 limitations set forth in Article 42.

11.4 Related Services: Throughout the Project, the Contractor shall be responsible for providing the related services set forth below. All costs for such related services are deemed included in the Multiplier for Construction Management Personnel.

11.4.1 Throughout the term of this Contract, the Contractor shall be required to provide and maintain a Project Office, dedicated to the activities of personnel in connection with Projects assigned under this Contract. Such Project Office shall be in accordance with the requirements set forth in Exhibit D, including the requirement that the Project Office be located with twenty-five (25) miles of DDC headquarters in Long Island City.

11.4.2 The Contractor shall provide overnight delivery of the following Project documents: (1) bid and contract 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.

11.4.3 The Contractor shall provide transportation, including parking and tolls, for the Project Executive(s) and all personnel assigned to the Project, except as otherwise provided below. The transportation provided shall be vehicular, unless the Project site can be easily accessed by public transportation. Contractors and/or consultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.

(a) In the event the Contractor is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Contractor shall be reimbursed for expenses incurred in connection with such long distance travel.

(b) 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 Contractor's home office.

(c) Reimbursement for long distance travel expenses shall be as set forth in Article 42.5.

11.4.4 The Contractor shall provide communications equipment and service, including without limitation cellular telephones for the Project Executive(s) and all personnel assigned to the Project. The telephone numbers of all personnel assigned to the Project shall be submitted to the Commissioner.

11.5 Services During Pre-Construction/Remediation Phase: The Contractor shall provide construction management services during the Pre-Construction/Remediation Phase as directed by the Commissioner. Such construction management services shall include without limitation the services set forth below.

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

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

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

11.5.4 Take appropriate action to ensure that all required filings with regulatory agencies with respect to the design have been made.

11.5.5 Prepare Bid and Contract Documents for the Project that are complete and comply with all DDC requirements.

11.5.6 During the bidding process for the subcontracts, coordinate the work of the Consultant(s) to assure that any required addenda are promptly issued.

11.5.7 Perform all services with respect to the process of bidding and awarding subcontracts as set forth in Article 10.

11.6 Services During Construction/Remediation Phase: The Contractor shall provide construction management services during the Construction/Remediation Phase as directed by the Commissioner. Such construction management services shall include without limitation the services set forth below.

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

11.6.2 Transmit, or ensure that the Subcontractor(s) have transmitted, to the Consultant all required submittals, including without limitation shop drawings, material samples and catalogue cuts. Such transmittals shall be in accordance with DDC guidelines.

11.6.3 Undertake the following responsibilities with respect to the inspection of the Work:

(a) Provide technical inspection, supervision and coordination of the Work on the Project until final completion of the Work and Final Acceptance thereof by the Commissioner, verifying that the materials furnished and Work performed are in accordance with all requirements of the Construction Documents, and that Work on the Project is progressing on schedule.
(b) Provide offsite plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Commissioner, to insure conformance with the material specifications of the Construction Documents.
(c) Take appropriate action to prevent the installation of Work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the Construction Documents, and inform Commissioner promptly of such action and the reasons for and outcome of such action.
(d) Supervise the performance of all inspections, quality control tests, or any other tests required by law, rule or regulation or by the Construction Documents, to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include without limitation, semi-controlled or off-site inspections and controlled inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel or any other material or equipment. If directed by the Commissioner in writing as an additional service, the Contractor shall retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory services will be provided to the Contractor pursuant to the Allowance for Additional Services.
(e) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative on a periodic basis and prior to Substantial Completion, occupancy by the City, or Final Acceptance, as described in Articles 11.6.17 and 11.6.18 below. The Contractor shall furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
(f) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.
(g) Inspect the Project and provide a report prior to the expiration of the guarantee period set forth in the Construction Documents, as described in Article 11.6.20 below.
(h) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

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

(a) Review proposed Progress Schedule(s), and any updates thereto, submitted by the Subcontractor(s) and direct the Subcontractor(s) to revise the same as necessary prior to Contractor submission of the Progress Schedule, or any updates thereto, to the Commissioner for approval in accordance with Article 8 hereof.
(b) Take appropriate action to ensure compliance with the Progress Schedule by the Subcontractor(s).
(c) Review the adequacy of the personnel and equipment of the Subcontractor(s) and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule.
(d) Notify the Commissioner of any anticipated delays in fabrication or construction.
(e) Take appropriate action to minimize delays to the Project caused by labor disputes during construction.

(f) If performance of the Work by the Subcontractor(s) falls behind the Progress Schedule, advise the Commissioner of the same and make recommendations as to what methods should be adopted to make up for lost time.

11.6.5 Review and evaluate the means and methods of construction and/or remediation proposed by the Subcontractor(s) and direct changes as necessary in the event the Contractor reasonably believes that such proposed means and methods of construction and/or remediation will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the terms of the Construction Documents.

11.6.6 Undertake the following responsibilities with respect to the safety of the Project site:

(a) Perform all CM responsibilities set forth in the DDC Safety Requirements (Exhibit E).
(b) Review all Safety Programs and Site Safety Plan(s) developed by the Subcontractor(s) and direct revisions to the same as necessary prior to submission to DDC.
(c) Take appropriate action to enforce Subcontractor compliance with (1) Safety Program, (2) Site Safety Plan, (3) DDC Safety Requirements, and (4) all applicable regulations that pertain to construction safety.
(d) Promptly notify the Commissioner and the Subcontractor(s) if the Contractor observes any hazardous conditions at the site or non-compliance by the Subcontractor(s) with its Safety Program, Site Safety Plan, DDC Safety Requirements, any applicable safety regulations or subcontract requirements.
(e) Take or cause to be taken precautions to minimize the risk of injury to persons and damage to property resulting from or arising out of the Work.
(f) In the event of an emergency, provide such labor, materials, equipment and supervision necessary to cure such emergency condition. The Contractor shall immediately notify the Commissioner of any such emergency condition.

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

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

11.6.8 Monitor compliance by the Subcontractor(s) with the following requirements applicable to the Work: (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA); (3) requirements for the participation of M/WBEs, and (4) requirements for the participation of Locally Based Enterprises (LBEs). If Participation Goals have been established for the participation of M/WBEs in the subcontracted Work, the subcontractor is not required to comply with the LBE Program.

11.6.9 Undertake the following responsibilities with respect to Subcontractor payments:

(a) Review all requisitions for payments submitted by the Subcontractor(s), including without limitation partial payments, payments for extra work, Substantial Completion and final payments.
(b) Verify all estimates for payments of Work performed, computations, as well as field measurements and sketches necessary for payment purposes.
(c) With respect to each requisition for payments submitted by the Subcontractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.
(d) Contractor’s requisitions for payment for Work performed by Subcontractors, submitted in accordance with Article 42 hereof, shall be based upon and in accordance with Subcontractor requisitions for payment reviewed and approved by the Contractor.

11.6.10 Review and approve or disapprove applications for extensions of time submitted by the Subcontractor(s). The Contractor’s request for a time extension for construction Work performed by Subcontractors, submitted for Commissioner approval in accordance with Article 10 hereof, shall be based upon and in accordance with Subcontractor applications for extensions of time reviewed

and approved by the Contractor.

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

11.6.12 Undertake the following responsibilities with respect to Subcontractor requests for change orders:

(a) Review, evaluate and make a decision with respect to the validity of all written Subcontractor requests for change orders. The Contractor's decision as to the validity of the proposed Subcontractor change order shall be in writing and shall provide a reasonably detailed explanation for the decision based upon the information presented by the Subcontractor and the requirements of the Construction Documents.

(b) If the Contractor decides that the Subcontractor's request for a change order is not valid, it shall provide such written decision to the Subcontractor, with a copy of the same to the Commissioner.

(c) If the Contractor decides that the Subcontractor's request for a change order is valid, the Contractor shall prepare the proposed Subcontractor change order and submit the same to the Commissioner for approval. Such proposed Subcontractor change order shall include or be accompanied by the following: (1) the Contractor's written decision as to the validity of the change order, (2) the cost proposal submitted by the Subcontractor, (3) the Contractor's evaluation of such cost proposal, (4) the Contractor's own cost estimate of the quantities of labor, equipment and materials required for the performance of the proposed change order. The Contractor must be prepared to substantiate the information with respect to the change order to the Commissioner, the Engineering Audit Officer, the Comptroller and any other agency having jurisdiction in this area. The Commissioner will make all final determinations regarding change orders, modifications and additions to the Construction Documents.

(d) If the Commissioner approves the Contractor's request for a Subcontractor change order, the Contractor shall negotiate a price, i.e., a lump sum price or unit prices, for the performance of the proposed change order work and submit the same to the Commissioner for his approval.

11.6.13 Conduct job meetings with the Subcontractor(s), Consultants, representatives of the Commissioner, interested city agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, scheduling and related issues. The Contractor shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees.

11.6.14 Undertake the following responsibilities with respect to Project reports:

(a) Submit written progress reports to the Commissioner on a monthly basis, unless otherwise directed. Such reports shall be based upon the most current information and shall include, without limitation:

(1) Progress Schedule, including information concerning the Work of the construction Subcontractor(s) and the percentage of completion of the Work;
(2) Change Order Tracking Sheet, indicating the number and amount of change orders;
(3) Shop Drawing Log Schedule;
(4) Fabrication and Delivery Schedule;
(5) Budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete, and
(6) Progress photographs, as set forth in Article 11.6.21.

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

11.6.15 Undertake the responsibilities set forth below with respect to disputes submitted by its subcontractors. Disputes shall mean disputes of the kind delineated in Article 29 of this Agreement.

(a) Review, evaluate and prepare a recommended determination with respect to disputes filed by its subcontractors. The Contractor's recommendation shall be in writing, and shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the subcontractor, as well as the requirements of the subcontract and the Construction Documents.

(b) The Contractor shall submit the dispute filed by its subcontractor to the City for resolution in accordance with Article 29 of this Agreement. The Contractor's submission shall be accompanied by the recommended determination described above.

11.6.16 Determine the need for and undertake default proceedings against the Subcontractor(s). In the event of default by a Subcontractor, the Contractor shall promptly submit for Commissioner approval an alternate Subcontractor(s) to perform the Work.

11.6.17 Undertake the following responsibilities with respect to Substantial Completion of the Work:

(a) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative at the time of Substantial Completion.
(b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
(c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.
(d) Finalize all necessary Punch Lists, including completion dates for all items, and expedite execution of the same by its Subcontractors.
(e) Perform the above duties in the event the City is to take over, use, occupy or operate any part or all of the Project.

11.6.18 Undertake the following responsibilities with respect to Final Acceptance of the Work:

(a) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative at the time of Final Acceptance.
(b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
(c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.
(d) Assemble and deliver to the Commissioner all record "As Built" Drawings. The Contractor shall notify the Commissioner of any issues, problems or observations relative to such drawings.

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

11.6.20 Undertake the following responsibilities with respect to maintenance and guarantee obligations:

(a) Prior to the expiration of the guarantee period set forth in Article 25 hereof, inspect the Project and furnish a report to the Commissioner describing in detail any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.
(b) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

11.6.21 Take photographs to document the progress of the construction Work. Such photographs shall be taken on a bi-weekly basis until Substantial Completion of the Work. As indicated in Article 11.6.14, such photographs shall be included in each monthly progress report.

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

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

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

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

11.7 Services During Post Construction/Remediation Phase: The Contractor shall provide construction management services during the Post Construction/Remediation Phase as directed by the Commissioner. Such construction management services shall include without limitation the services set forth below.

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

11.7.2 Manage and supervise training sessions provided by the Subcontractors for all equipment and/or systems installed.

11.7.3 Obtain and deliver whichever of the following is required by the Commissioner: (1) permanent Certificates of Occupancy, (2) Letter of Completion from the Department of Buildings, (3) all certificates of inspection for the work, and (4) written approval of any agency having jurisdiction over the work.

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

11.8 Additional Services: The Contractor may be directed to provide additional services. Additional services shall be such services determined by the Commissioner to be necessary for the expeditious completion of the Project, and may include without limitation, the performance of general conditions work and/or the purchase of miscellaneous items.

ARTICLE 12 - CHARACTER OF THE WORK

12.1 Unless otherwise expressly provided in this Agreement, the Work must be performed in accordance with the best, modern practice, with materials and workmanship of the highest quality, to the satisfaction of the Commissioner. All materials required for the Work shall be free from all defects, of the best available grade and quality, entirely satisfactory for the purpose intended, furnished in ample quantities to prevent delays, and in accordance with all requirements of this Agreement.

ARTICLE 13 - MEANS AND METHODS OF CONSTRUCTION and/or REMEDIATION

13.1 Unless otherwise expressly provided in this Agreement, the means and methods of construction and/or remediation shall be such as the Contractor may choose; subject, however, to the Commissioner's right to reject means and methods proposed by the Contractor which: (1) will constitute or create a hazard to the Work, or to persons or property; or (2) will not produce finished Work in accordance with the terms of the Agreement.

13.2 The Commissioner's approval of the Contractor's means and methods of construction and/or remediation, or his/her failure to exercise his right to reject such means or methods, shall not relieve the Contractor of his obligation to accomplish the result intended by the Agreement; nor shall the exercise of such right to reject create a cause of action for damages.

ARTICLE 14 - INSPECTION

14.1 During the progress of the Work and up to the date of Final Acceptance of all required Work, the Contractor shall at all times afford the representatives of the City every reasonable, safe and proper facility for inspecting all Work done or being done at the Site and also the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

14.2 The Contractor's obligation hereunder shall include the uncovering or taking down of finished Work and its restoration thereafter, provided, however that the order to uncover, take down and restore shall be in writing, and further provided that if Work thus exposed proves satisfactory, such uncovering or taking down and restoration shall be considered an item of extra Work to be paid for in accordance with the provisions of Article 26 hereof.

14.3 Inspection and approval by the Commissioner's Representative of finished Work or of work being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the Contractor of his obligation to perform the Work in strict accordance with the Agreement. Finished or unfinished Work found not to be in strict accordance with the Agreement shall be replaced as directed by the Commissioner's Representative, even though such Work may have been previously approved and paid for.

14.4 Rejected Work and materials must be promptly taken down and removed from the Site, which must at all times be kept in a reasonably clean and neat condition.

ARTICLE 15 - PROTECTION OF WORK AND OF PERSONS AND PROPERTY

15.1 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace or repair such Work, whichever the Commissioner's Representative shall determine to be preferable. The obligation to deliver finished Work in strict accordance with the Contract prior to Final Acceptance shall be absolute and shall not be affected by the Commissioner's Representative's approval of, or failure to prohibit, the Means and Methods of Construction used by the Contractor.

15.2 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall take all reasonable precautions to protect the persons and property of the City and of others from damage, loss or injury resulting from the Contractor's, and/or its Subcontractors' operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, place or replace and adequately maintain at or about the Site suitable and sufficient protection such as lights, barricades, and enclosures.

15.3 The Contractor shall make a full and complete report in writing to the Commissioner's Representative within three (3) Days after the happening of any loss, damage or injury to Work, persons or property, or any accidents arising out of the operations of the Contractor and/or its Subcontractors under this Contract. The Contractor shall notify in writing the Commissioner (pursuant to Article 23), the Comptroller, the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any such loss, damage, injury, or accident, and any claim or suit arising therefrom, immediately, but not later than 20 days after such event. The Contractor's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as [the Contractor] as Named Insured." If the Contractor fails to give any of the foregoing notices to any appropriate insurance carrier in a timely manner, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

15.3.1 Notice to the Comptroller pursuant to Article 15.3 shall specify the name of the Contractor, the number of this Contract, the date of the occurrence, the location (street address and borough) of the occurrence, the identity of the persons or things injured, damaged or lost, and the name of the insurance carrier that issued the commercial general liability insurance policy pursuant to Article 23.1.1 of this Contract. Such notice shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007.

15.4 The Contractor shall indemnify, defend and hold the City, its employees and agents harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, allegedly arising out of or in any way related to the operations of the Contractor and/or its Subcontractors in the performance of this Contract or from the Contractor's and/or its Subcontractors' failure to comply with any of the provisions of this Contract or of the Law. Insofar as the facts and Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent provided by Law.

15.5 The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor or the City.

ARTICLE 16 - REQUEST FOR INFORMATION OR APPROVAL

16.1 From time to time as the Work progresses and in the sequence indicated by the approved Progress Schedule, the Contractor may submit to the Commissioner a specific request in writing for each item of information or approval required by him. These requests must state the latest date upon which the information or approval is actually required by the Contractor, and must be submitted sufficiently in advance thereof to allow the Commissioner a reasonable time to act upon such submissions or any necessary re-submissions thereof.

16.2 The Contractor shall not have any right to an extension of time on account of delays due to his failure to submit his requests for the required information for the required approval in accordance with the above requirements.

ARTICLE 17 - NOTICE AND DOCUMENTATION OF DELAY DAMAGES AND OTHER DAMAGES; PRODUCTION OF FINANCIAL RECORDS

17.1 After the commencement of any condition which is causing or may cause a delay in completion of the Work, including conditions for which the Contractor may be entitled to an extension of time, the following notifications and submittals are required:

17.1.1 Within seven (7) Days after the commencement of such condition, the Contractor must notify the Commissioner's Representative in writing of the existence, nature and effect of such condition upon the approved progress schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.

17.1.2 If the Contractor shall claim to be sustaining damages for delay, by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action arising under or by reason of this Contract shall not be different from or in excess of the statements made and documentation provided pursuant to this Article.

17.2 Failure of the Contractor to strictly comply with the requirements of Article 17.1.1 may, in the discretion of the Commissioner, be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of the Contractor to strictly comply with the requirements of Articles 17.1.1 and 17.1.2 shall be deemed a conclusive waiver by the Contractor of any and all claims for damages for delay arising from such condition and no right to recover on such claims shall exist.

17.3 When appropriate and directed by the Commissioner's Representative, the progress schedule shall be revised by the Contractor until finally approved by the Commissioner's Representative. The revised progress schedule must be strictly adhered to by the Contractor.

17.4 If the Contractor shall claim to be sustaining damages by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action or dispute resolution procedure arising under or by reason of this Contract shall not be different from or in excess of the statements and documentation made pursuant to this Article.

17.5 In addition to the foregoing statements, the Contractor shall, upon notice from the Commissioner, produce for examination at the Contractor's office, by the Commissioner's Representative, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract, and submit itself and persons in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

17.6 In addition to the statements required under Article 30 and this Article, the Contractor and/or its Subcontractor shall, within thirty (30) Days upon notice from the Commissioner or Comptroller, produce for examination at the Contractor's and/or Subcontractor's office, by a representative of either the Commissioner or Comptroller, all of its books of account, bid documents, financial statements, accountant work papers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract. Further, the Contractor and/or its Subcontractor shall submit any person in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

17.7 Unless the information and examination required under Article 17.6 is provided by the Contractor and/or its Subcontractor upon thirty (30) Days' notice from the Commissioner or Comptroller, or upon the Commissioner's or Comptroller's written authorization to extend the time to comply, the City shall be released from all claims arising under, relating to or by reason of this Contract, except for sums certified by the Commissioner or Comptroller to be due under the provisions of this Contract. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the City to recover any sum in excess of the sums certified by the Commissioner or Comptroller to be due under or by reason of this Contract, the Contractor must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article.

17.8 In addition, after the commencement of any action or dispute resolution procedure by the Contractor arising under or by reason of this Contract, the City shall have the right to require the Contractor to produce for examination under oath, up until the trial of the action or hearing before the Contract Dispute Resolution Board, the books and documents described in Article 17.6 and submit itself and all persons in its employ for examination under oath. If this Article is not complied with as required, then the Contractor hereby consents to the dismissal of the action or dispute resolution procedure.

ARTICLE 18 - DETERMINING DATE OF COMPLETION

18.1 Final inspection of the Work by the Commissioner's Representative shall be made within 10 days after receipt of the Contractor's written request therefor. The Work will be deemed complete as of the date of such inspection if, upon such inspection, the Commissioner's Representative finds that no further Work remains to be done. The Commissioner will then issue a certificate of completion and acceptance of the Work.

18.2 Request for Reinspection. However, if such inspection, in the opinion of the Commissioner's Representative, reveals items of Work still to be performed, the Contractor shall promptly perform them and then request a reinspection. If, upon any reinspection, the Commissioner's Representative determines that the Work is complete, the date of completion shall be deemed to be the actual date of such reinspection, which shall be made not more than 10 days after the date of the request therefor.

ARTICLE 19 - EXTENSION OF TIME

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

ARTICLE 20 - OCCUPATION OR USE PRIOR TO COMPLETION

20.1 If before final completion of the Work specified hereunder, it shall be deemed necessary by the Commissioner to take over, use, occupy or operate any part of the completed Work, the Commissioner shall have the right so to do and the Contractor will not in any way interfere with or object to the use, occupation or operation of such Work by the City after receipt of notice in writing by the Commissioner that such Work or part thereof will be used by the City on and after the date specified in such notice.

20.2 Should such action be taken by the Commissioner, the Contractor's guarantee on that part of the Work placed into use shall begin on the date such use by the City shall begin, and the Contractor shall be entitled to a return of so much of the retained percentages as have been withheld under Article 42, as security for the faithful performance of the Work which the Commissioner may take over, use, occupy or operate under this Article, except so much thereof as may be retained under Article 25 hereof.

20.3 Immediately prior to such occupancy or use, inspection of the part to be occupied or used will be made by the Commissioner's Representative, and the Contractor will be furnished in writing with a statement of the Work, if any, still to be done on such part. If any part of the completed or partly completed Work is taken over for use, occupation or operation under this Article, then the Commissioner may issue a determination of Substantial Completion with respect to such Work.

ARTICLE 21 - CHANGED CONDITIONS

21.1 Should the Contractor encounter during the progress of the Work, subsurface conditions at the site materially differing from any shown on any documents furnished by the Commissioner or such subsurface conditions as could not reasonably have been anticipated by the Contractor and were not anticipated by the City, which conditions will materially affect the cost of the Work to be done under the Contract, the attention of the Commissioner must be called immediately to such conditions before they are disturbed. The Commissioner shall thereupon promptly investigate the conditions. If he finds that they do so materially differ, or that they could not reasonably have been anticipated by the Contractor and were not anticipated by the City, the Contract may be modified with his written approval. Any increase in cost resulting therefrom shall be in accordance with Article 26 and the Procurement Policy Board Rules.

ARTICLE 22 - ASSIGNMENTS

22.1 The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or of its rights, obligations, duties, in whole or in part, or of its right to execute it, or its 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 prior 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. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

22.2 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.

22.3 Failure of the Contractor to obtain the required prior written consent of the Commissioner to such an assignment, transfer or conveyance, shall be cause for termination for cause, at the option of the Commissioner; and, if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all Moines that may become due under the contract shall be forfeited to the City, except so much thereof as may be necessary to pay the Contractor's employees.

22.4 The provisions of this Article shall not be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of creditors made pursuant to the statutes of the State of New York.

22.5 The Contractor 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.

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

ARTICLE 23 - INSURANCE

23.1 Types of Insurance: From the date the Contractor is ordered to commence Work and throughout the term of this Contract, the Contractor must effect and maintain with companies licensed and authorized to do business in the State of New York, the following types and amounts of insurance.

23.1.1 Commercial General Liability Insurance: The Contractor shall provide a Commercial General Liability Insurance policy (with the coverages indicated below) in the minimum amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate. Such policy shall be in the Contractor's name and shall name the City of New York as additional insured thereunder. This policy shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Contract. The coverage provided must be "occurrence" based; "claims made" coverage will not be

accepted. At its option, the Contractor may provide comprehensive general liability insurance that complies with all requirements set forth in this Article. The general liability insurance policy provided shall include, without limitation, the following coverages: comprehensive liability, premises/operations liability, products/completed operations liability, contractual liability, and broad form property damage. The general liability insurance policy provided shall include the following endorsements:

(a) The City of New York and any Site Owner designated by the City, together with their respective officials and employees, are Additional Insureds 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, 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) Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to Named Insured and to the City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007.
(f) Notice of Cancellation of Policy, as set forth in Article 23.2.4 below.

23.1.2 Professional Liability Insurance: Any consultant engaged by the Contractor to perform professional services hereunder, and any subconsultant performing professional services, must provide Professional Liability insurance in the amount of at least One Million Dollars ($1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the consultant or anyone employed by the consultant.

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

23.1.3 Worker's Compensation and Disability Benefits Insurance: The Contractor shall provide, and ensure that each Subcontractor 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.

23.1.4 Employers' Liability Insurance: The Contractor shall provide Employers' Liability Insurance in the 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 and in the course of his/her employment by the insured.

23.1.5 Automobile Liability Insurance: The Contractor shall provide liability insurance in the amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate, covering all owned, non-owned and hired vehicles to be used in connection with this contract. Such policy shall name the City of New York as an additional insured thereunder.

23.2 General Requirements for Insurance Policies

23.2.1 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.

23.2.2 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.

23.2.3 The omission of any endorsements or clauses required by this Article 23 will be considered cause for rejection of the policy.

23.2.4 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."

23.2.5 The Contractor 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.

23.3 Proof of Insurance

23.3.1 On or before the contract commencement date, the Contractor shall submit to the Commissioner two certificates of insurance for all policies required under this contract, together with originals of all endorsements required hereunder.

23.3.2 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 are deemed completed.

23.3.3 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.

23.4 Operations at the Site

23.4.1 The Contractor shall not commence any operations at the site or adjacent thereto unless and until all required insurance has been submitted to and accepted by the Commissioner.

23.4.2 The Contractor shall be responsible for providing continuous insurance coverage as required by this contract and shall be authorized to work at the site only during the effective period of all required coverage.

23.4.3 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all work at the site, and shall not recommence work at the site until authorized in writing to do so by the Commissioner. Upon quitting the site, the Contractor shall leave all plant, materials, equipment, tools and supplies on the site. Contract time shall continue to run during such periods and no extensions of time will be granted. Furthermore, the Commissioner may declare the Contractor in default for failure to maintain required insurance.

23.4.4 The Contractor shall promptly notify the Commissioner of any accidents causing bodily injury or property damage arising in the course of operations under the contract.

23.5 Indemnification

23.5.1 If the persons or property of the City or of others sustains loss, damage or injury as a result of the operations of the Contractor or his subcontractors in the performance of this contract, or from his or their failure to comply with any of the provisions of this contract, or of law, the Contractor shall indemnify and hold the City harmless from any and all costs and expenses which the City may be subjected to or which it may suffer or incur by reason thereof.

23.5.2 The Contractor shall indemnify and hold the City of New York harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the insurance provisions of this contract.

ARTICLE 24 - MONEY RETAINED AGAINST CLAIMS

24.1 If any claim shall be made by any person, firm or corporation against the City or against the Contractor and the City: (l) for an alleged loss, damage or injury of the kind referred to in Article 15 hereof which, in the opinion of the Comptroller, may not be covered by the general liability insurance policy, or, which, together with previously filed claims, is in excess of the amount payable under such policies; or (2) for an infringement of copyrights or patents or use of patented articles, tools, etc.; or (3) for damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract: the amount of such claim, or so much thereof as he may deem necessary, may be withheld by the Comptroller, as security against such claim, from any money due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of such action by a Court of competent jurisdiction. The Comptroller, in his discretion, may permit the Contractor to substitute other satisfactory security in lieu of the moneys so withheld.

24.2 If no action is commenced upon such claim within the time limited thereof by law, the Comptroller, upon written demand by the Contractor, shall return the amount so withheld without interest.

24.3 If an action on such claim is timely commenced and the liability of the City, or the Contractor, or both, shall have been established therein by a final judgment of a Court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the Comptroller shall pay such judgment or admitted claim out of the moneys retained by him under the provisions of this Article, and return the balance, if any, without interest, to the Contractor.

24.4 Liens: If any time before or within thirty days after the whole Work herein agreed to be performed, is completed and accepted by the City, any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Agreement shall file with the Department and with the Commissioner of Finance of the City any notice as is described in the Lien Law, or any act of the Legislature of the State of New York, the City shall retain, from the moneys due or to become due under this Agreement, so much of such moneys as shall be sufficient to pay the amount claimed in said notice, together with the reasonable costs of any action or actions brought or that may be brought to enforce such Lien. The moneys so retained shall be held by the City until the Lien thereon created by the said act and the filing of the said notice shall be discharged pursuant to law.

ARTICLE 25 - MAINTENANCE AND GUARANTY

25.1 The Contractor must promptly repair, replace, restore or rebuild, as the Commissioner may determine, any finished Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one-year period subsequent to the date of Substantial Completion of the Work required hereunder, except where other periods of maintenance and guarantee are provided for.

25.2 As security for the faithful performance of its obligations hereunder, the Contractor, upon filing his requisition for the Substantial Completion payment hereunder, shall deposit with the Commissioner a sum equal to l% of the value of the construction Work certified for payment in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the Comptroller; or obligations of the City of New York, which the Comptroller may approve as of equal value with the sum so required.

25.3 In lieu of the above, the Contractor may make such security payment to the City by authorizing the Commissioner in writing to deduct the amount from the Substantial Completion payment hereunder, which shall be deemed the deposit required above.

25.4 If the Contractor has faithfully performed all his obligations hereunder, the Commissioner shall so certify to the Comptroller within five (5) days after the expiration of one (1) year from the date of Substantial Completion of the Work required hereunder. The sum shall be repaid to the Contractor without interest within thirty (30) days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all his obligations hereunder.

25.5 Notice by the Commissioner to the Contractor to repair, replace, rebuild or restore such defective or damaged Work shall be timely if given not later not than ten (10) days subsequent to the expiration of the one-year period or other periods provided herein.

25.6 If the Contractor shall fail to repair, rebuild or restore such defective or damaged Work promptly after receiving such notice, the Commissioner shall have the right to have the Work done by others and to deduct the cost thereof from the amount so deposited hereunder. The balance, if any, shall be returned to the Contractor without interest. If the amount so deposited be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the Commissioner.

25.7 The Commissioner's Representative certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor shall be binding and conclusive as to the amount thereof upon the Contractor.

25.8 The Contractor shall obtain all manufacturer's warranties and guaranties of all equipment and materials required by this Agreement in the name of the City of New York and shall deliver same to the City.

ARTICLE 26 - CONTRACT CHANGES

26.1 Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Contractors deviating from the requirements of an original purchase order or 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 Contractor.

26.2 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 the Project. Contract changes may include any contract revision deemed necessary by the Contracting Officer. The Contractor may 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 Contractor may be entitled to an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (1) by agreement of a fixed price; (2) by unit prices specified in the contract; (3) by time and material record; and/or (4) in any other manner approved by the City Chief Procurement Officer.

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

26.4 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 Contractor'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 27 - AUDIT AND EXAMINATION

27.1 This Contract and all payments hereunder shall be subject to examination by the Engineering Audit Officer of DDC and

post-audit by the Comptroller of the City of New York in accordance with Law.

ARTICLE 28 - METHODS OF PAYMENT FOR EXTRA WORK

28.1 Overrun of Unit Price Item: The provisions set forth below shall apply to overruns of unit price items which the Contractor, through its subcontractor, is directed to provide. An overrun is any quantity of a unit price item which the Contractor, through its subcontractor, is directed to provide which is in excess of one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule.

28.1.1 For any unit price item, the Contractor's subcontractor will be paid at the unit price bid for any quantity up to one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule. If during the progress of the Work, the actual quantity of any unit price item required to complete the Work approaches the estimated quantity for that item, and due to errors, site conditions, changes in design, or any other reason, it appears that the actual quantity of any unit price item necessary to complete the Work will exceed the estimated quantity for that item by twenty-five (25%) percent, the Contractor shall immediately notify the Commissioner's Representative of such anticipated overrun. The Contractor's subcontractor shall not be compensated for any quantity of a unit price item provided which is in excess of one hundred twenty five (125%) percent of the estimate quantity for that item set forth in the bid schedule without written authorization from the Commissioner's Representative.

28.1.2 If the actual quantity of any unit price item necessary to complete the Work will exceed one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule, the City reserves the right and the Contractor, through its subcontractor, agrees to negotiate a new unit price for such item. In no event shall such negotiated new price exceed the unit bid price. If the City and Contractor, through its subcontractor, cannot agree on a new unit price, then the City shall order the Contractor and the Contractor, through its subcontractor agrees to provide additional quantities of the item on a time and material basis for the actual and reasonable cost as determined under Article 28.2, but in no event at a unit price exceeding the unit price bid.

28.2 Extra Work: The price to be paid for Extra Work ordered pursuant to Article 26, and performed by the Contractor's subcontractor with its own forces, shall be as set forth herein. For Extra Work where payment is by agreement on a fixed price in accordance to Article 26.2, the price to be paid for such Extra Work shall be the fair and reasonable cost of the items set forth below. For Extra Work where payment is on a time and material basis in accordance with Article 26.2, the price to be paid for such Extra Work shall be the actual and reasonable cost of the items set forth below.

28.2.1 Necessary materials (including transportation to the Site);

28.2.2 Necessary direct labor, the cost of which shall be comprised of the items set forth below:

(a) Prevailing wages and supplemental benefits, as defined in Labor Law Section 220
(b) Payroll Taxes, defined as State Unemployment Insurance ("SUI"), Federal Unemployment Insurance ("FUI") and payments pursuant to the Federal Insurance Contributions Act("FICA")
(c) Workers' compensation insurance, as set forth in Article 10.2.2(e) of this Contract. The cost of workers' compensation insurance shall be the subcontractor's actual rate for such coverage for the applicable class or classes of labor, established by its insurance carrier as a result of the latest audit performed. The Contractor shall include a provision in its subcontract which stipulates that the subcontractor, without any further notification or other process, gives its unconditional consent for its insurance carrier to release directly to the City documentation verifying such actual rate.

28.2.3 Sales and personal property taxes, if any, required to be paid on materials not incorporated into such Extra Work;

28.2.4 Maintenance, operation and rental of, or reasonable rental value of subcontractor-owned, necessary plant and equipment other than small tools. Subcontractor-owned equipment is defined to include equipment rental companies affiliated with or controlled by the subcontractor, as determined by the Commissioner. Payment rates for the use of subcontractor-owned plant and equipment shall be in accordance with the provisions of Joint Directive No. 1 issued by the Mayor's Office of Construction and the Comptroller. The applicable directive shall be that in effect at the time of the bid opening for the subcontract;

28.2.5 Necessary installation and dismantling of such plant and equipment (including transportation to and from the Site), if any;

28.2.6 Reasonable rental costs of non-subcontractor-owned necessary plant and equipment other than small tools. In no event shall the amount paid to the subcontractor for such rental exceed the lower of the actual value of such equipment or the book value of such equipment;

28.2.7 Any insurance coverage expressly required by the City for the performance of the Extra Work which is different than the types of insurance required by Article 10.2.2(e), other than workers' compensation insurance;

28.2.8 Twenty (20%) percent of the total of items in Articles 28.2.1 through 28.2.5 as compensation for overhead and profit, except that no percentage for overhead and profit will be allowed on (a) Payroll Taxes, (b) workers' compensation insurance, (c) the

premium portion of overtime pay, and/or (d) sales and personal property taxes. Overhead shall include without limitation, all costs and expenses in connection with administration, management superintendence, small tools, insurance required by Article 10.2.2(e), other than worker's compensation insurance, and performance and payment bonds;

28.2.9 Five (5%) percent of the total of items in Article 28.2.6 and 28.2.7 as compensation for overhead and profit.

28.3 Where the Extra Work is performed in whole or in part by other than the subcontractor's own forces, the subcontractor shall be paid, subject to audit by the Engineering Audit Officer, the cost of such Work computed in accordance with Article 28.2 above, plus an additional allowance of five (5%) percent to cover the subcontractor's overhead and profit.

28.4 Where a change is ordered, involving both Extra Work and omitted or reduced subcontract Work, the subcontract price shall be adjusted, subject to audit by the EAO, in an amount based on the difference between the cost of such Extra Work and of the omitted or reduced Work. The cost of such Extra Work and of such omitted or reduced Work shall be computed based upon applicable subcontract unit prices. Where there are no applicable subcontract unit prices, the cost of such Extra Work and of such omitted or reduced subcontract Work shall be computed in accordance with the Articles 28.2.1 through 28.2.7. If the cost of such Extra Work exceeds the costs of such omitted or reduced subcontract Work, the subcontract price shall be increased by the difference, plus percentages for overhead and profit as provided in Articles 28.2.8 and 28.2.9. If the cost of the omitted or reduced subcontract Work exceeds the cost of the Extra Work, then the subcontract price shall be reduced by the difference.

28.5 Where the Contractor and the Commissioner can agree upon another method of payment for Extra Work in accordance with Article 26.2, or for Extra Work ordered in connection with omitted work, such method, subject to audit by the EAO, may, at the option of the Commissioner, be substituted for the cost plus a percentage method; provided in Article 28.2; provided, however, that if the Extra Work is performed by a sub-subcontractor engaged by a subcontractor, the subcontractor shall not be entitled to receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such sub-subcontractor's Work as computed in accordance with Article 28.2.

28.6 Unless the parties agree on a lump sum payment for Extra Work, requests for payment for Extra Work performed by construction Subcontractors shall be accompanied by signed time sheets, documenting by date the actual hours worked by specific personnel for whom payment is requested, and any other data as may be requested by the Commissioner.

28.7 The Contractor shall not be entitled to any mark-up whatsoever on payments for Extra Work ordered pursuant to Article 26 hereof performed by Subcontractors.

ARTICLE 29 - 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 30 – RECORD KEEPING FOR EXTRA OR DISPUTED WORK

30.1 While the Contractor or any of its Subcontractors is performing Extra Work on a Time and Material Basis ordered by the Commissioner under Article 28, or is performing disputed Work, or complying with a determination or order under protest in accordance with Article 29 hereof, in each such case the Contractor shall furnish the Commissioner's Representative daily with three (3) copies of written statements signed by the Contractor's representative at the Site showing:

30.1.1 The name and number of each Worker employed on such Work or engaged in complying with such determination or order, the number of hours employed, and the character of the Work each is doing; and

30.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work or compliance with such determination or order, and from whom purchased or rented.

30.2 A copy of such statement will be countersigned by the Commissioner's Representative, noting thereon any items not agreed to or questioned, and will be returned to the Contractor within two (2) Days after submission.

30.3 The Contractor and its Subcontractors, when required by the Commissioner, or the Comptroller, shall also produce for inspection, at the office of the Contractor or Subcontractor, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, and canceled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such Work, or in complying with such determination or order, and the amounts expended therefor, and shall permit the Commissioner and the Comptroller to make such extracts therefrom, or copies thereof, as they or either of them may desire.

30.4 In connection with the examination provided for herein, the Commissioner, upon demand therefor, will produce for inspection by the Contractor such records as the Agency may have with respect to such Extra or disputed Work performed under protest pursuant to order of the Commissioner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

30.5 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Work or compliance with such determination or order.

ARTICLE 31 - OMITTED WORK

31.1 If any Work in a lump sum subcontract, or if any part of a lump sum item in a unit price, lump sum, or percentage-bid subcontract is omitted by the Commissioner pursuant to Article 33, the subcontract price, subject to audit by the Engineering Audit Officer, shall be reduced by a pro rata portion of the lump sum bid amount based upon the percent of Work omitted, subject to Article 31.4. For the purpose of determining the pro rata portion of the lump sum bid amount, the bid breakdown submitted in accordance with Article 42 shall be considered, but shall not be the determining factor.

31.2 If the whole of a lump sum item or units of any other item is so omitted by the Commissioner in a unit price, lump sum, or percentage-bid subcontract, then no payment will be made therefore, except as provided in Article 31.4.

31.3 For units that have been ordered but are only partially completed, the unit price shall be reduced by a pro rata portion of the unit price bid based upon the percentage of Work omitted, subject to Article 31.4.

31.4 In the event the subcontractor, with respect to any omitted Work, has purchased any non-cancelable material and/or equipment that is not capable of use except in the performance of the subcontract and has been specifically fabricated for the sole purpose of the subcontract, but not yet incorporated into the Work, the subcontractor shall be paid for such material and/or equipment, as set forth below; provided, however, such payment is contingent upon the subcontractor’s delivery of such material and/or equipment in acceptable condition to a location designated by the City.

31.4.1 Payment for such material and/or equipment shall be in accordance with Article 28, subject to the following modification. For the purpose of payment hereunder, the percentage for overhead and profit set forth in Article 28.1.8 shall be reduced from twenty (20%) percent to five (5%) percent.

31.5 The Contractor and its subcontractors agree to make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

ARTICLE 32 - THE COMMISSIONER'S REPRESENTATIVE

32.1 The Commissioner's Representative shall be the representative of the Commissioner, and subject to review by the Commissioner, shall have the power, in the first instance, to inspect the performance of the Work and exercise such other authority as the Commissioner may delegate. He shall not however, have the power to issue an Extra Work order, except as specifically designated in writing by the Commissioner.

ARTICLE 33 - THE COMMISSIONER

33.1 The Commissioner, in addition to those matters elsewhere herein expressly made subject to his determination, direction or approval, shall have the power: (a) to review and determine any and all questions in relation to this Agreement and its performance; and (b) to modify or change this Agreement so as to require: (i) the performance of Extra Work (subject, however, to the limitations specified in Article 26 hereof); or (ii) the omission of Work whenever he deems it in the interest of the City to do so; or both; and (c) to postpone, delay, suspend or terminate the whole or any part of the Work, whenever in his judgment such action is required in the interest of the City.

ARTICLE 34 - NO ESTOPPEL

34.1 Neither the City nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by the City, the Commissioner, the Commissioner's Representative, or any other officer, agent or employee of the City, either before or after the final completion and acceptance of the Work and payment therefor:

34.1.1 from showing the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Work or any part thereof does not in fact conform to the requirements of this Agreement; and

34.1.2 from demanding and recovering from the Contractor any overpayments made to him, or such damages as it may sustain by reason of his failure to perform each and every part of his Agreement in strict accordance with its items, or both.

ARTICLE 35 - EMPLOYEES

35.1 The Contractor and its Subcontractors shall not employ on the Work:

35.1.1 anyone who is not competent, faithful and skilled in the Work for which he shall be employed; and whenever the Commissioner shall inform the Contractor, in writing, that any employee is, in his opinion, incompetent, unfaithful or disobedient, he shall be discharged from the Work forthwith, and shall not again be employed upon it; or

35.1.2 any labor, materials or means whose employment, or utilization during the course of this Agreement, may tend to or in any way cause or result in strikes, Work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or his Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Agreement, or by other contractors or their subcontractors pursuant to other contracts, or on any other building or premises owned or operated by the City of New York, its agencies, departments, boards or authorities. Any violation by the Contractor of this requirement may, upon certification of the Commissioner, be considered as proper and sufficient cause for terminating the Contractor for cause and taking such action as set forth in Article 46 hereof, or such other action as the Commissioner may deem proper; or

35.1.3 in accordance with Section 220.3.e of the New York State Labor Law, any apprentice, unless he is registered individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his Work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above shall be paid the wage rate determined by the Comptroller of the City of New York for the classification of Work being actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Contract Work.

35.2 If the total cost of the Work under this Contract is at least two hundred fifty thousand dollars, all laborers, workers, and mechanics employed in the performance of the Contract on the public work site, either by the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, shall be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States department of labor's occupational safety and health administration that is at least ten hours in duration.

ARTICLE 36 - NO DISCRIMINATION

36.1 As required by New York State Labor Law Section 220.e, it is agreed between the parties hereto as follows:

36.1.1 That in the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color 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;

36.1.2 That neither the Contractor, Subcontractor, nor any person on his behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, color or national origin;

36.1.3 That there may be deducted from the amount payable to the Contractor by the City under this Agreement 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 Agreement; and

36.1.4 That this Agreement 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 Agreement.

36.1.5 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.

36.2 As required by New York City Administrative Code Section 6-108:

36.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of building 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.

36.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision 36.2.1 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.

36.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this Agreement.

36.2.4 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 37 - EQUAL EMPLOYMENT OPPORTUNITY

37.1 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 Contractor agrees that:

37.1.1 The Contractor 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;

37.1.2 When it subcontracts, the Contractor 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;

37.1.3 The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without 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;

37.1.4 The Contractor 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

37.1.5 The Contractor 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.

37.2 The Contractor 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:

37.2.1 disapproval of the Contractor;
37.2.2 suspension or termination of the contract;
37.2.3 declaring the Contractor in default; or
37.2.4 in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the DLS may recommend to the Department head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

37.3 The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract in the amount of $750,000 or more 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. The Contractor will take such action with respect to any subcontract as may be directed by the Director of DLS as a means of enforcing such provisions, including sanctions for noncompliance.

37.4 The Contractor 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 38. LABOR LAW REQUIREMENTS

Labor Law Compliance: The CM/Build Contractor shall take appropriate action to ensure compliance by its subcontractors with the Labor Law.

Subcontracts: The CM/Build Contractor shall include the provisions of this Article 38 set forth below in all subcontracts for construction Work for the Project.

LABOR LAW REQUIREMENTS

38.1 The Contractor shall strictly comply with all applicable provisions of the Labor Law, as amended. Such compliance is a material term of this Contract.

38.2 The Contractor specifically agrees, as required by Labor Law Section 220 and 220-d, as amended, that:

38.2.1 Hours of Work: No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar Day, or more than five (5) Days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

38.2.2 In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the Work contemplated by this Contract as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) Day; or five (5) Days in any one (1) week; provided, however, that upon application of any Contractor, the Commissioner shall have first certified to the Commissioner of Labor of the State of New York (hereinafter "Commissioner of Labor") that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

38.2.3 Failure of the Commissioner to make such a certification to the Commissioner of Labor shall not entitle the Contractor to damages for delay or for any cause whatsoever.

38.2.4 Prevailing Rate of Wages: The wages to be paid for a legal day's Work to laborers, workers, or mechanics employed upon the Work contemplated by this Contract or upon any materials to be used thereon shall not be less than the "prevailing rate of wage" as defined in Labor Law Section 220, and as fixed by the Comptroller in the attached Schedule of Wage Rates and in updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed.

38.2.5 Requests for interpretation or correction in the Information for Bidders include all requests for clarification of the classification of trades to be employed in the performance of the Work under this Contract. In the event that a trade not listed in the Contract is in fact employed during the performance of this Contract, the Contractor shall be required to obtain from the Agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Contract at the price at which the Contract was awarded.

38.2.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, all persons employed by the Contractor and any Subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by Law, not less than the sum mandated by Law. Minimum wages shall be the rates fixed by Federal Law and regulations.

38.3 Working Conditions: No part of the Work, labor or services shall be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. Compliance with the safety, sanitary and factory inspection Laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this article.

38.4 Prevailing Wage Enforcement: The Contractor agrees to pay for all costs incurred by the City in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the Agency or the Comptroller, where the City discovers a failure to comply with any of the requirements of this Article 38 by the Contractor or its Subcontractor(s). The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Agency is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

38.4.1 The Labor Law Section 220 and Section 220-d, as amended, provide that this Contract shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than:

(a) The stipulated wage scale as provided in Labor Law Section 220, as amended, or
(b) Less than the stipulated minimum hourly wage scale as provided in Labor Law Section 220-d, as amended.

38.4.2 For any breach or violation of either Working Conditions and Minimum Wages, the party responsible therefore shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any Contracts with the City of such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damage for any other breach of this Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition, the Commissioner shall have the right to cancel Contracts and enter into other Contracts for the completion of the original Contract, with or without public letting, and the original Contractor shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Comptroller, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within two (2) years from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

38.4.3 A determination by the Comptroller that a Contractor and/or its Subcontractor willfully violated Labor Law Section 220 will be forwarded to the City's five District Attorneys for review.

38.4.4 The Contractor's or Subcontractor's noncompliance with this article and Labor Law Section 220 may result in an unsatisfactory performance evaluation and the Comptroller may also find and determine that the Contractor or Subcontractor willfully violated the New York Labor Law.

(a) An unsatisfactory performance evaluation for noncompliance with this article may result in a determination that the Contractor is a non-responsible bidder on subsequent procurements with the City and thus a rejection of a future award of a contract with the City, as well as any other sanctions provided for by Law.
(b) Labor Law Section 220-b, as amended, provides that when two (2) final determinations have been rendered against a Contractor or Subcontractor within any consecutive six (6) year period determining that such Contractor or Subcontractor has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor Law and this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with the City for a period of five (5) years from the second final determination. If the final determination involves the falsification of payroll records or the kickback of wages or supplements, the Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with the City for a period of five (5) years from the first final determination.
(c) Labor Law Section 220, as amended, provides that the Contractor or Subcontractor found to have violated this article may be directed to make payment of wages or supplements including interest found to be due, and the Contractor or Subcontractor may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

38.5 The Contractor and its Subcontractors shall within ten (10) Days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of the Contractor and its Subcontractors engaged in the performance of this Contract are employed, notices furnished by the City, in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Sections 220 and 220-h of the Labor Law, and the Contractor and its Subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services required to be furnished or rendered under this Contract.

38.6 The Contractor shall strictly comply with all of the provisions of Articles 38.6.1 through 38.6.5, and provide for all workers, laborers or mechanics in its employ, the following:

38.6.1 Notices Posted At Site: Post, in a location designated by the City, schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the Site, the City notice that this Project is a public works Project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the City directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the City. The Contractor shall maintain and keep current such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Contractor shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete; and

38.6.2 Daily Site Sign-in Sheets: Maintain daily Site sign-in sheets, and require that Subcontractors maintain daily Site sign-in sheets for its employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began Work and the time the employee left Work, until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services to be furnished or rendered under this Contract unless exception is granted by the Comptroller upon application by the Agency. In the alternative, subject to the approval of the CCPO, the Contractor and Subcontractor may maintain an electronic or biometric sign-in system, which provides the information required by this Article 38.6.2; and

38.6.3 Individual Employee Information Notices: Distribute a notice, to each worker, laborer or mechanic employed under this Contract, in a form provided by the Agency, that this Project is a public work project on which each worker, laborer or mechanic is entitled to receive the prevailing rate of wages and supplements for the occupation at which he or she is working. If the total cost of the Work under this Contract is at least two hundred fifty thousand dollars, such notice shall also include a statement that, that each worker, laborer or mechanic be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States department of labor's occupational safety and health administration that is at least ten hours in duration. Such notice shall be distributed to each worker before he or she starts performing any Work of this Contract and with the first paycheck after July first of each year. Worker, laborer or mechanic includes employees of the Contractor and all Subcontractors and all employees of suppliers entering the Site. At the time of distribution, the Contractor shall have each worker, laborer or mechanic sign a statement, in a form provided by the Agency, certifying that the worker has received the notice required by this article, which signed statement shall be maintained with the payroll records required by this Contract; and

(a) The Contractor and each Subcontractor shall notify each worker, laborer or mechanic employed under this Contract in writing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every worker, laborer and mechanic on their first pay stub and with every pay stub thereafter; and

38.6.4 Site Laminated Identification Badges: Provide laminated identification badges which indicate the worker's, laborer's or mechanic's name, trade, employer's name and employment starting date (month/day/year). Further, require as a condition of employment on the Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the City; and

38.6.5 Language Other Than English Used On Site: Provide the ACCO notice when three (3) or more employees (worker and/or laborer and/or mechanic) on the Site, at any time, speak a language other than English. The ACCO will then provide the Contractor the notices in Article 38.6.1 in that language or languages as may be required. The Contractor is responsible for all distributions under Article 38; and

38.6.6 Provision of Records: The Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Commissioner, the Commissioner's Representative, the ACCO, the Agency EAO, or the Comptroller, such records as are required to be kept by this Article 38.6; and

38.6.7 If this Contract is for an amount greater than $1,000,000, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency). For any subcontract for an amount greater than $750,000, checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency); and

38.6.8 The failure of the Contractor or Subcontractor(s) to comply with the provisions of Articles 38.6.1 through 38.6.7 may result in the Commissioner declaring the Contractor or Subcontractor(s) in default and/or the withholding of payments otherwise due under the Contract.

38.7 The Contractor and its Subcontractors shall keep such employment and payroll records as are required by Section 220 of the Labor Law.

38.8 At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to the Commissioner a written payroll certification, in the form provided by this Contract, of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Labor Law Section 220 and of compliance with the training requirements of Labor law section 220-h set forth in Article 35.2. This certification of compliance with the provisions of this article shall be a condition precedent to payment and no payment shall be made to the Contractor unless and until each such certification shall have been submitted to and received by the Commissioner.

38.9 This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of Section 220 of the Labor Law for the award of the Contract.

38.10 Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Contract, and grounds for cancellation thereof by the City.

ARTICLE 39 - PAYROLL REPORTS

Compliance: The CM/Build Contractor shall take appropriate action to ensure compliance by its subcontractors with the payroll requirements set forth herein.

Subcontracts: The CM/Build Contractor shall include the provisions of this Article 39 set forth below in all subcontracts for construction Work for the Project.

PAYROLL REPORTS

39.1 The Contractor shall maintain on the Site the original payrolls or transcripts thereof which the Contractor and its Subcontractor(s) are required to maintain pursuant to Labor Law Section 220. The Contractor and Subcontractor(s) shall submit original payrolls or transcripts, subscribed and affirmed by it as true, with each and every payment requisition. The Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Commissioner, Commissioner's Representative, the ACCO, the Agency EAO, or the Comptroller, such original payrolls or transcripts thereof, subscribed and affirmed by it as true, and the statements signed by each worker pursuant to this Contract. In addition, the Contractor and Subcontractor(s) shall furnish to the Commissioner's Representative upon written demand any other information to satisfy the Commissioner's Representative that this Contract and the Labor Law, as to the hours of employment and rates of wages, are being observed. The Contractor shall maintain the payrolls or transcripts thereof for six (6) years from the date of completion of the Work on this Contract.

39.2 When directed by the Commissioner's Representative, the Contractor or Subcontractor shall provide an attendance sheet for each Day on which Work is performed on the Site. Such attendance sheet shall be in a form acceptable to the Agency and shall provide information for employees of the Contractor and Subcontractor(s).

ARTICLE 40 - DUST HAZARDS

40.1 Should a harmful dust hazard be created in performing the Work of this Agreement, 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. Failure to comply with this provision after notice shall make this Agreement void.

ARTICLE 41 - NOISE CONTROL CODE PROVISIONS

41.1 In accordance with the provisions of Section 24-216(b) of the Administrative Code of the City ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the City Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the Department of Environmental Protection.

41.2 The Contractor agrees to comply with Section 24-219 of the Administrative Code of the City ("Administrative Code") and implementing rules codified at 15 Rules of the City of New York ("RCNY") Section 28-100 et. seq. In accordance with such provisions, the Contractor, if the Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan at each work site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the New York City Department of Environmental Protection. In addition, the Contractor's certified Construction Noise Mitigation Plan is subject inspection by the Department of Environmental Protection in accordance with 15 RCNY §28-101. No Contract work may take place at a worksite unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

ARTICLE 42 - PAYMENT TERMS AND CONDITIONS

42.1 General

42.1.1 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.

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

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

42.1.4 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in this Article 42, the Commissioner may, by issuance of a No Cost Change Order to the Contractor, reallocate such specific allowance amounts within this Article 42.

42.2 Multipliers

42.2.1 Multiplier for Design Personnel: The Multiplier to be used in calculating payment to the Contractor for staffing expenses for design personnel is set forth in Exhibit A (the "Multiplier for Design Personnel"). The Multiplier for Design Personnel shall be deemed to include: (1) all expenses incurred by the Design Consultant in the performance of all required services for the Project (except as specified below), (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead, and (4) any anticipated profit. The Multiplier for Design Personnel shall include, but not be limited to, the items set forth below:

(a) Compensation paid to personnel of the Design Consultant (other than design personnel identified in the approved Staffing Plan, except for the Principal). Such other personnel of the Design Consultant shall include without limitation all officers, principals, employees and personnel of the Design Consultant, serving in whatever capacity, including the Principal set forth in Exhibit A. 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 design personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include without limitation the items listed in item (a) above.

(c) All expenses incurred by the Design Consultant in connection with the performance of all required design services, including without limitation, transportation, meals and lodging, unless the Design Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, as defined in Article 11.

(d) All expenses incurred by the Design Consultant with respect to 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, estimating expenses, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, postage, and any other office or miscellaneous expenses, except as otherwise expressly provided in an allowance for miscellaneous expenses and/or additional services.

(e) All expenses incurred by the Design Consultant with respect to applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.

(f) All insurance coverage determined by the Design Consultant to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required under this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the Design Consultant in the course of business, including without limitation, burglary and theft, general fidelity and payroll insurance.

(g) Any losses for theft or robbery sustained by the Design Consultant.

(h) All expenses incurred by the Design Consultant with respect to fixed capital, including interest thereon or on monies borrowed.

(i) All expenses incurred by the Design Consultant with respect to legal services.

(j) All management, administrative or overhead expenses of any kind whatsoever incurred by the Design Consultant, including such expenses incurred in the performance of additional services.

(k) Profit.

42.2.2 Multiplier for Construction Management Personnel: The Multiplier to be used in calculating payment to the Contractor for staffing expenses for construction management personnel is set forth in Exhibit A (the "Multiplier for CM Personnel"). The Multiplier for CM Personnel shall be deemed to include: (1) all expenses incurred by the Contractor in the performance of all required CM services for the Project (except as specified below), (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses in connection with providing the related services set forth in Article 11, including without limitation, the Project Office, (4) all expenses related to overhead, and (5) any anticipated profit. The Multiplier for CM Personnel shall include, without limitation, the items set forth below:

(a) Compensation paid to personnel of the Contractor (other than construction management personnel identified in the approved Staffing Plan, except for the Project Executive). Such other personnel of the Contractor shall include without limitation all officers, principals, employees and personnel of the Contractor, serving in whatever capacity, including the Project Executive set forth in Exhibit A. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.

(b) All expenses for compensation paid to construction management personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include

without limitation the items listed in item (a) above.

(c) All expenses incurred by the Contractor in connection with providing the related services set forth in Article 11, including without limitation, (1) Project Office in accordance with the requirements set forth in Exhibit D, and (2) transportation, meals and lodging, unless the Contractor is directed in advance in writing by the Commissioner to provide services which require long distance travel, as defined in Article 11.

(d) All expenses incurred by the Contractor with respect to 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, estimating expenses, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, postage, and any other office or miscellaneous expenses, except as otherwise expressly provided in an allowance for miscellaneous expenses and/or additional services.

(e) All expenses incurred by the Contractor with respect to applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.

(f) All insurance coverage determined by the Contractor to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required under this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the Contractor in the course of business, including without limitation, burglary and theft, general fidelity and payroll insurance.

(g) Any losses for theft or robbery sustained by Contractor.

(h) All expenses incurred by the Contractor with respect to fixed capital, including interest thereon or on monies borrowed.

(i) All expenses incurred by the Contractor with respect to legal services.

(j) All management, administrative or overhead expenses of any kind whatsoever incurred by the Contractor, including without limitation, (1) management and/or administrative expenses in connection with the Design Consultant, and (2)) management and/or administrative expenses in connection with the performance of additional services.

(k) Profit.

42.3 Allowance for Staffing Expenses for Design and Construction Management Personnel

42.3.1 Amount of Allowance: An allowance in the amount set forth in Exhibit A (the "Allowance for Staffing Expenses") is established for payment of the Contractor's staffing expenses for those design and construction management personnel described in Exhibit B, who have been assigned to the Project and identified in the Staffing Plan approved by the Commissioner pursuant to Article 11 (the "Assigned Employee"). The Contractor shall not be entitled to payment for staffing expenses for (1) any Project Executive(s), (2) any principals(s) of the Design Consultant, and (2) any personnel not assigned to the Project and not included in the approved Staffing Plan. Payment of staffing expenses is subject to retainage, as set forth below.

(a) Payment to Design Consultant: The Contractor agrees to pay its Design Consultant the full amount of staffing expenses for design personnel, computed in accordance with the provisions set forth below. The Contractor shall not be entitled to reduce payments to the Design Consultant as compensation for overhead and/or management expenses incurred by the Contractor with respect to the Design Consultant. All such expenses incurred by the Contractor are deemed included in the Multiplier for CM Personnel. The Design Consultant shall not be entitled to payment for staffing expenses for (1) any principals of the Design Consultant, and (2) any design personnel not assigned to the Project and not included in the approved Staffing Plan

42.3.2 Amount of Payment: For any week during which an Assigned Employee performed services for the Project, payment to the Contractor 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 one of the following multipliers: (1) for design personnel, utilize the Multiplier for Design Personnel, and (2) for construction management personnel, utilize the Multiplier for Construction Management Personnel. Both Multipliers are set forth in Exhibit A. Such Multipliers 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. The amount of payment for the services of an Assigned Employee calculated in accordance with this section may be subject to an equitable reduction if the conditions set forth in Article 42.3.3 below apply. All payments are subject to retainage, as set forth below.

(a) Assigned Employee's Direct Salary Rate per hour, as determined and approved in writing by the Commissioner as set forth below. In the event the Contractor receives written authorization from the Commissioner to have an Assigned Employee perform services for the Project during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.

(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services for this Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for the Project for which the Contractor 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) Retainage: Throughout all phases of the Project, the Commissioner shall deduct and retain 5% of all payments for staffing expenses for design and construction management personnel. Upon Final Acceptance of all required work for all assigned Projects, the Contractor shall be entitled to payment of the amount of staffing expense retained.

(d) 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.

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

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

42.3.4 Direct Salary Rates: Direct Salary Rates per hour for each Assigned Employee shall be determined and approved in writing by the Commissioner, as set forth below.

(a) For each Assigned Employee, the Contractor shall submit such employee's actual annual direct salary, as defined below. In addition, the Contractor 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 Contractor's payroll register for the past twelve 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 per hour, the Assigned Employee's actual annual direct salary, as defined above, shall be divided by 2080.

(b) 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 the **LESSER** of (1) the Assigned Employee's actual annual direct salary, computed on an hourly basis as set forth above, or (2) the Estimated Direct Salary Rate per hour for the Assigned Employee's title set forth in Exhibit B.
(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 42.3.5 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 42.3.6 below, in the event the Contractor receives written authorization from the Commissioner to have the Assigned Employee perform services during other than regular business hours.

42.3.5 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, subject to the limitations set forth below. The first such increase shall be made one (1) year after the commencement date (i.e., the date on which the Contract is registered by the Comptroller). Thereafter, for the remainder of the Contract term, including any extension thereof, increases in the Direct Salary Rate(s) shall be made on a yearly basis, on the anniversary of the commencement date. Any increase in the Direct Salary Rate(s) shall be based on an increase in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO"). Any increase in the Direct Salary Rate(s) shall be based on whatever increase may have occurred in the Index for the PRIOR YEAR ONLY, as determined by EAO. If for the prior year, the Index showed an increase, the Direct Salary Rate(s) shall be increased. If, for the prior year, the Index declined or showed no increase, the Direct Salary Rate(s) shall remain unchanged. Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only.

(a) Any increase to an Assigned Employee's Direct Salary Rate per hour shall only be permitted to the extent such increase does not result in a Direct Salary Rate per hour that exceeds the Estimated Direct Salary Rate per hour for the Assigned Employee's title set forth in Exhibit B. 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 Estimated Direct Salary Rate per hour set forth in Exhibit B.

(b) The Contractor 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 to the Assigned Employee, as determined by the Commissioner. The Contractor shall submit its payroll register, as well as the payroll register of its Design Consultant, to verify the amount actually paid to the Assigned Employee.

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

(a) The Contractor's policy is subject to approval by the Commissioner in accordance with Article 11.

(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 Contractor shall not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the Contractor to the Assigned Employee, as evidenced by the Contractor's payroll register.

42.3.7 Requisitions: For any week(s) for which the Contractor is requesting payment for staffing expenses for an Assigned Employee, the Contractor shall submit the documentation set forth below.

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

42.4 Allowance for Construction/Remediation Work

42.4.1 An allowance in the amount set forth in Exhibit A (the "Allowance for Construction/Remediation Work") is established for payment for construction and/or remediation Work for the Project performed by Subcontractors under the supervision and control of the Contractor. Construction and/or remediation Work shall include all required Work for the types of Projects described in Exhibit A, including required pre-design services.

42.4.2 The total amount to be paid from the Allowance for Construction/Remediation Work shall not exceed the cumulative total of the amounts for which subcontracts for Work for the Project are awarded and the amounts of any change orders to such subcontracts. No amounts shall be paid from the Allowance for Construction/Remediation Work, unless the Commissioner has given prior written approval to the amount of award of the subcontract and the amount of any change orders thereto.

42.4.3 Bid Breakdown of Subcontract Price: Upon commencement of construction and/or remediation Work, the Contractor shall submit a bid breakdown of costs on a per subcontract basis, and any other information as may be required by the Commissioner. This breakdown shall be used for checking the Contractor's requests for partial payment for Work performed by Subcontractors and shall not be binding on the Commissioner for any purpose whatsoever.

42.4.4 Partial Payments: Partial payments to the Contractor for Work performed by Subcontractors shall be on the basis of and in proportion to the percentage of completion of all Work required under the subcontract, as determined by the Commissioner. Until Substantial Completion of the Work, the Commissioner shall deduct and retain 5% of the value of the Work certified for payment in each partial payment voucher. Upon determination by the Commissioner that the Work required is substantially complete, the retainage shall be reduced to 1% of the value of the Work certified for payment in each partial payment voucher, which amount shall be retained by the City in accordance with the Article 25 hereof.

(a) With respect to Work, partial payments may be made for materials, fixtures and equipment in advance of their actual incorporation in the work, subject to approval by the Commissioner and compliance with the requirements set forth in Exhibit D.

(b) In connection with every partial payment requisition for Work, the Contractor shall also submit a verified statement in the prescribed form setting forth the information required under Section 220(a) of the Labor Law.

(c) The retainage provisions set forth above shall not apply to subcontracts for pre-design services described in Article 9.

42.4.5 Substantial Completion Requisition: Upon written determination by the Commissioner that the Work of a subcontract is substantially complete, the Contractor shall submit a requisition for a Substantial Completion payment for that subcontract. The Contractor must submit the following with such requisition:

(a) Final verified statement of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of this Contract (including those as

to which details may have been furnished pursuant to Articles 17, 29 and 30 hereof). With respect to each such claim, the Contractor shall set forth the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof, was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Commissioner and the Comptroller shall have the same right to inspect, and to make extracts or copies of, books, vouchers, records, etc., of the Contractor or the Subcontractor, as referred to in Articles 17, 29 and 30 hereof. Nothing contained in this Article is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to Articles 17, 29 and 30 hereof. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor, upon acceptance of the Substantial Completion payment pursuant to this Article, will have waived any such claims arising out of the Work for which payment is requested.

(b) Final written complete punch list and a date for completion of all required Work. The punch list and completion date are subject to the written acceptance of the Commissioner.

(c) If required, a request for a substantial or final extension of time.

42.4.6 Substantial Completion Payment: The Commissioner shall issue a voucher calling for payment to the Contractor of any part or all of the balance due for subcontracted Work for which payment is requested, including moneys retained hereunder, less any and all deductions authorized to be made by the Commissioner, under this Contract or by law, and less twice the amount the Commissioner considers necessary to ensure the completion of the balance of the Work of the subcontract. No further partial payments shall be made to the Contractor after the Commissioner determines that the subcontracted Work is substantially complete, except the Substantial Completion payment and any requisitions for partial payment that were properly filed with the Commissioner prior to the date of Substantial Completion; provided, however, the Commissioner may grant a waiver for further partial payments after the date of Substantial Completion to permit payments for change order work and/or release of retainage and deposits pursuant to Article 25. Such waiver shall be in writing.

42.4.7 Final Payment: After Final Acceptance by the Commissioner of the subcontracted Work, the Contractor shall submit all required certificates and documents, together with a requisition for the balance claimed to be due, less the amount authorized to be retained for maintenance under Article 25 hereof. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Commissioner.

42.4.8 Requisition for Final Payment: The Contractor must also submit with the final requisition for Work performed any amendments to the final verified statement of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of the Work performed for which payment is requested (including those as to which details may have been furnished pursuant to Articles 17, 29 and 30 hereof) that have occurred subsequent to Substantial Completion, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item. With reference to each permissible claim, the Commissioner and the Comptroller shall have the same right to inspect, and to make extracts or copies of, the books, vouchers, records, etc., of the Contractor or Subcontractor, as referred to in Articles 17, 29 and 30 hereof. Nothing contained in this Article, is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to Articles 17, 29 and 30 hereof. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor upon acceptance of the final payment, pursuant to Article 44 hereof, will have waived any such claims arising out of the Work performed for which payment is requested.

42.4.9 Voucher for Final Payment: Upon determining the balance due for subcontracted Work for which payment is requested, other than on account of claims, the Commissioner's Representative will prepare and certify, and the Commissioner will approve, a voucher for final payment in that amount less any and all deductions authorized to be made by the Commissioner under Contract or by law. Such voucher shall thereupon be filed with the Comptroller and a copy thereof delivered to the Contractor. The Commissioner shall certify the voucher for final payment for subcontracted Work for which payment is requested following completion and acceptance of the work, provided all requests for extensions of time have been acted upon, if required. Payment pursuant to such final voucher, less any deductions authorized to be made by the Commissioner under Contract or by law, shall constitute final payment in accordance with Article 44 hereof.

42.4.10 No Mark-Up: The Contractor shall not be entitled to any mark-up whatsoever on payments for subcontracted Work performed by Subcontractors.

42.5 Allowance for Miscellaneous Expenses

42.5.1 An allowance in the amount set forth in Exhibit A (the "Allowance for Miscellaneous Expenses") is established for reimbursement for miscellaneous expenses actually incurred by the Contractor, as set forth below.

42.5.2 The Contractor shall be reimbursed for expenses actually incurred in the procurement of miscellaneous items, in accordance with the terms and conditions set forth below.

(a) No miscellaneous expenses shall be incurred by the Contractor, or reimbursed from this allowance, unless expressly authorized in a written directive from the Commissioner. For miscellaneous expenses in excess of $150, such written authorization must be provided in advance of the expenditure.

(b) In the event the Contractor is directed to purchase any item(s) pursuant to this allowance, such item(s) shall, unless otherwise directed by the Commissioner, be the sole property of the City upon delivery to the designated location. Upon completion of the required work, as directed by the Commissioner, the Contractor shall turn such item(s) over to the City.

(c) With respect to miscellaneous expenses, the Contractor shall utilize the method of procurement and form of payment directed by the Commissioner.

(d) Payment for miscellaneous expenses (except for long distance travel) shall be as set forth below.

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

(e) The Contractor shall not be entitled to a mark-up for overhead and profit on miscellaneous expenses.

(f) Reimbursement for long distance travel expenses, as set forth in Article 11.4.3, 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." The Contractor shall not be entitled to any mark-up with respect to long distance travel expenses. Requests for reimbursement for long distance travel expenses shall be accompanied by receipted bills or any other data required by the Commissioner.

(g) Miscellaneous Items: Miscellaneous items shall be those items determined by the Commissioner to be necessary for the Project and shall include without limitation the items set forth below. Miscellaneous items shall not include any items the Contractor is required to provide pursuant to Exhibit D.

(1) Equipment specified by DDC, other than as set forth in Exhibit D
(2) Printing of contract documents and reports
(3) Express mail postage, except as otherwise provided in Article 11.4.2
(4) Long distance travel, as set forth in Article 11.4.3

42.6 Allowance for Additional Services

42.6.1 An allowance in the amount set forth in Exhibit A (the "Allowance for Additional Services") is established for reimbursement for the provision of additional services hereunder. Additional services shall be as defined in Article 11.8 hereof. No additional services shall be provided by the Contractor, or reimbursed from this allowance, unless expressly authorized in advance in a written directive from the Commissioner.

42.6.2 With respect to additional services, the Contractor shall utilize the method of procurement and form of payment directed by the Commissioner.

42.6.3 Payment for additional services shall be as set forth below.

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

42.6.4 The Contractor shall not be entitled to a mark-up for overhead and profit on additional services.

42.7 Requisitions for Payment

42.7.1 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 Contractor and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into the following categories, to the extent each respective category applies to the payment period: (1) Construction Services; (2) Staffing Expenses; (3) Miscellaneous Expenses, and (4) Additional Services. The Contractor shall submit one (1) original and two (2) copies of each requisition for payment. Requisitions for payment shall be accompanied by the documentation set forth below.

(a) Project Progress Report: The Contractor shall submit a current report indicating (1) the percentage of completion of all required services for the Project, and (2) the services the Contractor was directed to provide during the payment period.

(b) Construction/Remediation Work: For payment for construction and/or remediation Work, the Contractor shall submit the documentation set forth below:

(1) Current report indicating: (1) the name and type of Work performed by each first tier Subcontractor, and (2) the percentage of completion of all required Work under that subcontract. A first tier Subcontractor shall mean a Subcontractor directly engaged by the Contractor.

(2) Certified copies of payroll reports for all Subcontractors of whatever tier which have performed Work for the Project.

(c) Staffing Expenses: For payment of staffing expenses for an Assigned Employee, the Contractor shall submit the documentation set forth below. Payment of staffing expenses is subject to retainage of 5%.

(1) Assigned Employee's name and title;
(2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement;
(3) Assigned Employee's direct salary rate determined by the Commissioner and included in the approved Staffing Plan;
(4) 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.
(5) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for this Project; (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 this Project for which the Contractor is not entitled to compensation, and (5) non-regular business hours, if any.
(6) If applicable, copy of Contractor's or Design Consultant's payroll register for the week(s) in question reflecting the amount actually paid to the Assigned Employee for that week,
(7) Applicable only if services were performed during other than regular business hours: (i) copy of authorization by Commissioner for such services, and (ii) copy of Commissioner's approval of the policy regarding payment of a premium for services performed during other than regular business hours.

(d) Miscellaneous Expenses or Additional Services: For payment for miscellaneous expenses or additional services, the Contractor shall submit the documentation set forth below:

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

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

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

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

42.8.1 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 43 - PROMPT PAYMENT

43.1 The Prompt Payment provisions of the Procurement Policy Board ("PPB") Rules in effect at the time of the solicitation for this Contract shall be applicable to payments hereunder. The provisions require the payment to contractors of interest on payments made after the required payment date, except as otherwise provided in the PPB Rules. The Contractor must submit a proper invoice to receive payment, except where the Contract provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determination of interest due will be made in accordance with the provisions of the PPB Rules. If the Contractor is paid interest, the proportionate share of that interest shall be forwarded by the Contractor to its Subcontractor(s).

43.2 The Contractor shall pay each Subcontractor (including a materials supplier) not later than seven (7) days after receipt of payment out of amounts paid to the Contractor by the City for work performed by the Subcontractor or supplier under this Contract.

43.3 The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth above.

43.4 If Contractor fails to make any payment to any Subcontractor or Materialman within seven (7) days after receipt of payment by the City pursuant to section 43.2 herein, then the Contractor shall pay interest on amounts due to such Subcontractor or Materialman at a rate of interest in effect on the date such payment is made by the Contractor computed in accordance with section 756-b (1)(b) of the NY General Business Law. Accrual of interest shall commence on the day immediately following the expiration of the seventh day following receipt of payment to the Contractor by the City and shall end on the date on which payment is made.

ARTICLE 44 - ACCEPTANCE OF FINAL PAYMENT

44.1 The acceptance by the Contractor, or by anyone claiming by or through him, of final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the City from any and all claims of and liability to the Contractor, or anyone claiming by or through him, for anything theretofore done or furnished for or relating to or arising out of this Contract and the Work done hereunder, and for any prior act, neglect or default on the part of the City or any of its officers, agents or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Agreement or by law, and excepting a claim, not otherwise waived, which is contained in the verified statement filed with the Contractor's final requisitions for any work performed hereunder.

44.2 The Contractor is warned that the execution by him of a release, in connection with the acceptance of any final payment hereunder, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the Commissioner from the final requisition or by the Comptroller from the final payment as certified by the Commissioner's Representative and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.

44.3 Should the Contractor refuse to accept any final payment hereunder as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.

44.4 The Contractor, however, shall not be barred from commencing an action for breach of contract under this provision, provided that a detailed and verified statement of claim is served upon the Department and Comptroller not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

44.5 The provisions of this Article 44 shall apply to final payment(s) for work performed pursuant to subcontracts hereunder.

ARTICLE 45 - RIGHTS OF COMMISSIONER TO POSTPONE AND TERMINATE AGREEMENT

45.1 The Commissioner shall have the right, upon ten (10) days prior written notice to the Contractor, to postpone, delay, suspend or terminate all or any portion of the services to be performed by the Contractor under the Agreement, or any additions thereto or modifications thereof, at any time and for any reason deemed to be in the City's interest. In such event, the Contractor shall be paid such part of the payment items set forth in Article 42 as shall have become due and payable hereunder for the work done by him prior thereto, or for non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement and has been specifically fabricated for the sole purpose of this Agreement and not incorporated into the Work, subject to audit by the Department and post-audit by the Comptroller. Such postponement, delay, suspension or termination shall not give rise to any cause of action for damages or extra remuneration against the City other than that provided for herein.

ARTICLE 46 - TERMINATION OF THIS AGREEMENT FOR CAUSE

46.1 If in the sole determination of the Commissioner: (1) the Contractor fails to perform any of the terms, covenants or provisions of this Agreement on its part to be performed, or (2) the Contractor fails to progress with the Work called for under this Agreement in a satisfactory manner, or (3) the conduct of the Contractor is such that the interests of the City are likely to be impaired or prejudiced, or (4) the Contractor shall violate any of the terms, covenants or provisions of this Agreement, then the Commissioner may, upon written notice to the Contractor, immediately terminate this Agreement for cause.

46.2 Upon such termination, the Contractor shall be entitled to payment of such amount, to be determined by the Commissioner, and subject to post-audit by the Comptroller, as shall fairly compensate him for the work satisfactorily performed prior to the termination date; provided, however, that the Commissioner shall deduct from such amount and from any amount due and payable to the Contractor prior to the termination date, but withheld or not paid, the total amount of additional expenses incurred by the City in order satisfactorily to complete the Work required to be performed by the Contractor under this Agreement, including the expense of engaging another Contractor for this purpose. If such additional expense shall exceed the amounts otherwise due and payable to the Contractor hereunder, the Contractor shall pay the City the full amount of such excess incurred by the City.

46.3 The Commissioner's determination upon which the termination of this Agreement for cause is based, as set forth in Article 46.1, shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the determination of the Commissioner, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

ARTICLE 47 - ACTIONS UPON TERMINATION

47.1 In the event of termination with or without cause, the Contractor shall, upon receipt of such notice, take the following actions:

- 47.1.1 Stop Work on the date specified in the notice;
- 47.1.2 Take such action as may be necessary for the protection and preservation of the City's materials and property;
- 47.1.3 Cancel all cancelable orders for material and equipment;
- 47.1.4 Assign to the City and deliver to the Site or any other location designated by the Commissioner, any non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement and has been specifically fabricated for the sole purpose of this Agreement and not incorporated in the Work;
- 47.1.5 Take no action which will increase the amounts payable by the City under this Agreement.

ARTICLE 48 - CLAIMS AND ACTIONS THEREON

48.1 No claim against the City for damages for breach of contract or compensation for Extra Work shall be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims all as herein before provided.

48.2 Nor shall any such action or proceeding be instituted or maintained on any such claims unless such action or proceeding be commenced within one year after the date of the filing in the office of the Comptroller of the final payment voucher pursuant to Article 42; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Agreement or by law, must be commenced within one year after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and further except that an action or proceeding on a claim based upon the Commissioner's exercise of the right to terminate this Agreement for cause must be commenced within six months after the date the Commissioner exercises such right to terminate for cause.

ARTICLE 49 - SUPPLIES, LABOR, SERVICES, MATERIALS AND TAX EXEMPTION

49.1 The City is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the City pursuant to the provisions of this Agreement. These taxes are not to be included in requests for payment. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which even though they are consumed, are not incorporated into the completed Work (consumable supplies), and the Contractor and his Subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.

49.2 The Contractor and its Subcontractors agree to sell and the City agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the Project covered by this Agreement. The sum paid under this Agreement for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials herein.

49.3 The purchase by the Contractor through its Subcontractors of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Contractor to the City is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, the Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to the City title to such supplies and materials, free of liens or encumbrances, and the Contractor shall mark or otherwise identify all such materials as the property of the City.

49.4 Title to all materials to be sold by the Contractor to the City pursuant to the provisions of the Agreement shall immediately vest in and become the sole property of the City upon delivery of such supplies and materials to the Site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such

materials and supplies in accordance with the provisions of this Agreement, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to the City, until such time as the Work covered by the Agreement is fully accepted by the City. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. In the event that, after title has passed to the City, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

49.5 The purchase by Subcontractors of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to the Contractor (either directly or through other subcontractors) and therefore not subject to the aforesaid Sales or Compensating Use Taxes, provided that the subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Agreement with respect to the separation of the sale of materials from the Work and labor, services, consumable supplies and any other matters to be provided, and provided further that the subcontract agreements provide separate prices for (l) materials and (2) all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other Work and labor and other things to be provided.

49.6 The Contractor and his Subcontractors and materialmen shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the Work covered by this Agreement.

49.7 In the event any of the provisions of this Article 49 shall be deemed to be in conflict with any other provisions of this Agreement or create any ambiguity, then the provision of this Article shall control.

ARTICLE 50 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

50.1 No claim whatsoever shall be made by the Contractor 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 Agreement.

50.2 The Contractor shall require each Subcontractor or consultant to agree in its subcontract not to make any claim against the City, its officers, agents or employees, by reason of such subcontract, or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to (a) demands filed by subcontractors pursuant to Article 10.6 hereof, or (b) disputes submitted by subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in Article 10.2.2 (g) hereof.

ARTICLE 51 - LOCALLY BASED ENTERPRISE PROGRAM

NOTE: If goals have been established for the participation of M/WBEs in the subcontracted Work, the subcontractor is not required to comply with the Locally Based Enterprise Program ("LBE").

51.1 This Contract is subject to the requirements of Administrative Code Section 6-108.1 and regulations promulgated thereunder. The Contractor shall not award any subcontract for Work hereunder unless and until these requirements have been complied with in their entirety.

51.2 The provisions set forth below shall apply to all subcontracts for Work hereunder entered into by the Contractor. The Contractor shall include the provisions set forth below in all subcontracts for Work hereunder.

51.2.1 Unless specifically waived by the Commissioner with the approval of the Office of Economic and Financial Opportunity, if any portion of the subcontract is sub-subcontracted, not less than ten percent of the total dollar amount of the subcontract shall be awarded to locally based enterprises ("LBEs"); except that where less than ten percent of the total dollar amount of the subcontract is sub-subcontracted, such lesser percentage shall be so awarded.

51.2.2 The Subcontractor shall not require performance and payment bonds from LBE sub-subcontractors.

51.2.3 If the Subcontractor has indicated prior to award that no Work will be sub-subcontracted, no Work shall be sub-subcontracted without the prior approval of the Commissioner, which shall be granted only if the Subcontractor makes a good faith effort beginning at least six weeks before the work is to be performed to obtain LBE sub-subcontractors to perform the work.

51.2.4 If the Subcontractor has not identified sufficient LBE sub-subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Administrative Code §6-108.01, recognizes that achieving the LBE requirement is a condition of its subcontract, and shall submit documentation demonstrating its good faith efforts to obtain LBEs. After award, the Subcontractor shall begin to solicit LBE's to perform sub-subcontracted work at least six weeks before the date such work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBE's on each sub-subcontract until it meets the required percentage.

51.3 Failure of the Contractor to comply with the requirements of Administrative Code §6-108.01 and the regulations promulgated

thereunder shall constitute a material breach of contract. Remedy for such breach of contract may include the imposition of any or all of the following sanctions:

51.3.1 Reducing the Contractor's compensation by an amount equal to the dollar value of the percentage of the LBE sub-subcontracting requirement not complied with;
51.3.2 Declaring the Contractor in default;
51.3.3 Where non-compliance is by an LBE, de-certifying and declaring the LBE ineligible to participate in the LBE program for a period of up to three years.

ARTICLE 52 - PARTICIPATION IN AN INTERNATIONAL BOYCOTT

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

52.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof, 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.

52.3 The Contractor shall comply in all respects, 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 53 - INVESTIGATIONS

53.1 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.

53.1.1 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;

53.1.2 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;

53.1.3 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.

53.1.4 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 Article 53.3 below without the City incurring any penalty or damages for delay or otherwise.

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

53.2.1 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

53.2.2 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; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

53.3 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Articles 53.3.1 and 53.3.2 below. He or she may also consider, if relevant and appropriate, the criteria established in Articles 53.3.3 and 53.3.4 below in addition to any other information which may be relevant and appropriate;

53.3.1 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.

53.3.2 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.

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

53.3.4 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 53.2 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 53.1.3 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.

53.4 Definitions Used in this Article

53.4.1 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.

53.4.2 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.

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

53.4.4 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.

53.5 In addition to and not withstanding 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 54 - ALL PRIOR WRITTEN OR ORAL AGREEMENTS EXCLUDED

54.1 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 55 - HEADINGS NOT BINDING

55.1 Article, Section and Chapter headings and the Table of Contents are inserted for convenience only and are not to be considered in the construction or interpretation of any provision hereof.

ARTICLE 56 - ERRORS

56.1 If this Agreement contains any errors, inconsistencies, ambiguities or discrepancies, including typographical errors, the Contractor shall request a clarification of same by writing to the Commissioner whose decision shall be binding on the parties.

ARTICLE 57 - UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

57.1 If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

ARTICLE 58 - ALL LEGAL PROVISIONS DEEMED INCLUDED

58.1 It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall and is inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the 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 hereunder.

ARTICLE 59 - WAIVER

59.1 Waiver by the City of a breach of any provision of this Agreement 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 Agreement unless and until the same be agreed to in writing by the Commissioner.

ARTICLE 60 - ALL DEFENSES RESERVED

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

ARTICLE 61 - CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

61.2 The parties agree that any and all claims asserted by or against the City arising under this Agreement 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 Contractor agrees:

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

61.2.2 With respect to any action between the City and the Contractor in New York State Court, the Contractor 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.

61.2.3 With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor 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.

61.2.4 If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor 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 Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

61.3 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 62 - SERVICES OF NOTICES

62.1 The Contractor hereby designates the business address on page 1 of this Agreement as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place or deposit of the same in a postpaid wrapper addressed thereto in any post office box regularly maintained by the United States Post Office Department shall be conclusively deemed to be sufficient service thereof upon the Contractor as of the date of such delivery or deposit.

62.2 Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Commissioner.

62.3 Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor is a corporation, upon any officer or director thereof.

62.3 The City hereby designates the following as its address for the service of any notice hereunder:

Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101
Attention: David Resnick, Deputy Commissioner

ARTICLE 63 - MODIFICATION

63.1 In addition to the authority of the Commissioner to order Extra Work pursuant to Article 26 hereof or omit certain Work pursuant to Article 33 hereof, this Agreement 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 Work agreed to be performed under this Agreement, provided, however, in no event shall such modification exceed the cost limitation approved by the Bureau of the Budget.

ARTICLE 64 - MacBRIDE PRINCIPLES PROVISIONS

64.1 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.

64.2 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.

64.3 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.

64.4 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.

64.5 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.

64.6 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:

64.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
64.6.2 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;
64.6.3 ban provocative religious or political emblems from the work place;
64.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
64.6.5 establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
64.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
64.6.7 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;
64.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
64.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their

full implementation.

64.7 The Contractor agrees that the covenants and representations in Article 64.5 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 65 – 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 66 – 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 67 Vendex Questionnaires

67.1 Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, the Contractor 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.

67.2 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 Contractor must submit a Confirmation of Vendex Compliance to the Department.

67.3 Obtaining Forms: Vendex Questionnaires, as well as detailed instructions, may be obtained at www.nyc.gov/vendex. The Contractor may also obtain Vendex forms and instructions by contacting the ACCO or the contact person for this contract.

ARTICLE 68: PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

M/WBE Participation: Requirements for the participation of M/WBEs apply to Work for the Project performed by subcontractors under the supervision and control of the Contractor. Prior to the commencement of each type of Work, the City shall provide applicable M/WBE requirements to the Contractor in a form entitled "Schedule B: M/WBE Utilization Plan." The Schedule B: M/WBE Utilization Plan shall be included by the Contractor in Bid Documents for subcontracts for Work for the Project, as directed by the City. Work includes required Work for various Projects, including pre-design services and any related construction and/or remediation Work. Such Work is paid for from the Allowance for Construction/Remediation Work. Bids that do not comply with the requirements for M/WBE participation, as set forth below, shall be deemed non-responsive.

Subcontracts: The Contractor shall include the language set forth below in all subcontracts for Work for the Project.

Locally Based Enterprise (LBE) Program: If Participation Goals have been established for the participation of M/WBEs in the subcontracted Work, the subcontractor is not required to comply with the LBE Program.

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in

New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART B: MISCELLANEOUS

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

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

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

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

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the

Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required Participation Goals.

ARTICLE II. ENFORCEMENT

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

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any M/WBE Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

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

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

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

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

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

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

ARTICLE 69 - INDEMNIFICATION

69.1 Notwithstanding anything to the contrary set forth in this Contract, the City shall indemnify, defend and hold harmless the Contractor, its Consultants and subcontractors, and each of their officers, agents and employees, from and against all claims, liabilities, damages, losses and expenses for bodily injury and property damage brought by third parties which:

69.1.1 Result from environmental impairment and/or pollution, and

69.1.2 Are excluded from coverage under any general liability or other insurance policies maintained by the Contractor, its Consultants and subcontractors, except that the existence of coverage for such claim under any policy(s) held by any of the aforementioned shall not void the City's obligation to indemnify, defend and hold harmless the other entities who do not have such coverage, and

69.1.3 Arise out of or are related to: (a) pre-existing conditions at any of the sites specified hereunder, and/or (b) the performance of the work provided for herein for a period of two years following the completion of all required work, and

69.1.4 Are not attributable to the gross negligence of the Contractor, its Consultants and subcontractors, or any of their officers, agents and employees.

69.2 The City reserves the right to defend the Contractor, its Consultants and subcontractors, and each of their officers, agents and employees, in any claim, suit or cause of action described in Article 69.1 above. In the event the City exercises such right to defend, the Contractor, its Consultants and subcontractors, and their officers, agents and employees, agree, without additional compensation, to render all assistance necessary to the City and to promptly provide any and all documents or other material requested by the City.

69.3 The Contractor, its Consultants and subcontractors, and each of their officers, agents and employees, shall provide immediate notification to the City of the assertion or filing of any claim, suit or cause of action described in above. Such notice shall be provided by certified mail, return receipt requested, and shall be delivered to the Corporation Counsel, 100 Church Street, New York, New York 10007, and shall include a copy of this Article.

69.4 The City retains all rights of subrogation against the Contractor, its Consultants and subcontractors, each of their officers, agents and employees, and their respective insurers for claims which do not meet the criteria set forth in Article 69.1 above.

69.5 Failure by the Contractor, its Consultants and subcontractors, and each or any of their officers, agents and employees, to strictly comply with the requirements set forth in Article 69.2 and 69.3 above shall render this Article 69 void, and the City shall have no indemnification obligation whatsoever hereunder.

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and the Contractor, have executed this agreement in quadruplicate, two of which are to remain with the Commissioner, another to be filed with the Comptroller of the City, and the fourth to be delivered to the Contractor.

THE CITY OF NEW YORK:

By:_____
Deputy Commissioner

CONTRACTOR:

By: _____

Print Name: _____

Title:_____

EIN: _____

APPROVED AS TO FORM AND CERTIFIED
AS TO LEGAL AUTHORITY

_____
Acting Corporation Counsel

DATE _____

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

EXHIBIT A: CONTRACT INFORMATION

(1) TYPE OF SERVICES: Construction Management / design / build services on a requirements basis for the type of projects described below. The Commissioner shall, by written directive, assign various Projects to the Contractor for performance of the required services. Such projects will be located in Manhattan and the Bronx, as well as in upstate New York.

(2) TOTAL NOT TO EXCEED AMOUNT: $6,665,806.00

Allowance for Staffing Expenses:	$3,000,000.00
Allowance for Construction/Remediation Work:	$3,365,806.00
Allowance for Miscellaneous Expenses:	$200,000.00
Allowance for Additional Services:	$100,000.00

(3) KEY DESIGN AND CONSTRUCTION MANAGEMENT PERSONNEL

KEY CONSTRUCTION MANAGEMENT PERSONNEL

Project Executive: _____
Project Manager: _____
Assistant Project Manager: _____

KEY DESIGN PERSONNEL

Design Consultant: _____
Principal: _____
Project Manager: _____
Senior Project Engineer: _____

(4) MULTIPLIERS

Multiplier for Design Personnel _____
Multiplier for CM Personnel _____

(5) PROJECTS: The types of Projects to be assigned to the Contractor pursuant to this Contract are indicated below. The Projects will be located at various sites, as specified by the Commissioner. Projects assigned to the Contractor may involve any of the following types of sites: (1) sites owned by the City, (2) sites owned by a third party and leased by the City, and (3) sites owned by a third party and not leased by the City, but for which the City has a remediation obligation. If the Contractor is assigned a site owned by a third party, it will be required to name the owner of the site as an Additional Insured on its policy for General Liability Insurance, as set forth in Article 23.

_X_ Remediation Project: A Project which requires the remediation of contamination at the site to ensure compliance with all local state and federal laws, rules and regulations.

Pre-Design Services: Pre-design services for Remediation Projects shall include without limitation the following: drilling services, ground penetrating radar services, laboratory services for soil and ground water analysis, survey services, and tank testing services.

_X_ Replacement Project: A Project which requires the upgrade, replacement or decommissioning of storage tanks at the site, to ensure compliance with all local state and federal laws, rules and regulations. Such tanks may be located underground or above ground.

Pre-Design Services: Pre-design services for Replacement Projects shall include without limitation the following: tank testing services, survey services, and laboratory services for soil and ground water analysis.

_____ Fire Suppression Project: A Project which requires the installation of a fire suppression system at the site, to ensure compliance with all local state and federal laws, rules and regulations.

Pre-Design Services: Pre-design services for Fire Suppression Projects shall include without limitation testing of fire suppression systems.

EXHIBIT B

STAFFING REQUIREMENTS AND ESTIMATED DIRECT SALARY RATES

STAFFING REQUIREMENTS: Overall staffing requirements for design and construction management personnel for the Project have been establish by the Commissioner and are set forth below. Such staffing requirements specify the titles of design and construction management personnel that may be required for the Project, as well as the estimated direct salary rate per hour for each title. A staffing plan for the project shall be established in accordance with the procedure set forth in the Contract.

MINIMUM REQUIREMENTS PER TITLE: Design and construction management personnel for the Project must comply with the minimum requirements per title. Such requirements are set forth on the following page.

DIRECT SALARY RATES FOR ASSIGNED EMPLOYEES: An Assigned Employee's Direct Salary Rate per hour shall be the **LESSER** of (1) the Assigned Employee's actual annual direct salary, computed on an hourly basis (as described in Article 42), or (2) the estimated direct salary rate per hour for the Assigned Employee's title set forth below. An Assigned Employee's Direct Salary Rate is subject to approval by the Commissioner.

DESIGN PERSONNEL

TITLE	**ESTIMATED DIRECT SALARY RATE (per hour)**
Principal	Included in Multiplier for Design Personnel
Project Manager	$67.76
Senior Project Engineer	$67.76
Project Engineer (Electrical)	$49.28
Project Engineer (Mechanical)	$49.28
Project Engineer (Civil)	$49.28
Geologist	$49.28
Inspector	$43.12
CADD Operator	$30.80
Clerical	$30.80

CONSTRUCTION MANAGEMENT PERSONNEL

TITLES	**ESTIMATED DIRECT SALARY RATE (per hour)**
Project Executive	Included in Multiplier for CM Personnel
Project Manager	$67.76
Assistant Project Manager	$67.76
Construction Inspector/Resident Engineer	$49.28
Contract Manager	$49.28
Office Engineer	$36.96
Clerical	$30.80

EXHIBIT B

MINIMUM REQUIREMENTS PER TITLE

DESIGN PERSONNEL			
TITLE	**ACADEMIC QUALIFICATIONS**	**PROFESSIONAL LICENSE**	**RELEVANT EXPERIENCE IN DESIGN**
Project Manager	BS in Engineering (CE, EE, ME, Environ. Eng., Chem. Eng., or Hydro geologist)		7 years
Senior Project Engineer	BS in Engineering (CE, EE, ME, Environ. Eng., Chem. Eng., or Hydro geologist)	PE	7 years
Project Engineer (Electrical)	BS in Elect. Engineering		3 years
Project Engineer (Mechanical)	BS in Mech. Engineering		3 years
Project Engineer (Civil)	BS in Civil/Environ. Engineering		3 years
Geologist	BS in Geology		3 years
Inspector	Bachelor or Associate degree in Engineering		5 years
CADD Operator	12th Grade		2 years
Clerical	12th Grade		2 years

CM PERSONNEL	
TITLE	**RELEVANT EXPERIENCE IN CONSTRUCTION**
Project Manager	10 years OSHA 10 Hour Construction Health and Safety Certificate
Assistant Project Manager	7 years OSHA 10 Hour Construction Health and Safety Certificate
Construction Inspector/Resident	7 years OSHA 10 Hour Construction Health and Safety Certificate
Contract Manager	5 years
Office Engineer	5 years
Clerical	2 years

EXHIBIT C

PARTIAL PAYMENT FOR STORED MATERIAL

The Commissioner may authorize partial payment for certain materials, fixtures and equipment, prior to their incorporation in the Work, but only in strict accordance with and subject to all the terms and conditions set forth in Paragraphs 1 through 16 below. The Contractor may request such partial payment on behalf of its Subcontractors.

1. The Contractor shall submit to the Commissioner a written request, in quadruplicate, for payment for materials purchased or to be purchased for which it desires to be paid prior to their actual incorporation in the Work. The request shall be accompanied by a schedule of the types and quantities of materials, and shall state whether such materials are to be stored on or off the site.
2. Where the materials are to be stored off the site, they shall be stored at a place other than the Contractor's or Subcontractor's premises (except with the written consent of the Commissioner) and under the conditions prescribed or approved by the Commissioner. The Contractor shall set apart and separately store at the place or places of storage all materials and shall clearly mark same "PROPERTY OF THE CITY OF NEW YORK", and further, shall not at any time move any of said materials to another off-site place of storage without the prior written consent of the Commissioner. Materials may be removed from their place of storage off the site for incorporation in the work upon approval of the Commissioner's Representative.
3. Where the materials are to be stored at the site, they shall be stored at such locations as shall be designated by the Commissioner's Representative and only in such quantities as, in the opinion of the Commissioner's Representative, will not interfere with the proper performance of the Work by the Contractor or by other contractors then engaged in performing work on the site. Such materials shall not be removed from their place of storage on the site except for incorporation in the Work, without the approval of the Commissioner's Representative.

4. INSURANCE

   a. STORAGE OFF-SITE: Where the materials are stored off the site and until such time as they are incorporated in the Work, the Contractor shall fully insure such materials against any and all risks of destruction, damage or loss including but not limited to fire, theft, and any other casualty or happening. The policy of insurance shall be payable to the City of New York. It shall be in such terms and amounts as shall be approved by the Commissioner and shall be placed with a company duly licensed to do business in the State of New York. The Contractor shall deliver the original and one copy of such policy or policies marked "Fully Paid" to the Commissioner.
   b. STORAGE ON THE SITE: Where the materials are stored at the site, the Contractor shall furnish satisfactory evidence to the Commissioner that they are properly insured against loss, by endorsements or otherwise, under the policy or policies of insurance obtained by the Contractor to cover losses to materials owned or installed by him. The policy of insurance shall cover fire and extended coverage against windstorm, hail, explosion and riot attending a strike, civil commotion, aircraft, vehicles and smoke.
   c. Subject to approval by the Commissioner, the above described insurance may be provided by the Contractor's Subcontractor.

5. All costs, charges and expenses arising out of the storage of such materials, shall be paid by the Contractor and the City hereby reserves the right to retain out of any partial or final payment made under the Contract an amount sufficient to cover such costs, charges and expenses with the understanding that the City shall have and may exercise any and all other remedies at law for the recovery of such cost, charges and expenses. There shall be no increase in the Contract price for such costs, charges and expenses and the Contractor shall not make any claim or demand for compensation therefor.
6. The Contractor shall pay any and all costs of handling and delivery of materials, to the place of storage and from the place of storage to the site of the work; and the City shall have the right to retain from any partial or final payment an amount sufficient to cover the cost of such handling and delivery.
7. In the event that the whole or any part of these materials are lost, damaged or destroyed in advance of their satisfactory incorporation in the Work, the Contractor at his own cost, shall replace such lost, damaged or destroyed materials of the same character and quality. The City will reimburse the Contractor for the cost of the replaced materials to the extent, and only to the extent, of the moneys actually received by the City under the policies of insurance hereinbefore referred to. Until such time as the materials are replaced, the City will deduct from the value of the stored materials or from any other money due under the Contract, the amount paid to the Contractor for such lost, damaged or destroyed materials.
8. Should any of the materials paid for the City hereunder be subsequently rejected or incorporated in the Work in a manner or by a method not in accordance with the Contract Documents, the Contractor shall remove and replace such defective or improperly incorporated material with materials complying with the Contract Documents. Until such materials are replaced, the City will deduct from the value of the stored materials or from any other money due the Contractor, the amount paid by the City for such rejected or improperly incorporated materials.
9. Payments for the cost of materials made hereunder shall not be deemed to be an acceptance of such materials as being in accordance with the Contract Documents, and the Contractor always retains and must comply with his duty to deliver to the site and properly incorporate in the Work only materials which comply with the Contract Documents.
10. The Contractor shall retain any and all risks in connection with the damage, destruction or loss of the materials paid for hereunder to the time of delivery of the same to the site of the Work and their proper incorporation in the Work in accordance with the Contract Documents.

11. The Contractor shall comply with all laws and the regulations of any governmental body or agency pertaining to the priority purchase, allocation and use of the materials.
12. When requesting payment for such materials, the Contractor shall submit with the partial estimate duly authenticated documents of title, such as bills of sale, invoices or warehouse receipts, all in quadruplicate. The executed bills of sale shall transfer title to the materials from the Contractor to the City (in the event that the invoices state that the material has been purchased by a Subcontractor, bills of sale in quadruplicate will also be required transferring title to the materials from Subcontractor to the Contractor).
13. Where the Contractor, with the approval of the Commissioner has purchased unusually large quantities of materials in order to assure their availability for the Work, the Commissioner at his option, may waive the requirements of paragraph "12" provided the Contractor furnishes evidence in the form of an affidavit of the Contractor in quadruplicate, and such other proof as the Commissioner may require, that he is the sole owner of such materials and has purchased them free and clear of all liens and other encumbrances. In such event, the Contractor shall pay for such materials and submit proof thereof, in the same manner as provided in paragraph "12" hereof, within seven (7) days after receipt of payment therefor from the Comptroller. Failure on the part of the Contractor to submit satisfactory evidence that he has paid in full for all such materials shall preclude him from payments under the Contract.
14. The Contractor shall include in each succeeding partial estimate requisition a summary of materials stored which shall set forth the quantity and value of materials in storage, on or off the site, at the end of each preceding estimate period; the amount removed for incorporation in the Work; the quantity and value of materials delivered during the current period and the total value of materials on hand for which payment thereof will be included in the current payment estimate.
15. Upon proof to the satisfaction of the Commissioner of the actual cost of such materials and upon submission of proper proof of title as required under paragraph "12" or "13" hereof, payment will be made therefore to the extent of 85%, provided however, that the cost so verified, established and approved shall not exceed the estimated cost of such materials included in the approved detailed breakdown estimate submitted in accordance with Article 42 of the Contract; if it does, the City will pay only 85% approved estimated cost.
16. Upon the incorporation in the Work of any such materials, which have been paid for in advance of such incorporation in accordance with the foregoing provisions, payment will be made for such materials incorporated in the Work pursuant to Article 42 of the Contract, less any sums paid pursuant to paragraph "15" herein.

EXHIBIT D: REQUIREMENTS FOR PROJECT OFFICE

(1) General: Throughout the term of this Contract, the Contractor shall be required to provide and maintain a Project Office, dedicated to the activities of personnel in connection with Projects assigned under this Contract. Such Project Office shall be in accordance with the requirements set forth in this Exhibit D. The Project Office shall be located with twenty-five (25) miles of DDC headquarters in Long Island City.

(2) Cost Included in Multiplier for CM Personnel: The Multiplier for CM Personnel shall include all expenses incurred by the Contractor in connection with providing the Project Office in accordance with the requirements set forth in this Exhibit D. The Contractor shall not be entitled to additional compensation for providing the Project Office.

(3) Ownership of Components: In the event the Contractor elects to purchase any of the components of the Project Office to be provided hereunder, such components shall remain the sole property of the Contractor.

(4) Risk of Loss: The entire risk of loss with respect to the Project Office shall remain solely and completely with the Contractor. The Contractor shall be responsible for the cost of any insurance coverage determined by the Contractor to be necessary for the Project Office.

(5) Replacement: In the event the Project Office or any component(s) thereof is lost, damaged, or determined by the Commissioner to be defective or noncompliant with the requirements set forth in this Exhibit D, the Contractor shall be responsible, at its sole cost and expense, to replace such component(s) within two weeks from the date of such loss or damage, or written notice from the Commissioner that the component is defective or noncompliant.

(6) Compliance: The Project Office provided by the Contractor in accordance with this Exhibit D shall comply with all applicable federal, state and local laws, rules and regulations, including without limitation, the New York City Building Code.

(7) Project Office Requirements: The required Project Office shall be sufficient in size to accommodate all personnel assigned to the Project and shall, at a minimum, have the following square footage: (a) 800 square feet of usable office space, and (b) 200 square feet of usable storage space. The Project Office shall have sufficient toilet facilities for all assigned personnel.

(8) Utilities: The Contractor shall be responsible for providing all necessary utilities for the Project Office, including without limitation, water, heat, air conditioning, electricity and telephone service. Cellular telephone service shall include both incoming and outgoing calls.

(9) Maintenance Services: The Contractor shall be responsible for providing all cleaning and maintenance services in connection with the Project Office, including without limitation maintenance of equipment.

(10) Office Supplies: The Contractor shall be responsible for providing all office supplies, including without limitation, pens, pencils, stationery, filtered drinking water and sanitary supplies.

(11) Office Furniture and Equipment: The Project Office provided by the Contractor shall include the offices, furniture, accessories and equipment specified below. All items and /or equipment furnished hereunder shall be in excellent condition and functioning properly. All equipment furnished hereunder shall be the most current model.

(a) Office furniture, cubicles and/or desks for all personnel assigned to the Project
(b) Shared private office for the Project Manager and Assistant Project Manager.
(c) Conference room for at least twelve (12) people.
(d) Flex type multi line telephone system, including modem and fax lines with voice mail
(e) One (1) high volume copier (50 copies per minute)
(f) One (1) fax machine
(g) Minimum of four (4) networked computers, plus file server and all associated computer software, in accordance with Paragraph 13 below
(h) Minimum of one (1) heavy duty laser printer
(i) Mobile communication system (cellular telephones or two way radios) for all personnel assigned to the Project

(12) File Transfer Protocol Site: The contractor shall furnish a File Transfer Protocol (FTP) site for the exchange of electronic project data. The FTP site shall include the ability to create multiple secure folders with unique usernames and access passwords. The storage capacity of the FTP site shall be a minimum of 300 megabytes. It shall be accessible using either Microsoft Windows or Apple Macintosh operating systems. The Contractor shall verify and ensure that the FTP site is compliant with the "client" security and network access restrictions.

(13) Requirements for Computer Equipment: Any personal computers ("PCS") required in this Exhibit D must meet the following specifications.

(a) Personal Computer(s) – Workstation Configuration

(1) Acceptable Models: Dell, Gateway, Toshiba, HP, IBM, or an approved equal. (Note: an approved equal requires written approval of the Assistant Commissioner of ITS.)
(2) Processor: 3.0 GHz Pentium 4 or faster computer - Single Processor.
(3) System RAM: Minimum of 1 GB (gigabytes) of SDRAM or DDR.
(4) Hard Disk Drive(s): 80 GB (Gigabytes) or larger.
(5) CD-RW: Internal CD-RW, 48x Speed or faster.
(6) 16xDVD+/-RWDVD Burner (with double layer write capability) 16x Speed or faster
(7) I/O Ports: Must have at least one (1) Serial Port one, (1) Parallel Port, 2 USB Ports. Serial Ports must consist of UART 16550 Chip or better.
(8) Video Display Card: PCI Interface with a minimum of 64 MB of RAM.
(9) Monitor: 17" TFT LCD monitor.
(10) Available Exp. Slots: System as configured above shall have at least two (2) full size PCI Slots available.
(11) Fax/Modem: Internal Fax/Modem 56 Kbps speed, featuring 3COM or US Robotics Chipset and supporting a minimum of V.92 and MNP5 compliant. Integrated 10/100/1000 Ethernet.
(12) Other Peripherals: Optical scroll Mouse, 101 Key Keyboard, Mouse Pad and all necessary cables.
(13) Software Requirements: Microsoft Windows XP Professional, Microsoft Office 2003 Professional; Microsoft Project 2002 Professional, Adobe Acrobat reader, Anti-Virus with one year updates subscription, Win Zip and Auto Cad 2008 LT.

(b) Computers shall be provided with the following:

(1) One (1) broad-band internet service account. This account will be active for the life of the project.
(2) One (1) 600 DPI HP Laser Jet Printer (twelve (12) pages per minute or faster) with one (1) Extra Paper Tray (Legal Size).
(3) All necessary Cabling.
(4) Storage Boxes for and Blank CDs/DVDs.
(5) Printer Table.
(6) UPS/Surge Surpressor combo.

(c) All Computer Hardware shall come with a three (3) year warranty for on-site repair or replacement. Additionally, and notwithstanding any terms of the warranty to the contrary, the Contractor is responsible for rectifying all computer problems or equipment failures within one (1) business day.

(d) An adequate supply of blank CD's/DVD's, and paper and toner cartridges for the printer shall be provided by the Contractor, and shall be replenished by the Contractor as required.

(e) It is the Contractor's responsibility to ensure that electrical service and phone connections are also available at all times.

(f) Broadband connectivity is preferred at each field office location. Please take into consideration that an extra phone line dedicated to the modem must be ordered as part of the contract unless Internet broadband connectivity, via Cable or DSL, is available at the planned field office location. Any questions regarding this policy should be directed to Raul Canabal, Assistant Commissioner of Information Technology Services at 718-391-1668.

EXHIBIT E

CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

SAFETY REQUIREMENTS

THE DDC SAFETY REQUIREMENTS INCLUDE THE FOLLOWING SECTIONS:

I. POLICY ON SITE SAFETY

II. PURPOSE

III. DEFINITIONS

IV. RESPONSIBILITIES

V. SAFETY QUESTIONNAIRE

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

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

VIII. EVALUATION DURING WORK IN PROGRESS

IX. SAFETY PERFORMANCE EVALUATION

I. POLICY ON SITE SAFETY

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

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

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

II. PURPOSE

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

III. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. RESPONSIBILITIES

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

A. Resident Engineer / Construction Project Manager / Construction Manager

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

B. Contractors

- Complete a Safety Questionnaire and submit with its bid or as part of a pre-qualification package.
- Provide a Written Job Hazard Assessment (JHA) that identifies expected safety issues of the work to be performed. JHA shall be included with the Site Safety Plan submitted by the contractor.

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

V. SAFETY QUESTIONNAIRE

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

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

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

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

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

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

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

1. Responsibility and Organization: Identify the person or persons with authority and responsibility for implementing the Site Safety Plan. Provide an organization chart and define levels of authority and responsibility. Identify the Competent Person, the Construction Superintendent (if required), the Job Safety Coordinator and the Qualified Person required for this project.

2. Communication: Establish a system for communicating with employees and subcontractors on matters relating to worker and public safety and health and environmental protection, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. An emergency response notification protocol is to be established that also includes after hours contact numbers. The plan must also include provisions for weekly safety meetings held by the Job Site Safety Coordinator.

3. Job Hazard Assessment: A written document submitted by the contractor, used to identify expected job hazards and public safety risks and state the specific means and methods to reduce, control or eliminate those hazards. This part of the Site Safety Plan must also include how on-going evaluations of those risks and hazards will be carried out, including plans for periodic inspections to identify unsafe conditions, work practices and public safety hazards.

4. Accident/Exposure Investigation: Establish a procedure to investigate and report occupational and public injury or illness, property damage, vehicle accidents or other mishaps.

5. Hazard Correction: Establish means, methods and/or procedures for correcting unsafe or unhealthy conditions that might be exposing both the public and workers to hazards. Corrective actions must be taken immediately when observed or discovered. Should an imminent hazard exist which cannot be immediately abated without endangering employees, the public and/or property, remove or restrict all exposed persons from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards. When corrective actions cannot be taken immediately, temporary measures should be taken until such time permanent measures are taken to eliminate the potential risks or hazards

6. Training: Describe site-specific hazard training programs. In addition to the required safety orientation, additional site specific training, in the form of required weekly safety meetings, will be required. Contractors must also initiate training when: a) new employees are hired; b) employees are given new job assignments for which training has not been previously received; c) new substances, processes, procedures or equipment are introduced that might represent a new public or worker hazard; d) the employee is made aware of a new or previously unrecognized hazard; e) new supervisors are assigned to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed; and f) after a jobsite incident or accident has occurred.

7. Recordkeeping: Establish procedures to maintain records of scheduled and periodic inspections, weekly safety meetings, and training records. Updated records shall be maintained at the jobsite, accessible to the Construction Safety Auditors and/or Quality Assurance Auditors/RE/CPM, and retained in accordance with DDC policy.

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

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

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

- Basic Personal Protective Equipment
- Compressed Air
- Compressed Gas Cylinders
- Cranes, Derricks and Hoists
- Demolition
- Electrical safety
- Excavations and Trenching
- Fall Protection – Floor openings/Stairways
- Fall Protection – Guardrails Toe boards etc.

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

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

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

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

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

VIII. EVALUATION DURING WORK IN PROGRESS

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

A. Use of a safety checklist by a representative of the Construction Safety Unit or other designated DDC representative or Consultant during regular, unannounced inspections of the job site. Field Exit Conferences will be held with the RE/CPM, Contractor Superintendents or Safety Representatives.

B. The RE/CPM will continually monitor the safety and environmental performance of the contractor's employees and work methods. Deficiencies shall be brought to the attention of the contractor's representative on site for immediate correction. The DDC representative will maintain a written record of these deficiencies and forward them to the Construction Safety Unit on a weekly basis. Any critical deficiencies shall be immediately reported to QACS phone# (718) 391-1624 or (718) 391-1911.

C. If the Contractor's safety performance during the project is not up to DDC standards (safety performance measure, accident/incident rate, etc.) the Director- QACS, or designee will meet with the Contractor's safety representative, the DDC project manager, the RE/CPM, or the DDC Environmental Specialist (if environmental issues are involved). The purpose of this meeting is to 1) determine the level of non-compliance; 2) explain and clarify the safety/environmental provisions; 3) agree on a future course of action to correct the deficiencies.

D. If the deficiencies continue to occur with inadequate attention by the contractor, this shall, among other remedies available, be grounds for default.

E. The contractor shall inform the Construction Safety Unit and ACCO Insurance and Risk Management Unit of all medical injuries or illnesses that require doctors' treatment resulting from an on-the-job incident within 24 hours of the occurrence. The Construction Safety Unit shall also be immediately informed of all fatalities, catastrophic accidents with more than one employee hospitalized, any injuries to members of the general public and major equipment damage (e.g., property damage, equipment rollovers, loads dropped from crane). QACS shall maintain a record of all contractor injuries and illnesses during the project and provide regular reports to the Agency.

F. The Construction Safety Unit shall be immediately notified at the start of any NYS-DOL/ NYC-COSH/ OSHA/ EPA inspections. The Director of Quality Assurance & Construction Safety shall maintain a log of all contractor OSHA/EPA inspections and citations during the project.

IX. SAFETY PERFORMANCE EVALUATION

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

APPENDIX A

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

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions……1

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement……1

Section 2.02 Conflicts of Interest…….2

Section 2.03 Fair Practices……...2

Section 2.04 VENDEX……..2

Section 2.05 Political Activity……...3

Section 2.06 Religious Activity…….....3

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

Section 2.08 Bankruptcy and Reorganization……3

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment……...…3

Section 3.02 Subcontracting…….……4

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status……..5

Section 4.02 Employees…….5

Section 4.03 Removal of Individuals Performing Work……5

Section 4.04 Minimum Wage……...5

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

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records…….…...7

Section 5.02 Retention of Records…….....……7

Section 5.03 Inspection……..….8

Section 5.04 Audit……...8

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

Section 5.06 Electronic Records……...……..8

Section 5.07 Investigations Clause…….8

Section 5.08 Confidentiality……...……10

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS AND ANTITRUST

Section 6.01 Copyrights……..11

Section 6.02 Patents and Inventions…….……12

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

Section 6.04 Antitrust……...……...12

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure…….……12

Section 7.02 Commercial General Liability Insurance ……..……12

Section 7.03 Professional Liability Insurance…….……...…..12

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance ……....…...……..…13

Section 7.05 Unemployment Insurance ……13

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

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

Section 7.08 Proof of Insurance…….……..……...13

Section 7.09 Miscellaneous …….….…...14

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions……..…….……15

Section 8.02 Protection of City Property…….…….……15

Section 8.03 Indemnification …….……..…….15

Section 8.04 Infringement Indemnification …….……15

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation.….….….15

Section 8.06 Actions By or Against Third Parties…….…….…..15

Section 8.07 Withholding of Payments……...….……..…16

Section 8.08 No Third Party Rights……..……..…16

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes…….……..…16

Section 9.02 Changes Through Fault of Contractor…….…….……..…16

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause…….…….…...16

Section 10.02 Reductions in Federal, State and/or City Funding……...……...….17

Section 10.03 Contractor Default ……..……...17

Section 10.04 Force Majeure ……..……...18

Section 10.05 Procedures for Termination……...…19

Section 10.06 Miscellaneous Provisions ……...19

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment…….…....19

Section 11.02 Electronic Funds Transfer……..……....20

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law…….…….....20

Section 12.02 Jurisdiction and Venue……..…….20

Section 12.03 Resolution of Disputes……...…..20

Section 12.04 Claims and Actions …….…23

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

Section 12.06 General Release……...…24

Section 12.07 No Waiver……..……...…24

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules……..……..…24

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

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

Section 13.04 Compliance With Laws……...……24

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

Section 13.06 Not Used ……..…..…25

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

Section 13.08 MacBride Principles……...….25

Section 13.09 Not Used…….……..25

Section 13.10 Not Used……..…….25

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent……...……...25

Section 14.02 Merger……...……..……..25

Section 14.03 Headings……..…….25

Section 14.04 Notice……..……..26

Section 14.05 Monies Withheld…….…26

Section 14.06 Whistleblower Expansion Act Rider…….26

AFFIRMATION……...……...28

CERTIFICATION BY BROKER……...……..…...29

APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

representations and warranties in the execution of this Agreement.

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

Section 2.02 Conflicts of Interest

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

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

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

D. through H. Not Used

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

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

Section 2.05 Political Activity

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

Section 2.06 Religious Activity

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

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

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

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

Section 3.02 Subcontracting

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

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

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

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

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

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

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

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

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

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

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

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

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

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

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

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

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

or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

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

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

Section 7.03 Professional Liability Insurance

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

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

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

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

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars ($1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or

5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City of a claim upon demand, the Contractor shall reimburse the City for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officers and employees with a defense or reimbursement for attorney's fees.

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

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

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State and/or City Funding

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business Days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination

date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required

payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

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

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

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars ($25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

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

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

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

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

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

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

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

Head.

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

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of

the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

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

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved

Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Not Used

Section 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

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

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.08 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Not Used

Section 13.10 Not Used

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

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

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

Section 14.05 Monies Withheld

When the Commissioner shall have reasonable grounds for believing that: (1) the Contractor will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Contractor or the City arising out of the negligence of the Contractor or the Contractor's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Contractor hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Contractor, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

Section 14.06 Whistleblower Protection Expansion Act Rider

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

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

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

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

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

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

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

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

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

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder *[below]*

_____

Address_____

City_____ State_____ Zip Code_____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

☐ B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

☐ C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By_____

Signature

_____

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

_____
[Name of broker (typewritten)]

_____
[Address of broker (typewritten)]

_____
[Signature of authorized officer of broker]

_____
[Name of authorized officer (typewritten)]

_____
[Title of authorized officer (typewritten)]

_____
[Contact Phone Number for Broker (typewritten)]

_____
[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

_____

NOTARY PUBLIC

THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF PUBLIC BUILDINGS

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

REQUIREMENTS CONTRACT FOR CONSTRUCTION MANAGEMENT / DESIGN / BUILD SERVICES

PROJECT: **Remediation of Petroleum Contaminated Sites and Replacement of Storage Tanks**
Boroughs of Brooklyn, Queens and Staten Island

FMS NUMBER: **PW348-64**

REGISTRATION NUMBER: **8502014VP0028P**

CONTRACTOR: _____

_____

_____

Telephone: _____

Fax: _____

Construction Management / Design / Build Services
Storage Tanks Program
July 2013

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

WITNESSETH:

WHEREAS, the City desires to have design, construction, and construction management services performed on a requirements basis for various projects, as described in Exhibit A, to ensure compliance with all local state and federal laws, rules and regulations; and

WHEREAS, the Contractor has been selected based upon and in consideration of its representation that it can perform the required services and complete the Project in the time set forth herein,

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

ARTICLE 1 - DEFINITIONS

1.1 "Agreement" shall mean this Agreement which has been signed by the parties and each of the various parts of this Agreement set forth below, both as a whole and severally, whether or not existing in final approved form at the time of execution of this Agreement. In the event of any conflict between items 1.1.12 and 1.1.13, item 1.1.12 shall prevail.

1.1.1 The Agreement
1.1.2 The Budget Director's Certificate
1.1.3 The Construction Documents
1.1.4 Exhibit A: Contract Information
1.1.5 Exhibit B: Staffing Requirements and Estimated Direct Salary Rates
1.1.6 Exhibit C: Partial Payment for Stored Material
1.1.7 Exhibit D: Requirements for Project Office
1.1.8 Exhibit E: Safety Requirements
1.1.9 Schedule of Prevailing Wages
1.1.10 Notice of Award
1.1.11 Request for Proposals for the Contract
1.1.12 Contractor's Proposal submitted for the Contract
1.1.13 All provisions required by law to be inserted in this Agreement, whether actually inserted or not

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 "Allowance" shall mean those contract funds allocated for the payment of specific costs and expenses, in accordance with Article 42 hereof.

1.5 "Business Day" shall mean a day other than a Saturday, Sunday or a day on which the executive offices of the Department are not officially open for business.

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

1.7 "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).

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

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

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

1.11 "Construction Documents" shall mean the final plans, drawings and specifications and all modifications thereto prepared by consultant(s) engaged by the Contractor and approved in writing by the Commissioner. Upon such approval, the Construction Documents shall become part of this Agreement, as set forth in Article 1.1.3.

1.12 "Contract" or "Contract Documents" shall mean each of the various parts of the Agreement set forth in Article 1.1.

1.13 "Contract Work" shall mean everything required to be furnished and done by the Contractor pursuant to the Agreement, except Extra Work.

1.14 "Contractor" 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.

1.15 "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.

1.16 "Drawings" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.

1.17 "Extra Work" shall mean work not reasonably foreseeable at the time of the execution of this Agreement or not reasonably inferable from the Agreement.

1.18 "Final Acceptance" shall mean the final written acceptance of all Work required hereunder, as determined by the Commissioner. The Commissioner may also issue a written determination of Final Acceptance with respect to any subcontract hereunder.

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

1.20 "Law(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 hereof through Final Acceptance, applicable to or affecting the Project, the Site(s), the Construction Documents, the Work, and all employees engaged in Work hereunder.

1.21 "Lien" shall mean any and every lien, lease, security interest, or encumbrance of any kind whatsoever including, but not limited to, a Mechanic's Lien.

1.22 "Materialman" shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor or any Subcontractor to fabricate or deliver, or who actually fabricates or delivers, plant, material or equipment to be incorporated into the Work.

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

1.24 "Means and Methods of Construction" shall mean the labor, materials in temporary structures, tools, plant and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Agreement.

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

1.26 "Project" shall mean a Project for which the Contractor's services are required. The Commissioner shall, by written directive, assign various Projects to the Contractor for the performance of required services. The types of Projects for which the Contractor's services shall be required, as well as the location of such Projects, are set forth in Exhibit A.

1.27 "Project Executive" shall mean the person designated by the Contractor to provide, on an as needed basis, executive or management expertise and oversight with respect to the Project. The person so designated shall be identified as the Project Executive in Exhibit A and in the staffing plan approved by the Commissioner in accordance with Article 11.3.1. In accordance with Article 42, the Contractor shall not be entitled to payment for services provided by any Project Executive(s). Compensation for services provided by any Project Executive(s) is deemed included in the Multiplier(s).

1.28 "Safety Standards" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date hereof through Final Acceptance, pertaining to worker safety and accident prevention applicable to the Project and/or the 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).

1.29 "Samples" shall mean physical examples or specimens, intended to demonstrate workmanship or the characteristics of materials and equipment and/or to establish standards by which the Work will be judged. "Samples" includes (but is not limited to) raw materials, assemblies, completed items, working components or parts thereof, required under this Agreement or by the City to ascertain whether the kind, quality, assembly, construction, workmanship, finish, color, texture, grade or other characteristics of Work submitted by the Contractor conforms to the requirements of the Agreement.

1.30 "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 Work.

1.31 "Site(s)" shall mean the area(s) upon or in which the Contractor's operations hereunder are carried on, and such other areas adjacent thereto as may be designated by the Commissioner's Representative.

1.32 "Specifications" shall mean all of the directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.

1.33 "Subcontractor" shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his Subcontractors to furnish, or actually furnishes consulting services, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder. All Subcontractors are subject to the prior written approval of the Commissioner.

1.34 "Substantial Completion" shall mean the written determination by the Commissioner that all required Work for any subcontract is substantially complete. The terms and conditions that must be satisfied to achieve Substantial Completion are set forth in Article 10.

1.35 "Unavoidable Delay" shall mean any delay or obstruction whatsoever in the Work resulting from any act or event which has had (or may reasonably be expected to have) a material adverse effect on Contractor's ability to perform its obligations under this Agreement, if such act or event is beyond the reasonable control of Contractor and such act or event was not (and would not have been) separately or concurrently caused by a negligent or willful act or omission of Contractor and/or could not have been prevented by reasonable actions on Contractor's part. Unavoidable Delay shall include without limitation:

1.35.1 Acts of God;
1.35.2 Unforeseeably severe weather conditions;
1.35.3 Fire, earthquake, explosion, landslide, lightning or flood;
1.35.4 Epidemic;
1.35.5 Strikes or lockouts;
1.35.6 Riots, civil disturbance, insurrection, enemy action or war;
1.35.7 Injunctions or orders of any Government Entity;
1.35.8 Embargoes or blockades.

1.36 "Utilities" shall mean any and all utility services and installations whatsoever including, but not limited to, gas, water, electricity, telephone, other telecommunications, steam, sewer and storm sewer, and all piping, wiring, conduit and/or other fixtures of every kind whatsoever related thereto or used in connection therewith.

1.37 "Work" shall means everything expressly or implicitly required to be furnished and done by the Contractor for the Project pursuant to this Agreement, and shall include both Contract Work and Extra Work.

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 Contractor shall comply with all local, State and Federal laws, rules and regulations applicable to this Agreement and to the work to be done hereunder.

2.3 The Contractor shall give or cause to be given all necessary notices, obtain or cause to be obtained all permits, and pay or cause to be paid all fees required in connection with the Work, and comply with all local, state and federal laws, rules and regulations affecting work of this character. These laws, rules and regulations shall take precedence over any requirements of this Contract where a conflict occurs. Nothing herein contained shall, however, be construed as permitting the use of material and equipment of lesser quality than specified hereunder, unless the specified material or equipment violates such laws, rules or regulations.

2.4 The Contractor shall be responsible for applying for and obtaining the required approval of all federal, state and local agencies having jurisdiction over the subject matter hereof. As provided in Article 10.4, such approvals are required for a determination of Substantial Completion.

2.5 In accordance with Section 165 of the State Finance Law, the Contractor agrees that tropical hardwoods, as defined in Section 165 of the State Finance Law, shall not be utilized in the performance of this Contract, except as the same are permitted by the foregoing provision of law.

ARTICLE 3 - TIME OF ESSENCE

3.1 In performing the services hereunder, the Contractor and the City shall place emphasis on considerations which will aid in expediting the construction of the Project consistent with the construction standards and procedures of the City. The Contractor agrees to use all resources at its command so that the Project is completed in an expeditious fashion by the various Subcontractors and to this end, it shall give constant attention to the adequacy of its own and each Subcontractor's planning, personnel, equipment and the availability of materials and supplies. The Contractor and the City acknowledge that time will be of the essence for the Project and will use their best efforts to prevent delays. If a situation cannot be resolved, the Contractor shall bring it to the immediate attention of the Commissioner.

ARTICLE 4 - AGREEMENT TO SERVE

4.1 The City hereby retains the Contractor to perform the services hereinafter described, on the terms and conditions specified herein, and the Contractor hereby agrees to so serve. The Contractor is familiar with the terms of this Agreement, and the intended use of the Project upon completion of construction. The Contractor hereby certifies that it has the necessary experience, expertise, personnel and resources to fulfill its obligations under this Agreement competently and efficiently. The Contractor agrees to use its best efforts to complete this Project as soon as possible, in a manner meeting the highest professional standards.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

5.1 Responsibility and Competency: The Contractor warrants and represents as follows:

5.1.1 That it is financially solvent and sufficiently experienced and competent to perform the Work required by this Agreement, or to cause the same to be performed.

5.1.2 That its employees, agents, consultants, and subcontractors possess the requisite expertise, skill, experience and financial resources to perform the Work as required by this Agreement.

5.1.3 That (1) it is not in arrears to the City of New York upon debt, contract, or taxes; (2) it is not a defaulter, as surety or otherwise, upon any obligation of the City of New York; (3) it has not been declared not responsible or disqualified by any agency of the City of New York or State of New York, and (4) there is not any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts.

5.2 Procurement of Agreement: The Contractor 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 Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

5.2.1 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 Contractor 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.

5.3 Conflicts of Interest: The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further 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.

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

5.4.1 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 other proposer or with any competitor;

5.4.2 Unless otherwise required by law, the prices which have been quoted in this contract and in the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other proposer or to any other competitor, and

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

5.4.4 The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not, without more, constitute a disclosure within the meaning of the above.

ARTICLE 6 - TERM OF PERFORMANCE

6.1 Term of Contract: This Contract shall commence as of the date of registration by the Comptroller and shall remain in effect for a period of three years (1095 consecutive calendar days).

6.2 Extension of Contract: 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.

6.3 Continuation of the Contract: In the event (1) services are required for a Project, (2) the Commissioner assigns such Project to the Contractor 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 Project through the time frame for completion of the Project, as determined by the Commissioner. 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, or (2) the extended term of the Contract.

6.4 Impact on Multiplier: In the event the term of the Contract is extended, the Multipliers set forth in Exhibit A shall remain in full force and effect during such extension of the contract term.

ARTICLE 7 - OVERVIEW OF CONTRACTOR'S SERVICES

7.1 The Contractor shall provide construction management / design / build services on a requirements basis for the types of Projects described in Exhibit A. The Contractor's services shall include without limitation, investigation, planning, pre-construction, design, construction, management, supervision and coordination of all Work necessary and required for any Project assigned hereunder to effectuate its timely completion.

7.2 The Commissioner shall, by written directive, assign various Projects to the Contractor for the performance of required services. Regarding the assignment of Projects, the Commissioner reserves the following rights: (1) to determine the order of priority for the performance of services for the assigned Projects; (2) to increase or decrease the Projects assigned to the Contractor, and (3) to assign Projects to the Contractor in any of the locations set forth in Exhibit A.

7.3 Ownership of Documents: Any and all material records or documents prepared by or for the Contractor pursuant to this Agreement, including, but not limited to, office diaries, field diaries, daily records of labor, materials and equipment used, notes, reports, including laboratory and plant inspection reports, designs, drawings, tracings, estimates, specifications, schedules, and/or photographs, shall be the property of the City. During the term of this Agreement and at any time within 7 years thereafter, the Contractor shall, upon demand, promptly deliver such records or documents to the Commissioner, or make such records or documents available to the Commissioner or his authorized representatives for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such 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 Contractor.

ARTICLE 8 - PROGRESS SCHEDULE

8.1 To enable the Work to be performed in an orderly and expeditious manner, the Contractor, within twenty (20) days after commencement of the Contract, unless otherwise directed by the Commissioner, shall submit a proposed progress schedule per Project, indicating the information specified below:

8.1.1 The anticipated time of commencement and completion of each of the various operations to be performed;
8.1.2 The sequence and inter-relationship of each these operations with the others;
8.1.3 The estimated time required for fabrication or delivery, or both, of all materials and equipment required for the work.

8.2 The proposed schedule per Project shall be revised as directed by the Commissioner's Representative, until finally approved by him, and after such approval, shall, subject to the provisions of Article 17, be strictly adhered to by the Contractor.

8.3 If the Contractor shall fail to adhere to the approved progress schedule per Project, or to the schedule as revised pursuant to Article 17 hereof, he must promptly adopt such other or additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.

8.4 Responsibility for Delay: In the event the Project is not completed within the timeframe set forth in the original Project Schedule, the Commissioner shall prepare a report analyzing the causes of the delay and determining responsibility for the same.

8.4.1 If the report indicates that the Contractor, as a result of its actions or inactions, is responsible for the delay, or any

portion thereof, the Commissioner shall deduct from any amount due and owing to the Contractor under this Contract, the total amount of staffing expenses paid to the Contractor for the period of the delay, or any portion thereof, for which the Commissioner determines the Contractor is responsible. For the purpose of this deduction, staffing expenses shall mean the Direct Salary Rates for all Assigned Employees times the applicable Multiplier for Overhead and Profit set forth in Exhibit A. If the amount due and owing to the Contractor under this Contract is less than the total amount of the deduction described herein, the Contractor shall be liable for and agrees to pay the difference upon demand by the Commissioner.

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

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

ARTICLE 9 – PRE-DESIGN AND DESIGN SERVICES

9.1 General Description: The Contractor shall provide all pre-design and design services for the Project, as described below. The Contractor shall provide personnel for the Project, in accordance with the requirements of Article 11.3. The Contractor shall provide construction management personnel to conduct the bidding process. The Contractor shall, through its design consultant, provide design personnel to supervise the pre-design services described below.

9.2.1 Types of Projects: The types of Projects to be assigned to the Contractor pursuant to this Contract, as well as the pre-design services required for each type of Project, are set forth in Exhibit A. The Contractor shall engage subcontractors to provide the pre-design services required for the Project.

9.2.2 Initial Project Site Report: As authorized in a written directive from the Commissioner, the Contractor shall, through its design consultant, prepare an initial Project site report, including without limitation the following: (1) site history and operating characteristics; (2) examination of all site conditions; (3) verification of all existing site data provided by the City; (4) compilation of all site documentation; (5) identification of existing utilities, and (6) interviews with site operational staff. The site report shall be submitted to the Commissioner prior to the commencement of services described below.

9.2.3 Subcontracts for Pre-Design Services: Unless otherwise authorized in a written directive from the Commissioner, subcontracts for pre-design services shall comply with the provisions of Article 10 set forth below. Payment to subcontractors for pre-design services shall be made from the Allowance for Construction/Remediation Work set forth in Article 42.

(a)	Article 10.2.1	Competitive Bid Procedure – Bids for pre-design services shall be on a unit price basis, in accordance with format(s) provided by DDC.
(b)	Article 10.2.3	Subcontract Requirements – Unit prices for pre-design services shall not be subject to retainage. Subcontractors providing pre-design services shall not be required to submit payment and performance bonds.
(c)	Article 10.2.4	Payment to Subcontractors
(d)	Article 10.2.5	Approval of Subcontractors
(e)	Article 10.2.6	Contractor Responsibility for Subcontractors
(f)	Article 10.4	Liquidated Damages
(g)	Article 10.5	Extension of Time
(h)	Article 10.5	Extension of Time

9.2.4 Comprehensive Report and Recommendations: As authorized in a written directive from the Commissioner, the Contractor shall, through its design consultant, prepare a comprehensive report with respect to each Project site, including without limitation the following: (1) Site Specific Investigation Plans (SSIP), and (2) Investigative Site Remediation Plans (ISRP). Such report shall be based upon and incorporate information compiled from the initial site report, as well as the results of any required pre-design services. Such report shall include recommendations for all required work for the Project. The report and recommendations are subject to written approval by the Commissioner. The time frames for submission of the required report are set forth below.

9.3 Design Services: The Contractor shall, through its design consultant, provide all design services required for the Project, as directed by the Commissioner. The types of Projects to be assigned to the Contractor under this Contract are set forth in Exhibit A.

9.3.1 Approval of Consultants and Subconsultants: Professional design services required hereunder shall be provided by persons or firms licensed by the State of New York. All consultants performing such services are subject to the prior written approval of the Commissioner. If an approved consultant elects to subcontract any portion of its subcontract, the proposed subconsultant is subject to the prior written approval of the Commissioner. The Commissioner's approval of a consultant or subconsultant shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder.

9.3.2 Removal of Consultants: An approved consultant performing professional design services hereunder shall not be removed without the prior written approval of the Commissioner. The Commissioner reserves the right to require the Contractor to remove and replace an approved consultant.

9.3.3 Contractor's Responsibility for Consultants: The Contractor shall be solely responsible to the City for the acts, defaults, errors or omissions of its consultants and of such consultant's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.

9.3.4 Specific Design Services: Design Services required for the Project shall include without limitation the following:

(a) Preparation of coordinated final design documents for all required work for the Project (plans, drawings and specifications). Specifications prepared by the manufacturer are not acceptable.
(b) Obtaining all required regulatory approvals of the design
(c) Review and approval of shop drawings
(d) Preparation of supplementary drawings, if necessary
(e) Preparation of original drawings reflecting as-built conditions

9.3.5 Design Compliance: All required design services shall be in accordance with: (1) criteria provided by DDC, and (2) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code.

9.3.6 Approvals of Design: Final design documents are subject to: (1) written approval by the Commissioner, and (2) approval by all regulatory agencies whose approval of the design is required, including without limitation the New York State Department of Environmental Conservation, the New York City Department of Environmental Protection, the New York City Fire Department and the New York City Department of Buildings. All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect of Record, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.

9.3.7 Review of Design Documents: Throughout the design process, the Contractor shall review and comment on the design, with special attention to the following issues: (1) constructability; (2) coordination; (3) economy and efficiency; (4) minimization of impact on agency operations; (5) division of the work for bidding purposes; (6) time of performance; (7) compliance with the required scope of Work; (8) compliance with DDC criteria, and (9) avoidance of inconsistencies, problems, delays and change orders during the construction process. At the time of submission of final design documents, the Contractor shall provide written comments addressing the above issues.

9.3.8 Submission and Approval of Final Design Documents: The provisions set forth below shall apply to the submission, review and resubmission of final design documents.

(a) Within fourteen (14) consecutive calendar days of submission or resubmission of final design documents, the Commissioner shall: (1) approve the same in writing, or (2) approve the same as noted and indicate whether resubmission is required, or (3) disapprove the same and transmit changes or comments to the Contractor.
(b) In the event the final design documents are not approved, the Contractor shall, within ten (10) consecutive calendar days of receipt of the Commissioner's changes or comments, revise such documents and resubmit the same to the Commissioner for written approval.
(c) The day on which the final design documents are actually received by the respective party shall be considered the first consecutive calendar day for the purpose of calculating the submission, resubmission and review times set forth above; provided, however, documents received after 3:00 P.M. shall be deemed received the next consecutive calendar day.
(d) Upon resubmission of final design documents, the Contractor shall not make any changes from the original submission, unless such changes are in response to comments by the Commissioner or are specifically noted in a written cover letter.

9.3.9 Subcontract Requirements: The subcontract(s) between the Contractor and the consultant(s) for design services hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Commissioner.

(a) Such subcontracts shall require that all design services comply with all criteria and requirements set forth in this Contract.
(b) Such subcontracts shall contain provisions approved in advance by the Commissioner regarding the time for completion of all required design services.
(c) Such subcontracts shall require that the consultant carry the following types and amounts of insurance, unless an exemption is expressly authorized in advance in writing by the Commissioner: (1) comprehensive general liability insurance in the minimum amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate, with the City of New York named as an additional insured thereunder; (2) worker's compensation insurance, as required by New York State Law; (3) employer's liability insurance, in the minimum amount of $1,000,000 per occurrence, and (4) professional liability insurance, as set forth in Article 23. All policies shall be in compliance with the requirements of

Article 23 and shall be issued by companies that meet the criteria set forth in such article. Proof of Insurance shall be provided to the City in accordance with Article 23.

(d) Such subcontracts shall contain a provision regarding the resolution of disputes between the consultant and the Contractor. Such provision shall conform to the requirements set forth in Article 10.2.2(g).

(e) Such subcontracts shall require that the consultant agree not to make any claims against the City, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to disputes submitted by consultant pursuant to dispute resolution provisions contained in the subcontract.

(f) Such subcontracts shall include a provision requiring the Subcontractor to make payment to each of its Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth in Article 43 ("Prompt Payment").

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

9.4.1 The Contractor shall be liable to and hereby agrees to defend, indemnify and hold harmless the City against all claims against the City for infringement of any copyright or patent rights of systems, graphs, charts, designs, drawings or specifications furnished by the Contractor in the performance of this Contract.

9.5 Indemnification: The Contractor shall indemnify and hold the City of New York harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur arising out of any error, omission or negligent act in the performance of pre-design or design services.

ARTICLE 10 - CONSTRUCTION and/or REMEDIATION WORK

10.1 General: The Contractor shall provide all required construction and/or remediation Work for the Project, as directed by the Commissioner. The types of Projects to be assigned to the Contractor pursuant to this Contract are set forth in Exhibit A.

10.1.1 Required Approvals: The Contractor's provision of all required Work for the Project must comply with all federal, state and local requirements, including obtaining all required permits and approvals from regulatory agencies having jurisdiction over the Work, including without limitation the agencies set forth below.

(a) New York State Department of Environmental Conservation
(b) New York City Department of Environmental Protection
(c) United States Environmental Protection Agency
(d) New York City Fire Department, Bureau of Fire Protection (Certificate of Operation)
(e) New York City Department of Buildings
(f) New York City Department of Consumer Affairs

10.2 Subcontracts for Construction and/or Remediation Work: As authorized in a written directive from the Commissioner, the Contractor shall, on the basis of fully coordinated Construction Documents, enter into subcontracts for all construction and/or remediation Work required for the Project.

10.2.1 Competitive Bid Procedure for Construction and/or Remediation Work: Before entering into any subcontract for construction and/or remediation Work, the Contractor shall conduct a competitive bid procedure. Such competitive bid procedure shall be in accordance with all DDC requirements, including without limitation, the items set forth below:

(a) The Contractor shall prepare a Request for Bids ("RFB") for the required construction and/or remediation Work and shall submit the same to the Commissioner for review and approval prior to issuance. The RFB shall include the following items:

(1) Bid Form. If so directed, the Contractor shall use the Bid Form provided by DDC.
(2) Form of subcontract. Such subcontract shall comply with the requirements set forth below.
(3) Requirements applicable to bidders, as specified by DDC, including without limitation, requirements for MWBE participation and safety requirements. The Contractor shall comply with directions from DDC regarding the review of requirements included in the RFB. After the receipt of bids, DDC shall determine bidder compliance with such requirements.

(b) The Contractor shall prepare a list of contracting firms to receive the RFB (the "Selected Bidders List"). Selected Bidders must comply with the following items:

(1) Requirements specified by DDC, including without limitation, an acceptable Safety Questionnaire. DDC shall provide forms regarding these requirements and shall determine bidder compliance with the same.
(2) Criteria set forth in the PPB Rules (Criteria for Prequalification, as well as Criteria for Responsibility). Such

criteria are summarized below.

- Financial capability and availability of appropriate resources
- Technical expertise and experience with similar projects
- Organization, staffing and ability to undertake the work
- Satisfactory record of performance, confirmed by references
- Satisfactory record of business integrity
- Record of compliance with all laws, rules, regulations and executive orders applicable to the work
- Demonstration that the bidder has a valid license for the work, unless expressly authorized otherwise by the Commissioner (applicable to electrical and plumbing work only)
- Satisfactory safety record
- For Replacement Projects (i.e., tank installation, upgrade, or decommissioning) the bidder must be authorized or licensed by the tank manufacturer, and have a Certificate of Fitness from the New York City Fire Department.

(c) MWBE Participation: The Contractor shall include the following language in any advertisement or solicitation for the subcontract: "Companies who have been certified by the New York City Department of Small Business Services as Minority- or Women-Owned Business Enterprises ("M/WBE") are strongly encouraged to submit a bid. To find out more about M/WBE certification, please call 311 or go to www.nyc.gov/getcertified."

(d) The Contractor shall submit the following to the Commissioner for review and approval prior to issuance of the RFB: (1) list of criteria utilized for inclusion on the Selected Bidders List; (2) names of contracting firms included on the Selected Bidders List, and (3) documentation demonstrating the compliance of each contracting firm with the criteria for inclusion on the Selected Bidders List.

(e) The Contractor shall issue the RFB to a minimum of six (6) contracting firms and shall receive a minimum of three (3) sealed bids for the required construction services. The Contractor shall advise the Commissioner in writing not less than seven (7) business days in advance of the bid opening. The Commissioner's Representative must be present at the bid opening.

(f) Contracting firms submitting bids shall be required to complete and submit all forms or documentation the Commissioner may require.

(g) The Contractor shall submit a tabulation of the bids received to the Commissioner for his/her review and approval. If any bid received by the Contractor contains conditions and/or exclusions, the Contractor shall provide written notification of the same to the Commissioner. The Contractor shall proceed as directed by the Commissioner.

(h) The Contractor shall award the subcontract to the lowest responsive and responsible bidder approved in writing by the Commissioner.

(i) In the event less than three bids are received, no subcontract shall be awarded, unless the Contractor obtains the prior written approval of the Commissioner.

(j) Limitation: The Contractor shall not employ or otherwise engage, or cause or permit any subcontractor or sub-subcontractor at whatever tier to employ or otherwise engage (1) the Contractor, (2) any subsidiary, affiliate or parent of the Contractor, or (3) any person whose immediate family member is employed by the Contractor at a salary in excess of ten thousand dollars ($10,000.00) per annum, to perform work hereunder without the prior written approval of the Commissioner. For purposes of this Section, the term "immediate family member" shall mean a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild.

10.2.2 Exception: In order to ensure continuity of services at particular Project sites, the Commissioner reserves the right to direct the Contractor to enter into subcontracts with specific subcontractors at stipulated prices. In the event the Commissioner so directs the Contractor, the competitive bid procedure set forth above shall not apply.

10.2.3 Subcontract Requirements: Subcontracts between the Contractor and subcontractors for construction and/or remediation Work hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Commissioner.

(a) Such subcontracts shall require that all labor performed and all material furnished thereunder shall strictly comply with all requirements of this Agreement.

(b) Such subcontracts shall contain the DDC General Conditions, including the Addendum to the General Conditions, and the DDC Safety Requirements. Such subcontracts shall contain provisions approved in advance by the Commissioner regarding: (1) time for completion; (2) assessment of liquidated damages, and (3) warranties and/or guarantees.

(c) Such subcontracts shall contain the same terms and conditions with respect to: (1) method of payment and retained percentages, as set forth in Article 42; (2) substantial completion, as set forth in Article 10.4; (3) method of payment for extra work, as set forth in Article 28; (4) extension of time, as set forth in Article 10.5; (5) termination without cause, as set forth in Article 45; (6) termination for cause, as set forth in Article 46; (7) omitted work, as set forth in Article 31; (8) tax exemption, as set forth in Article 49, and (9) no damage for delay, as set forth below.

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

(d) Performance and payment bonds are not required for subcontracts hereunder, unless otherwise directed by the Commissioner.

(e) Such subcontracts shall require that the subcontractor carry the types and amounts of insurance set forth in Schedule A of the General Conditions, which will be provided by the City. All required policies shall be in accordance with the terms and conditions set forth in Article 23 of this Contract. Proof of Insurance shall be provided to the City in accordance with Article 23.3.

(f) Such subcontracts shall contain the following articles and shall require subcontractor compliance with the same.

(1) Article 38: Labor Law Requirements
(2) Article 39: Payroll Reports
(3) Article 41: Noise Control Code Provisions
(4) Article 43: Prompt Payment
(5) Article 51: Locally Based Enterprise Program (if applicable)
(6) Article 49: Supplies, Labor, Services Materials and Tax Exemption
(7) Article 65: Ultra Low Sulfur Diesel Fuel
(8) Article 66: Ultra Low Sulfur Diesel Fuel (Consolidated Construction Act)
(9) Article 68: Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement.

(g) Such subcontracts shall contain a provision regarding the resolution of disputes between the subcontractor and the Contractor. Such provision shall conform to the requirements set forth below.

(1) Such provision shall provide that all disputes the subcontractor may have of the kind delineated in Article 29 of this Agreement shall be resolved by the City in accordance with Article 29 and the PPB Rules. As set forth in Article 11, disputes submitted by a subcontractor to the Contractor must be submitted by the Contractor to the City for resolution in accordance with Article 29.
(2) Such provision shall provide that all terms, conditions, requirements and limitations set forth in Article 29, including the limitation on judicial review, shall apply to disputes submitted by the subcontractor, except as otherwise provided in paragraph (3) below.
(3) Such provision shall provide that subcontractor disputes and related material shall be submitted to the Contractor, not to the City. Such provision shall contain time frames specified by the Contractor for the submission of disputes and related material by the subcontractor to the Contractor. Such time frames shall be reasonable and substantially similar to the time frames set forth in Article 29.
(4) Such provision shall provide that the subcontractor agrees that it has no right to submit a dispute to the City.

(h) Such subcontracts shall require that the subcontractor agree not to make any claims against the City, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to (1) demands filed by subcontractors pursuant to Article 10.6 hereof, or (2) disputes submitted by subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in paragraph (g) above.

(i) Such subcontracts shall stipulate that the subcontractor, without any further notification or other process, gives its unconditional consent for its insurance carrier to release directly to the City documentation verifying its actual rate for workers' compensation insurance.

10.2.4 Payment to Subcontractors: Payment by the Contractor to subcontractors shall be in accordance with the provisions set forth below:

(a) The Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Commissioner, the Contractor shall submit satisfactory evidence that it has made such payment.

(b) The Contractor shall include on each requisition for payment the following data: subcontractor name, value of the subcontract, total amount previously paid to subcontractor for work previously requisitioned, and the amount, including retainage, to be paid to the subcontractor for work included in the requisition.

10.2.5 Approval of Subcontractors: All subcontractors and the dollar amounts of their subcontracts are subject to the prior written approval of the Commissioner. If an approved subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontractor and the dollar amount of its sub-subcontract are subject to the prior written approval of the Commissioner. No subcontractor or sub-subcontractor shall be permitted on the site until such written approval as required herein has been obtained. Any proposed change order to any subcontract(s) hereunder is subject to the prior written approval of the Commissioner. The Commissioner's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder.

10.2.6 Contractor's Responsibility for Subcontractors: In the event of default by any of the Contractor's Subcontractors, the

following conditions shall apply:

(a) The Contractor shall not be entitled to any payment whatsoever for any and all expenses, including without limitation staffing and/or administrative expenses, incurred by the Contractor in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required Work.

(b) The Contractor shall be responsible to compensate the City for any and all expenses, including without limitation administrative and/or professional design costs, incurred by the City in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required work. The Commissioner shall determine the amount of any such expenses incurred by the City and such determination shall be final, binding and conclusive upon the Contractor.

10.3 Liquidated Damages: The Commissioner shall specify an amount of liquidated damages to be included in each subcontract for Work hereunder. As directed by the Commissioner, the Contractor shall include such specified liquidated damage amount in each respective subcontract for Work hereunder.

10.3.1 Any and all moneys collected by the Contractor as liquidated damages from its Subcontractors shall be paid by the Contractor to the City.

10.3.2 In each subcontract for Work, the Contractor shall include a provision expressly giving the City a right of action against the Subcontractor in the event such subcontractor fails to pay any liquidated damages determined to be due and owing thereunder.

10.4 Requirements for Substantial Completion: Substantial Completion of the required Work for any subcontract shall occur when, in the sole determination of the Commissioner, all of the conditions set forth below have been satisfied.

(a) Contractor has obtained and delivered to the Commissioner: (1) the required written approval of any agency having jurisdiction over the work, and (2) all certificates of inspection for the Work.

(b) Contractor has completed all training sessions required by the City for equipment and/or systems installed for the Project.

(c) All utilities specified or required under the Contract are connected and function properly.

(d) The City can use and occupy the Project for the intended use and purpose.

(e) Contractor and the Commissioner's Representative have agreed in writing upon the Final Punch List and the date for Final Acceptance of all required Work, including completion of all Punch List items, or, if they are unable to agree, the Commissioner's Representative has prepared and issued in writing to the Contractor the Final Punch List and the date of Final Acceptance.

(f) All Work, except the items on the Final Punch List as approved by the Commissioner's Representative, is complete in all respects and is in compliance with the Contract to the satisfaction of the Commissioner's Representative.

(g) Contractor has delivered to the Commissioner's Representative a final verified statement of claims as described in Article 42 of the Agreement.

(h) Contractor has submitted to the Commissioner written certification that Contractor has paid all taxes and fees (including real property taxes and income or franchise taxes) due and payable by Contractor to the City prior to Substantial Completion.

(i) Contractor has submitted written certification that all of the foregoing conditions have been satisfied and the Commissioner has approved Contractor's certification.

Alternatively, Substantial Completion shall occur on any date certified by the Commissioner, who shall have discretion to waive any of the foregoing conditions.

10.5 Extensions of Time for Subcontracted Work: If the performance of Work performed by Subcontractors hereunder is delayed for a reason set forth in Article 10.5.1 below, the Contractor may be allowed a reasonable extension of time. An extension of time for subcontracted work may be granted only by the Commissioner, upon written application by the Contractor.

10.5.1 Grounds for Extension: If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of subcontracted work, if such delay is caused solely: (1) by the acts or omissions of the City, its officers, agents or employees; or (2) by the act or omissions of other contractors; or (3) by unavoidable delay, as defined in Article 1.35 hereof, or other supervening conditions entirely beyond the control of either party hereto.

The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Commissioner may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of Articles 8, 16, and 17 hereof.

10.5.2 Extension for Concurrent Causes of Delay: The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the subcontracted work as determined by the Commissioner, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of his Subcontractors or

materialmen, and would of itself (irrespective of the concurrent causes) have delayed the subcontracted work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. The determination made by the Commissioner shall be binding and conclusive on the Contractor. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Commissioner.

Permitting the Contractor to continue with the subcontracted work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the City of any of its rights under this Contract.

10.5.3 Application for Extension of Time: Before the Contractor's request for a time extension for subcontracted work may be approved, the Contractor must within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Commissioner identifying:

(a) Contractor; the Subcontractor; the Contract registration number; and Project description;
(b) Liquidated damage assessment rate, as specified in the subcontract;
(c) Original subcontract bid amount;
(d) Original subcontract start date and completion date;
(e) Any previous time extensions granted (number and duration); and
(f) Extension of time requested.

In addition, the application for extension of time shall set forth in detail:

(a) Nature of each alleged cause of delay in completing the work;
(b) Date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
(c) Statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and
(d) Statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of subcontract performance and payment for work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

10.5.4 Determination of Time Extensions: Time extensions for subcontracted work shall be determined in writing by the Commissioner.

10.5.5 Delay Analysis: For extensions of time for final completion payments for subcontracted work, the agency engineering staff shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Contract). The report shall be made a part of the agency contract file.

10.5.6 Assessment of Liquidated Damages: In the case of final completion payments for subcontracted work, liquidated damages shall be assessed as determined by the delay analysis. However, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension at final completion, shall operate as a waiver or release of any claim the City may have against the Subcontractor for either actual or liquidated damages.

10.6 Payment Guarantee

10.6.1 In the event the terms of this Contract do not require the Contractor or its Subcontractor(s) to provide a payment bond, the City shall, in accordance with the terms of this Article, guarantee payment of all lawful demands for: (a) wages and compensation for labor performed and/or services rendered, and (b) materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with the City as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of the City, the Contractor or its Subcontractor(s). For the purpose of this Article 10.6, Subcontractor shall mean any person, firm, or corporation, other than employees of the Contractor, who or which contracts with the Contractor to furnish, or actually furnishes, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder.

10.6.2 The provisions of Article 10.6.1 are subject to the following limitations and conditions.

(a) The guarantee is made for the benefit of all beneficiaries as defined in Article 10.6.1, above, provided that those beneficiaries strictly adhere to the terms and conditions of this Article 10.6.2.
(b) Nothing in this Article shall prevent a beneficiary providing labor, services or material for the work from suing the Contractor or its Subcontractor(s) for any amounts due and owing the beneficiary by the Contractor or its Subcontractor(s).
(c) All demands made against the City pursuant to this Article shall be made within four (4) months from the date payment is due on the invoice or invoices submitted by the beneficiary to the Contractor or its Subcontractor(s) for labor or work

done or for materials or supplies delivered, or, if the demand is for wages, four (4) months from the date the wages were due to be paid to the beneficiary.

(d) All demands made against the City by such beneficiary shall be presented to the Commissioner's Representative along with all written documentation concerning the demand which the Commissioner's Representative deems appropriate or necessary, which may include, but shall not be limited to: the subcontract or sub-subcontract; any invoices presented to the Contractor or subcontractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Contractor or Subcontractor and that the demand has not been paid by the Contractor or Subcontractor within the time allowed for such payment by the subcontract or sub-subcontract, and copies of any correspondence between the beneficiary and the Contractor or Subcontractor concerning such demand. The City shall notify the Contractor or Subcontractor that a demand has been made. The Contractor or Subcontractor shall inform the City of any defenses to the demand, and shall forward to the City any documents the City requests concerning the demand.

(e) The City shall make payment only if, after considering all defenses presented by the Contractor or Subcontractor, it determines that the payment is due and owing to the beneficiary making the demand.

(f) The City will not initiate the payment process of this Article or make payment on a demand where the beneficiary making the demand has filed a lien against the Work or otherwise sues the City prior to receiving a written notice from the City that it will not pay the demand.

(g) No beneficiary shall be entitled to interest from the City, or to any other costs, including but not limited to attorney's fees.

10.6.3 Upon the receipt by the City of a demand pursuant to this Article, the City may withhold from any payment otherwise due and owing to the Contractor under this Contract an amount sufficient to satisfy the demand.

(a) In the event the City determines that the demand is valid, the City shall notify the Contractor of such determination and the amount thereof, and direct the Contractor to immediately pay such amount to the beneficiary. In the event the Contractor, within seven (7) days of receipt of such notification from the City, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the Contractor to the beneficiary for the amount of the demand determined by the City to be valid. The Contractor, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the City, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.

(b) In the event that the amount otherwise due and owing to the Contractor by the City is insufficient to satisfy such demand, the City may, at its option, require payment from the Contractor of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the City may have under Law or Contract.

(c) In the event the City determines that the demand is invalid, any amount withheld pending the City's review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a lien has been filed, the terms and conditions set forth in Article 24 shall apply.

10.6.4 The provisions of this Article shall not prevent the City and the Contractor from resolving disputes in accordance with the rules of the Procurement Policy Board, where applicable.

10.6.5 In the event the City determines that the beneficiary is entitled to payment pursuant to this Article, such determination and any defenses and counterclaims raised by the Contractor shall be taken into account in evaluating the Contractor's performance.

10.6.6 Nothing in this Article shall relieve the Contractor of the obligation to pay the claims of all persons with valid and lawful claims against the Contractor relating to the work.

10.6.7 The Contractor shall not require any performance, payment or other bonds of any Subcontractor, unless required by the Commissioner.

10.6.8 The payment guarantee made pursuant to this Article shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to the Contractor or his Subcontractors in the prosecution of the Work under this Contract all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the City on the payment guarantee provided by this Article within the one year limitations period set forth in Section 137(4)(b).

ARTICLE 11 - CONSTRUCTION MANAGEMENT SERVICES

11.1 General Description of Construction Management Services: The Contractor shall provide, to the satisfaction of the Commissioner, all services necessary and required for the inspection, supervision, management, coordination and administration of the Project, so that the required Work is properly executed, completed in a timely fashion and conforms to the requirements of the Construction Documents and to good construction practice. The Contractor shall provide construction management services as directed by the Commissioner. Such construction management services shall include without limitation the services set forth in this Article 11. The Contractor shall cooperate in all respects with representatives of the Commissioner concerning all aspects of the Project.

11.2 The Contractor's Personnel

11.2.1 Key Personnel: It is the intent of the City to secure the personal services of those key design and construction management personnel identified in Exhibit A for the titles set forth therein. Accordingly, the Contractor agrees to assign such key personnel for the entire duration of Project. Failure by the contractor to provide such key personnel will be considered a material breach of the Contract and grounds for termination for cause. Replacement of such key personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer in the employ of the Contractor, or (2) if the City fails to direct the Contractor to commence work on the Project within nine (9) months of the date the Contractor submitted its technical proposal. Replacement of such key personnel must comply with the conditions set forth in Article 11.3.4 below.

11.2.2 Staffing Requirements: Staffing requirements for personnel are set forth in Exhibit B. Such staffing requirements specify the following: (1) titles of design and construction management personnel that may be required for the Project, (2) minimum requirements per title, and (3) Estimated Direct Salary Rate per hour per title. The Contractor agrees, throughout the term of the Contract, to provide design and construction management personnel as directed by the Commissioner. The Contractor specifically agrees that its employees, agents and consultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

11.2.3 Minimum Requirements Per Title: Design and construction management personnel providing services hereunder must satisfy the minimum requirements for the specific title in which he/she is performing services, as set forth in Exhibit B. The Contractor shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the minimum requirements per title**.**

11.3 Staffing Plan: A Staffing Plan for the Project shall be established as set forth below. Such Staffing Plan must be established and approved by the Commissioner prior to commencement of the Contractor's services pursuant to this Contract.

11.3.1 Contents of Staffing Plan: The Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those titles of personnel necessary for the provision of the required services.

(a) Key Personnel: Individuals named in Exhibit A as Key Personnel
(b) Other Personnel: Required titles and specific individual for each title
(c) Direct Salary Rate per hour for each specified individual (except Project Executive), 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 42, or (2) the Estimated Direct Salary Rate per hour for the specified title set forth in Exhibit B.
(d) Total estimated hours per title
(e) Total estimated amount per title
(f) Total estimated amount for all required titles

The specific personnel identified in the approved Staffing Plan, except for any Project Executive(s), shall be considered assigned personnel for the purpose of the Contractor's entitlement to reimbursement for services performed by such personnel in accordance with Article 42.3. As specified therein, the Contractor shall not be entitled to payment for staffing expenses for: (1) any Project Executive(s), and (2) any personnel not assigned to the Project and not included in the approved Staffing Plan. In accordance with Article 42.2, compensation for such personnel is deemed included in the Multiplier(s).

11.3.2 Proposed Staffing Plan: Within seven (7) days after commencement of this Contract, the Contractor shall submit a proposed Staffing Plan for the Project. Such Staffing Plan shall include the items listed above. With respect to each proposed employee, the Contractor shall provide: (1) the employee's resume, as well as any other information detailing his/her technical qualifications and expertise, (2) the title in Exhibit B for which the employee meets the qualification requirements, and (3) direct salary information, including the employee's current actual annual direct salary, as defined in Article 42, and direct salary history for the past three years.

11.3.3 Review and Approval of Staffing Plan: The Commissioner shall review the Contractor's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of his/her review, the Commissioner shall determine (1) whether each specific employee meets the qualification requirements for the applicable title, and (2) the direct salary rate per hour to be paid for each specific employee, in accordance with Article 42. The Contractor shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

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

(a) Replacement Personnel: No substitutions for assigned personnel shall be permitted unless the proposed replacement has received the prior written approval of the Commissioner. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced. As set forth above, replacement of key design and construction management personnel will not be permitted unless the designated individual is no longer in the employ of the Contractor.

(b) Changes by the Commissioner: The Commissioner reserves the right to direct changes to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Project and increasing or decreasing the personnel assigned to the Project, based upon the scope of the required Work. The Contractor shall increase or decrease the personnel assigned to the Project, as directed by the Commissioner.

(c) Removal of Personnel: At the Commissioner's request at any time, the Contractor shall remove any personnel and substitute another employee of the Contractor reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his/her sole discretion.

(d) Revisions Due to Delay: In the event completion of the Project is delayed for any reason, including without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the Contractor, the Commissioner shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The Contractor shall be reimbursed for the cost of the staffing it is directed by the Commissioner to maintain. Upon termination of the delay, the Contractor shall restore the level of staffing as directed by the Commissioner.

11.3.5 Night Differential / Overtime: The Contractor 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 Contractor'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 Contractor'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 limitations set forth in Article 42.

11.4 Related Services: Throughout the Project, the Contractor shall be responsible for providing the related services set forth below. All costs for such related services are deemed included in the Multiplier for Construction Management Personnel.

11.4.1 Throughout the term of this Contract, the Contractor shall be required to provide and maintain a Project Office, dedicated to the activities of personnel in connection with Projects assigned under this Contract. Such Project Office shall be in accordance with the requirements set forth in Exhibit D, including the requirement that the Project Office be located with twenty-five (25) miles of DDC headquarters in Long Island City.

11.4.2 The Contractor shall provide overnight delivery of the following Project documents: (1) bid and contract 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.

11.4.3 The Contractor shall provide transportation, including parking and tolls, for the Project Executive(s) and all personnel assigned to the Project, except as otherwise provided below. The transportation provided shall be vehicular, unless the Project site can be easily accessed by public transportation. Contractors and/or consultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.

(a) In the event the Contractor is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Contractor shall be reimbursed for expenses incurred in connection with such long distance travel.

(b) 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 Contractor's home office.

(c) Reimbursement for long distance travel expenses shall be as set forth in Article 42.5.

11.4.4 The Contractor shall provide communications equipment and service, including without limitation cellular telephones for the Project Executive(s) and all personnel assigned to the Project. The telephone numbers of all personnel assigned to the Project shall be submitted to the Commissioner.

11.5 Services During Pre-Construction/Remediation Phase: The Contractor shall provide construction management services during the Pre-Construction/Remediation Phase as directed by the Commissioner. Such construction management services shall include without limitation the services set forth below.

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

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

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

11.5.4 Take appropriate action to ensure that all required filings with regulatory agencies with respect to the design have been made.

11.5.5 Prepare Bid and Contract Documents for the Project that are complete and comply with all DDC requirements.

11.5.6 During the bidding process for the subcontracts, coordinate the work of the Consultant(s) to assure that any required addenda are promptly issued.

11.5.7 Perform all services with respect to the process of bidding and awarding subcontracts as set forth in Article 10.

11.6 Services During Construction/Remediation Phase: The Contractor shall provide construction management services during the Construction/Remediation Phase as directed by the Commissioner. Such construction management services shall include without limitation the services set forth below.

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

11.6.2 Transmit, or ensure that the Subcontractor(s) have transmitted, to the Consultant all required submittals, including without limitation shop drawings, material samples and catalogue cuts. Such transmittals shall be in accordance with DDC guidelines.

11.6.3 Undertake the following responsibilities with respect to the inspection of the Work:

(a) Provide technical inspection, supervision and coordination of the Work on the Project until final completion of the Work and Final Acceptance thereof by the Commissioner, verifying that the materials furnished and Work performed are in accordance with all requirements of the Construction Documents, and that Work on the Project is progressing on schedule.
(b) Provide offsite plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Commissioner, to insure conformance with the material specifications of the Construction Documents.
(c) Take appropriate action to prevent the installation of Work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the Construction Documents, and inform Commissioner promptly of such action and the reasons for and outcome of such action.
(d) Supervise the performance of all inspections, quality control tests, or any other tests required by law, rule or regulation or by the Construction Documents, to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include without limitation, semi-controlled or off-site inspections and controlled inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel or any other material or equipment. If directed by the Commissioner in writing as an additional service, the Contractor shall retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory services will be provided to the Contractor pursuant to the Allowance for Additional Services.
(e) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative on a periodic basis and prior to Substantial Completion, occupancy by the City, or Final Acceptance, as described in Articles 11.6.17 and 11.6.18 below. The Contractor shall furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
(f) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.
(g) Inspect the Project and provide a report prior to the expiration of the guarantee period set forth in the Construction Documents, as described in Article 11.6.20 below.
(h) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

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

(a) Review proposed Progress Schedule(s), and any updates thereto, submitted by the Subcontractor(s) and direct the Subcontractor(s) to revise the same as necessary prior to Contractor submission of the Progress Schedule, or any updates thereto, to the Commissioner for approval in accordance with Article 8 hereof.
(b) Take appropriate action to ensure compliance with the Progress Schedule by the Subcontractor(s).
(c) Review the adequacy of the personnel and equipment of the Subcontractor(s) and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule.
(d) Notify the Commissioner of any anticipated delays in fabrication or construction.
(e) Take appropriate action to minimize delays to the Project caused by labor disputes during construction.

(f) If performance of the Work by the Subcontractor(s) falls behind the Progress Schedule, advise the Commissioner of the same and make recommendations as to what methods should be adopted to make up for lost time.

11.6.5 Review and evaluate the means and methods of construction and/or remediation proposed by the Subcontractor(s) and direct changes as necessary in the event the Contractor reasonably believes that such proposed means and methods of construction and/or remediation will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the terms of the Construction Documents.

11.6.6 Undertake the following responsibilities with respect to the safety of the Project site:

(a) Perform all CM responsibilities set forth in the DDC Safety Requirements (Exhibit E).
(b) Review all Safety Programs and Site Safety Plan(s) developed by the Subcontractor(s) and direct revisions to the same as necessary prior to submission to DDC.
(c) Take appropriate action to enforce Subcontractor compliance with (1) Safety Program, (2) Site Safety Plan, (3) DDC Safety Requirements, and (4) all applicable regulations that pertain to construction safety.
(d) Promptly notify the Commissioner and the Subcontractor(s) if the Contractor observes any hazardous conditions at the site or non-compliance by the Subcontractor(s) with its Safety Program, Site Safety Plan, DDC Safety Requirements, any applicable safety regulations or subcontract requirements.
(e) Take or cause to be taken precautions to minimize the risk of injury to persons and damage to property resulting from or arising out of the Work.
(f) In the event of an emergency, provide such labor, materials, equipment and supervision necessary to cure such emergency condition. The Contractor shall immediately notify the Commissioner of any such emergency condition.

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

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

11.6.8 Monitor compliance by the Subcontractor(s) with the following requirements applicable to the Work: (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA); (3) requirements for the participation of M/WBEs, and (4) requirements for the participation of Locally Based Enterprises (LBEs). If Participation Goals have been established for the participation of M/WBEs in the subcontracted Work, the subcontractor is not required to comply with the LBE Program.

11.6.9 Undertake the following responsibilities with respect to Subcontractor payments:

(a) Review all requisitions for payments submitted by the Subcontractor(s), including without limitation partial payments, payments for extra work, Substantial Completion and final payments.
(b) Verify all estimates for payments of Work performed, computations, as well as field measurements and sketches necessary for payment purposes.
(c) With respect to each requisition for payments submitted by the Subcontractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.
(d) Contractor’s requisitions for payment for Work performed by Subcontractors, submitted in accordance with Article 42 hereof, shall be based upon and in accordance with Subcontractor requisitions for payment reviewed and approved by the Contractor.

11.6.10 Review and approve or disapprove applications for extensions of time submitted by the Subcontractor(s). The Contractor’s request for a time extension for construction Work performed by Subcontractors, submitted for Commissioner approval in accordance with Article 10 hereof, shall be based upon and in accordance with Subcontractor applications for extensions of time reviewed

and approved by the Contractor.

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

11.6.12 Undertake the following responsibilities with respect to Subcontractor requests for change orders:

(a) Review, evaluate and make a decision with respect to the validity of all written Subcontractor requests for change orders. The Contractor's decision as to the validity of the proposed Subcontractor change order shall be in writing and shall provide a reasonably detailed explanation for the decision based upon the information presented by the Subcontractor and the requirements of the Construction Documents.

(b) If the Contractor decides that the Subcontractor's request for a change order is not valid, it shall provide such written decision to the Subcontractor, with a copy of the same to the Commissioner.

(c) If the Contractor decides that the Subcontractor's request for a change order is valid, the Contractor shall prepare the proposed Subcontractor change order and submit the same to the Commissioner for approval. Such proposed Subcontractor change order shall include or be accompanied by the following: (1) the Contractor's written decision as to the validity of the change order, (2) the cost proposal submitted by the Subcontractor, (3) the Contractor's evaluation of such cost proposal, (4) the Contractor's own cost estimate of the quantities of labor, equipment and materials required for the performance of the proposed change order. The Contractor must be prepared to substantiate the information with respect to the change order to the Commissioner, the Engineering Audit Officer, the Comptroller and any other agency having jurisdiction in this area. The Commissioner will make all final determinations regarding change orders, modifications and additions to the Construction Documents.

(d) If the Commissioner approves the Contractor's request for a Subcontractor change order, the Contractor shall negotiate a price, i.e., a lump sum price or unit prices, for the performance of the proposed change order work and submit the same to the Commissioner for his approval.

11.6.13 Conduct job meetings with the Subcontractor(s), Consultants, representatives of the Commissioner, interested city agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, scheduling and related issues. The Contractor shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees.

11.6.14 Undertake the following responsibilities with respect to Project reports:

(a) Submit written progress reports to the Commissioner on a monthly basis, unless otherwise directed. Such reports shall be based upon the most current information and shall include, without limitation:

(1) Progress Schedule, including information concerning the Work of the construction Subcontractor(s) and the percentage of completion of the Work;
(2) Change Order Tracking Sheet, indicating the number and amount of change orders;
(3) Shop Drawing Log Schedule;
(4) Fabrication and Delivery Schedule;
(5) Budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete, and
(6) Progress photographs, as set forth in Article 11.6.21.

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

11.6.15 Undertake the responsibilities set forth below with respect to disputes submitted by its subcontractors. Disputes shall mean disputes of the kind delineated in Article 29 of this Agreement.

(a) Review, evaluate and prepare a recommended determination with respect to disputes filed by its subcontractors. The Contractor's recommendation shall be in writing, and shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the subcontractor, as well as the requirements of the subcontract and the Construction Documents.

(b) The Contractor shall submit the dispute filed by its subcontractor to the City for resolution in accordance with Article 29 of this Agreement. The Contractor's submission shall be accompanied by the recommended determination described above.

11.6.16 Determine the need for and undertake default proceedings against the Subcontractor(s). In the event of default by a Subcontractor, the Contractor shall promptly submit for Commissioner approval an alternate Subcontractor(s) to perform the Work.

11.6.17 Undertake the following responsibilities with respect to Substantial Completion of the Work:

(a) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative at the time of Substantial Completion.
(b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
(c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.
(d) Finalize all necessary Punch Lists, including completion dates for all items, and expedite execution of the same by its Subcontractors.
(e) Perform the above duties in the event the City is to take over, use, occupy or operate any part or all of the Project.

11.6.18 Undertake the following responsibilities with respect to Final Acceptance of the Work:

(a) Inspect the Project in conjunction with the Consultant and the Commissioner's Representative at the time of Final Acceptance.
(b) Furnish a detailed report to the Commissioner and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
(c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any discrepancies or deficiencies in the finished Work.
(d) Assemble and deliver to the Commissioner all record "As Built" Drawings. The Contractor shall notify the Commissioner of any issues, problems or observations relative to such drawings.

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

11.6.20 Undertake the following responsibilities with respect to maintenance and guarantee obligations:

(a) Prior to the expiration of the guarantee period set forth in Article 25 hereof, inspect the Project and furnish a report to the Commissioner describing in detail any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.
(b) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Commissioner may determine, of any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

11.6.21 Take photographs to document the progress of the construction Work. Such photographs shall be taken on a bi-weekly basis until Substantial Completion of the Work. As indicated in Article 11.6.14, such photographs shall be included in each monthly progress report.

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

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

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

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

11.7 Services During Post Construction/Remediation Phase: The Contractor shall provide construction management services during the Post Construction/Remediation Phase as directed by the Commissioner. Such construction management services shall include without limitation the services set forth below.

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

11.7.2 Manage and supervise training sessions provided by the Subcontractors for all equipment and/or systems installed.

11.7.3 Obtain and deliver whichever of the following is required by the Commissioner: (1) permanent Certificates of Occupancy, (2) Letter of Completion from the Department of Buildings, (3) all certificates of inspection for the work, and (4) written approval of any agency having jurisdiction over the work.

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

11.8 Additional Services: The Contractor may be directed to provide additional services. Additional services shall be such services determined by the Commissioner to be necessary for the expeditious completion of the Project, and may include without limitation, the performance of general conditions work and/or the purchase of miscellaneous items.

ARTICLE 12 - CHARACTER OF THE WORK

12.1 Unless otherwise expressly provided in this Agreement, the Work must be performed in accordance with the best, modern practice, with materials and workmanship of the highest quality, to the satisfaction of the Commissioner. All materials required for the Work shall be free from all defects, of the best available grade and quality, entirely satisfactory for the purpose intended, furnished in ample quantities to prevent delays, and in accordance with all requirements of this Agreement.

ARTICLE 13 - MEANS AND METHODS OF CONSTRUCTION and/or REMEDIATION

13.1 Unless otherwise expressly provided in this Agreement, the means and methods of construction and/or remediation shall be such as the Contractor may choose; subject, however, to the Commissioner's right to reject means and methods proposed by the Contractor which: (1) will constitute or create a hazard to the Work, or to persons or property; or (2) will not produce finished Work in accordance with the terms of the Agreement.

13.2 The Commissioner's approval of the Contractor's means and methods of construction and/or remediation, or his/her failure to exercise his right to reject such means or methods, shall not relieve the Contractor of his obligation to accomplish the result intended by the Agreement; nor shall the exercise of such right to reject create a cause of action for damages.

ARTICLE 14 - INSPECTION

14.1 During the progress of the Work and up to the date of Final Acceptance of all required Work, the Contractor shall at all times afford the representatives of the City every reasonable, safe and proper facility for inspecting all Work done or being done at the Site and also the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

14.2 The Contractor's obligation hereunder shall include the uncovering or taking down of finished Work and its restoration thereafter, provided, however that the order to uncover, take down and restore shall be in writing, and further provided that if Work thus exposed proves satisfactory, such uncovering or taking down and restoration shall be considered an item of extra Work to be paid for in accordance with the provisions of Article 26 hereof.

14.3 Inspection and approval by the Commissioner's Representative of finished Work or of work being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the Contractor of his obligation to perform the Work in strict accordance with the Agreement. Finished or unfinished Work found not to be in strict accordance with the Agreement shall be replaced as directed by the Commissioner's Representative, even though such Work may have been previously approved and paid for.

14.4 Rejected Work and materials must be promptly taken down and removed from the Site, which must at all times be kept in a reasonably clean and neat condition.

ARTICLE 15 - PROTECTION OF WORK AND OF PERSONS AND PROPERTY

15.1 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace or repair such Work, whichever the Commissioner's Representative shall determine to be preferable. The obligation to deliver finished Work in strict accordance with the Contract prior to Final Acceptance shall be absolute and shall not be affected by the Commissioner's Representative's approval of, or failure to prohibit, the Means and Methods of Construction used by the Contractor.

15.2 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall take all reasonable precautions to protect the persons and property of the City and of others from damage, loss or injury resulting from the Contractor's, and/or its Subcontractors' operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, place or replace and adequately maintain at or about the Site suitable and sufficient protection such as lights, barricades, and enclosures.

15.3 The Contractor shall make a full and complete report in writing to the Commissioner's Representative within three (3) Days after the happening of any loss, damage or injury to Work, persons or property, or any accidents arising out of the operations of the Contractor and/or its Subcontractors under this Contract. The Contractor shall notify in writing the Commissioner (pursuant to Article 23), the Comptroller, the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any such loss, damage, injury, or accident, and any claim or suit arising therefrom, immediately, but not later than 20 days after such event. The Contractor's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as [the Contractor] as Named Insured." If the Contractor fails to give any of the foregoing notices to any appropriate insurance carrier in a timely manner, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

15.3.1 Notice to the Comptroller pursuant to Article 15.3 shall specify the name of the Contractor, the number of this Contract, the date of the occurrence, the location (street address and borough) of the occurrence, the identity of the persons or things injured, damaged or lost, and the name of the insurance carrier that issued the commercial general liability insurance policy pursuant to Article 23.1.1 of this Contract. Such notice shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007.

15.4 The Contractor shall indemnify, defend and hold the City, its employees and agents harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, allegedly arising out of or in any way related to the operations of the Contractor and/or its Subcontractors in the performance of this Contract or from the Contractor's and/or its Subcontractors' failure to comply with any of the provisions of this Contract or of the Law. Insofar as the facts and Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent provided by Law.

15.5 The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor or the City.

ARTICLE 16 - REQUEST FOR INFORMATION OR APPROVAL

16.1 From time to time as the Work progresses and in the sequence indicated by the approved Progress Schedule, the Contractor may submit to the Commissioner a specific request in writing for each item of information or approval required by him. These requests must state the latest date upon which the information or approval is actually required by the Contractor, and must be submitted sufficiently in advance thereof to allow the Commissioner a reasonable time to act upon such submissions or any necessary re-submissions thereof.

16.2 The Contractor shall not have any right to an extension of time on account of delays due to his failure to submit his requests for the required information for the required approval in accordance with the above requirements.

ARTICLE 17 - NOTICE AND DOCUMENTATION OF DELAY DAMAGES AND OTHER DAMAGES; PRODUCTION OF FINANCIAL RECORDS

17.1 After the commencement of any condition which is causing or may cause a delay in completion of the Work, including conditions for which the Contractor may be entitled to an extension of time, the following notifications and submittals are required:

17.1.1 Within seven (7) Days after the commencement of such condition, the Contractor must notify the Commissioner's Representative in writing of the existence, nature and effect of such condition upon the approved progress schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.

17.1.2 If the Contractor shall claim to be sustaining damages for delay, by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action arising under or by reason of this Contract shall not be different from or in excess of the statements made and documentation provided pursuant to this Article.

17.2 Failure of the Contractor to strictly comply with the requirements of Article 17.1.1 may, in the discretion of the Commissioner, be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of the Contractor to strictly comply with the requirements of Articles 17.1.1 and 17.1.2 shall be deemed a conclusive waiver by the Contractor of any and all claims for damages for delay arising from such condition and no right to recover on such claims shall exist.

17.3 When appropriate and directed by the Commissioner's Representative, the progress schedule shall be revised by the Contractor until finally approved by the Commissioner's Representative. The revised progress schedule must be strictly adhered to by the Contractor.

17.4 If the Contractor shall claim to be sustaining damages by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action or dispute resolution procedure arising under or by reason of this Contract shall not be different from or in excess of the statements and documentation made pursuant to this Article.

17.5 In addition to the foregoing statements, the Contractor shall, upon notice from the Commissioner, produce for examination at the Contractor's office, by the Commissioner's Representative, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract, and submit itself and persons in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

17.6 In addition to the statements required under Article 30 and this Article, the Contractor and/or its Subcontractor shall, within thirty (30) Days upon notice from the Commissioner or Comptroller, produce for examination at the Contractor's and/or Subcontractor's office, by a representative of either the Commissioner or Comptroller, all of its books of account, bid documents, financial statements, accountant work papers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract. Further, the Contractor and/or its Subcontractor shall submit any person in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

17.7 Unless the information and examination required under Article 17.6 is provided by the Contractor and/or its Subcontractor upon thirty (30) Days' notice from the Commissioner or Comptroller, or upon the Commissioner's or Comptroller's written authorization to extend the time to comply, the City shall be released from all claims arising under, relating to or by reason of this Contract, except for sums certified by the Commissioner or Comptroller to be due under the provisions of this Contract. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the City to recover any sum in excess of the sums certified by the Commissioner or Comptroller to be due under or by reason of this Contract, the Contractor must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article.

17.8 In addition, after the commencement of any action or dispute resolution procedure by the Contractor arising under or by reason of this Contract, the City shall have the right to require the Contractor to produce for examination under oath, up until the trial of the action or hearing before the Contract Dispute Resolution Board, the books and documents described in Article 17.6 and submit itself and all persons in its employ for examination under oath. If this Article is not complied with as required, then the Contractor hereby consents to the dismissal of the action or dispute resolution procedure.

ARTICLE 18 - DETERMINING DATE OF COMPLETION

18.1 Final inspection of the Work by the Commissioner's Representative shall be made within 10 days after receipt of the Contractor's written request therefor. The Work will be deemed complete as of the date of such inspection if, upon such inspection, the Commissioner's Representative finds that no further Work remains to be done. The Commissioner will then issue a certificate of completion and acceptance of the Work.

18.2 Request for Reinspection. However, if such inspection, in the opinion of the Commissioner's Representative, reveals items of Work still to be performed, the Contractor shall promptly perform them and then request a reinspection. If, upon any reinspection, the Commissioner's Representative determines that the Work is complete, the date of completion shall be deemed to be the actual date of such reinspection, which shall be made not more than 10 days after the date of the request therefor.

ARTICLE 19 - EXTENSION OF TIME

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

ARTICLE 20 - OCCUPATION OR USE PRIOR TO COMPLETION

20.1 If before final completion of the Work specified hereunder, it shall be deemed necessary by the Commissioner to take over, use, occupy or operate any part of the completed Work, the Commissioner shall have the right so to do and the Contractor will not in any way interfere with or object to the use, occupation or operation of such Work by the City after receipt of notice in writing by the Commissioner that such Work or part thereof will be used by the City on and after the date specified in such notice.

20.2 Should such action be taken by the Commissioner, the Contractor's guarantee on that part of the Work placed into use shall begin on the date such use by the City shall begin, and the Contractor shall be entitled to a return of so much of the retained percentages as have been withheld under Article 42, as security for the faithful performance of the Work which the Commissioner may take over, use, occupy or operate under this Article, except so much thereof as may be retained under Article 25 hereof.

20.3 Immediately prior to such occupancy or use, inspection of the part to be occupied or used will be made by the Commissioner's Representative, and the Contractor will be furnished in writing with a statement of the Work, if any, still to be done on such part. If any part of the completed or partly completed Work is taken over for use, occupation or operation under this Article, then the Commissioner may issue a determination of Substantial Completion with respect to such Work.

ARTICLE 21 - CHANGED CONDITIONS

21.1 Should the Contractor encounter during the progress of the Work, subsurface conditions at the site materially differing from any shown on any documents furnished by the Commissioner or such subsurface conditions as could not reasonably have been anticipated by the Contractor and were not anticipated by the City, which conditions will materially affect the cost of the Work to be done under the Contract, the attention of the Commissioner must be called immediately to such conditions before they are disturbed. The Commissioner shall thereupon promptly investigate the conditions. If he finds that they do so materially differ, or that they could not reasonably have been anticipated by the Contractor and were not anticipated by the City, the Contract may be modified with his written approval. Any increase in cost resulting therefrom shall be in accordance with Article 26 and the Procurement Policy Board Rules.

ARTICLE 22 - ASSIGNMENTS

22.1 The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or of its rights, obligations, duties, in whole or in part, or of its right to execute it, or its 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 prior 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. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

22.2 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.

22.3 Failure of the Contractor to obtain the required prior written consent of the Commissioner to such an assignment, transfer or conveyance, shall be cause for termination for cause, at the option of the Commissioner; and, if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all Moines that may become due under the contract shall be forfeited to the City, except so much thereof as may be necessary to pay the Contractor's employees.

22.4 The provisions of this Article shall not be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of creditors made pursuant to the statutes of the State of New York.

22.5 The Contractor 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.

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

ARTICLE 23 - INSURANCE

23.1 Types of Insurance: From the date the Contractor is ordered to commence Work and throughout the term of this Contract, the Contractor must effect and maintain with companies licensed and authorized to do business in the State of New York, the following types and amounts of insurance.

23.1.1 Commercial General Liability Insurance: The Contractor shall provide a Commercial General Liability Insurance policy (with the coverages indicated below) in the minimum amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate. Such policy shall be in the Contractor's name and shall name the City of New York as additional insured thereunder. This policy shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Contract. The coverage provided must be "occurrence" based; "claims made" coverage will not be

accepted. At its option, the Contractor may provide comprehensive general liability insurance that complies with all requirements set forth in this Article. The general liability insurance policy provided shall include, without limitation, the following coverages: comprehensive liability, premises/operations liability, products/completed operations liability, contractual liability, and broad form property damage. The general liability insurance policy provided shall include the following endorsements:

(a) The City of New York and any Site Owner designated by the City, together with their respective officials and employees, are Additional Insureds 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, 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) Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to Named Insured and to the City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007.
(f) Notice of Cancellation of Policy, as set forth in Article 23.2.4 below.

23.1.2 Professional Liability Insurance: Any consultant engaged by the Contractor to perform professional services hereunder, and any subconsultant performing professional services, must provide Professional Liability insurance in the amount of at least One Million Dollars ($1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the consultant or anyone employed by the consultant.

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

23.1.3 Worker's Compensation and Disability Benefits Insurance: The Contractor shall provide, and ensure that each Subcontractor 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.

23.1.4 Employers' Liability Insurance: The Contractor shall provide Employers' Liability Insurance in the 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 and in the course of his/her employment by the insured.

23.1.5 Automobile Liability Insurance: The Contractor shall provide liability insurance in the amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate, covering all owned, non-owned and hired vehicles to be used in connection with this contract. Such policy shall name the City of New York as an additional insured thereunder.

23.2 General Requirements for Insurance Policies

23.2.1 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.

23.2.2 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.

23.2.3 The omission of any endorsements or clauses required by this Article 23 will be considered cause for rejection of the policy.

23.2.4 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."

23.2.5 The Contractor 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.

23.3 Proof of Insurance

23.3.1 On or before the contract commencement date, the Contractor shall submit to the Commissioner two certificates of insurance for all policies required under this contract, together with originals of all endorsements required hereunder.

23.3.2 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 are deemed completed.

23.3.3 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.

23.4 Operations at the Site

23.4.1 The Contractor shall not commence any operations at the site or adjacent thereto unless and until all required insurance has been submitted to and accepted by the Commissioner.

23.4.2 The Contractor shall be responsible for providing continuous insurance coverage as required by this contract and shall be authorized to work at the site only during the effective period of all required coverage.

23.4.3 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all work at the site, and shall not recommence work at the site until authorized in writing to do so by the Commissioner. Upon quitting the site, the Contractor shall leave all plant, materials, equipment, tools and supplies on the site. Contract time shall continue to run during such periods and no extensions of time will be granted. Furthermore, the Commissioner may declare the Contractor in default for failure to maintain required insurance.

23.4.4 The Contractor shall promptly notify the Commissioner of any accidents causing bodily injury or property damage arising in the course of operations under the contract.

23.5 Indemnification

23.5.1 If the persons or property of the City or of others sustains loss, damage or injury as a result of the operations of the Contractor or his subcontractors in the performance of this contract, or from his or their failure to comply with any of the provisions of this contract, or of law, the Contractor shall indemnify and hold the City harmless from any and all costs and expenses which the City may be subjected to or which it may suffer or incur by reason thereof.

23.5.2 The Contractor shall indemnify and hold the City of New York harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the insurance provisions of this contract.

ARTICLE 24 - MONEY RETAINED AGAINST CLAIMS

24.1 If any claim shall be made by any person, firm or corporation against the City or against the Contractor and the City: (l) for an alleged loss, damage or injury of the kind referred to in Article 15 hereof which, in the opinion of the Comptroller, may not be covered by the general liability insurance policy, or, which, together with previously filed claims, is in excess of the amount payable under such policies; or (2) for an infringement of copyrights or patents or use of patented articles, tools, etc.; or (3) for damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract: the amount of such claim, or so much thereof as he may deem necessary, may be withheld by the Comptroller, as security against such claim, from any money due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of such action by a Court of competent jurisdiction. The Comptroller, in his discretion, may permit the Contractor to substitute other satisfactory security in lieu of the moneys so withheld.

24.2 If no action is commenced upon such claim within the time limited thereof by law, the Comptroller, upon written demand by the Contractor, shall return the amount so withheld without interest.

24.3 If an action on such claim is timely commenced and the liability of the City, or the Contractor, or both, shall have been established therein by a final judgment of a Court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the Comptroller shall pay such judgment or admitted claim out of the moneys retained by him under the provisions of this Article, and return the balance, if any, without interest, to the Contractor.

24.4 Liens: If any time before or within thirty days after the whole Work herein agreed to be performed, is completed and accepted by the City, any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Agreement shall file with the Department and with the Commissioner of Finance of the City any notice as is described in the Lien Law, or any act of the Legislature of the State of New York, the City shall retain, from the moneys due or to become due under this Agreement, so much of such moneys as shall be sufficient to pay the amount claimed in said notice, together with the reasonable costs of any action or actions brought or that may be brought to enforce such Lien. The moneys so retained shall be held by the City until the Lien thereon created by the said act and the filing of the said notice shall be discharged pursuant to law.

ARTICLE 25 - MAINTENANCE AND GUARANTY

25.1 The Contractor must promptly repair, replace, restore or rebuild, as the Commissioner may determine, any finished Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one-year period subsequent to the date of Substantial Completion of the Work required hereunder, except where other periods of maintenance and guarantee are provided for.

25.2 As security for the faithful performance of its obligations hereunder, the Contractor, upon filing his requisition for the Substantial Completion payment hereunder, shall deposit with the Commissioner a sum equal to l% of the value of the construction Work certified for payment in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the Comptroller; or obligations of the City of New York, which the Comptroller may approve as of equal value with the sum so required.

25.3 In lieu of the above, the Contractor may make such security payment to the City by authorizing the Commissioner in writing to deduct the amount from the Substantial Completion payment hereunder, which shall be deemed the deposit required above.

25.4 If the Contractor has faithfully performed all his obligations hereunder, the Commissioner shall so certify to the Comptroller within five (5) days after the expiration of one (1) year from the date of Substantial Completion of the Work required hereunder. The sum shall be repaid to the Contractor without interest within thirty (30) days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all his obligations hereunder.

25.5 Notice by the Commissioner to the Contractor to repair, replace, rebuild or restore such defective or damaged Work shall be timely if given not later not than ten (10) days subsequent to the expiration of the one-year period or other periods provided herein.

25.6 If the Contractor shall fail to repair, rebuild or restore such defective or damaged Work promptly after receiving such notice, the Commissioner shall have the right to have the Work done by others and to deduct the cost thereof from the amount so deposited hereunder. The balance, if any, shall be returned to the Contractor without interest. If the amount so deposited be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the Commissioner.

25.7 The Commissioner's Representative certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor shall be binding and conclusive as to the amount thereof upon the Contractor.

25.8 The Contractor shall obtain all manufacturer's warranties and guaranties of all equipment and materials required by this Agreement in the name of the City of New York and shall deliver same to the City.

ARTICLE 26 - CONTRACT CHANGES

26.1 Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Contractors deviating from the requirements of an original purchase order or 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 Contractor.

26.2 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 the Project. Contract changes may include any contract revision deemed necessary by the Contracting Officer. The Contractor may 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 Contractor may be entitled to an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (1) by agreement of a fixed price; (2) by unit prices specified in the contract; (3) by time and material record; and/or (4) in any other manner approved by the City Chief Procurement Officer.

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

26.4 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 Contractor'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 27 - AUDIT AND EXAMINATION

27.1 This Contract and all payments hereunder shall be subject to examination by the Engineering Audit Officer of DDC and

post-audit by the Comptroller of the City of New York in accordance with Law.

ARTICLE 28 - METHODS OF PAYMENT FOR EXTRA WORK

28.1 Overrun of Unit Price Item: The provisions set forth below shall apply to overruns of unit price items which the Contractor, through its subcontractor, is directed to provide. An overrun is any quantity of a unit price item which the Contractor, through its subcontractor, is directed to provide which is in excess of one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule.

28.1.1 For any unit price item, the Contractor's subcontractor will be paid at the unit price bid for any quantity up to one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule. If during the progress of the Work, the actual quantity of any unit price item required to complete the Work approaches the estimated quantity for that item, and due to errors, site conditions, changes in design, or any other reason, it appears that the actual quantity of any unit price item necessary to complete the Work will exceed the estimated quantity for that item by twenty-five (25%) percent, the Contractor shall immediately notify the Commissioner's Representative of such anticipated overrun. The Contractor's subcontractor shall not be compensated for any quantity of a unit price item provided which is in excess of one hundred twenty five (125%) percent of the estimate quantity for that item set forth in the bid schedule without written authorization from the Commissioner's Representative.

28.1.2 If the actual quantity of any unit price item necessary to complete the Work will exceed one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule, the City reserves the right and the Contractor, through its subcontractor, agrees to negotiate a new unit price for such item. In no event shall such negotiated new price exceed the unit bid price. If the City and Contractor, through its subcontractor, cannot agree on a new unit price, then the City shall order the Contractor and the Contractor, through its subcontractor agrees to provide additional quantities of the item on a time and material basis for the actual and reasonable cost as determined under Article 28.2, but in no event at a unit price exceeding the unit price bid.

28.2 Extra Work: The price to be paid for Extra Work ordered pursuant to Article 26, and performed by the Contractor's subcontractor with its own forces, shall be as set forth herein. For Extra Work where payment is by agreement on a fixed price in accordance to Article 26.2, the price to be paid for such Extra Work shall be the fair and reasonable cost of the items set forth below. For Extra Work where payment is on a time and material basis in accordance with Article 26.2, the price to be paid for such Extra Work shall be the actual and reasonable cost of the items set forth below.

28.2.1 Necessary materials (including transportation to the Site);

28.2.2 Necessary direct labor, the cost of which shall be comprised of the items set forth below:

(a) Prevailing wages and supplemental benefits, as defined in Labor Law Section 220
(b) Payroll Taxes, defined as State Unemployment Insurance ("SUI"), Federal Unemployment Insurance ("FUI") and payments pursuant to the Federal Insurance Contributions Act("FICA")
(c) Workers' compensation insurance, as set forth in Article 10.2.2(e) of this Contract. The cost of workers' compensation insurance shall be the subcontractor's actual rate for such coverage for the applicable class or classes of labor, established by its insurance carrier as a result of the latest audit performed. The Contractor shall include a provision in its subcontract which stipulates that the subcontractor, without any further notification or other process, gives its unconditional consent for its insurance carrier to release directly to the City documentation verifying such actual rate.

28.2.3 Sales and personal property taxes, if any, required to be paid on materials not incorporated into such Extra Work;

28.2.4 Maintenance, operation and rental of, or reasonable rental value of subcontractor-owned, necessary plant and equipment other than small tools. Subcontractor-owned equipment is defined to include equipment rental companies affiliated with or controlled by the subcontractor, as determined by the Commissioner. Payment rates for the use of subcontractor-owned plant and equipment shall be in accordance with the provisions of Joint Directive No. 1 issued by the Mayor's Office of Construction and the Comptroller. The applicable directive shall be that in effect at the time of the bid opening for the subcontract;

28.2.5 Necessary installation and dismantling of such plant and equipment (including transportation to and from the Site), if any;

28.2.6 Reasonable rental costs of non-subcontractor-owned necessary plant and equipment other than small tools. In no event shall the amount paid to the subcontractor for such rental exceed the lower of the actual value of such equipment or the book value of such equipment;

28.2.7 Any insurance coverage expressly required by the City for the performance of the Extra Work which is different than the types of insurance required by Article 10.2.2(e), other than workers' compensation insurance;

28.2.8 Twenty (20%) percent of the total of items in Articles 28.2.1 through 28.2.5 as compensation for overhead and profit, except that no percentage for overhead and profit will be allowed on (a) Payroll Taxes, (b) workers' compensation insurance, (c) the

premium portion of overtime pay, and/or (d) sales and personal property taxes. Overhead shall include without limitation, all costs and expenses in connection with administration, management superintendence, small tools, insurance required by Article 10.2.2(e), other than worker's compensation insurance, and performance and payment bonds;

28.2.9 Five (5%) percent of the total of items in Article 28.2.6 and 28.2.7 as compensation for overhead and profit.

28.3 Where the Extra Work is performed in whole or in part by other than the subcontractor's own forces, the subcontractor shall be paid, subject to audit by the Engineering Audit Officer, the cost of such Work computed in accordance with Article 28.2 above, plus an additional allowance of five (5%) percent to cover the subcontractor's overhead and profit.

28.4 Where a change is ordered, involving both Extra Work and omitted or reduced subcontract Work, the subcontract price shall be adjusted, subject to audit by the EAO, in an amount based on the difference between the cost of such Extra Work and of the omitted or reduced Work. The cost of such Extra Work and of such omitted or reduced Work shall be computed based upon applicable subcontract unit prices. Where there are no applicable subcontract unit prices, the cost of such Extra Work and of such omitted or reduced subcontract Work shall be computed in accordance with the Articles 28.2.1 through 28.2.7. If the cost of such Extra Work exceeds the costs of such omitted or reduced subcontract Work, the subcontract price shall be increased by the difference, plus percentages for overhead and profit as provided in Articles 28.2.8 and 28.2.9. If the cost of the omitted or reduced subcontract Work exceeds the cost of the Extra Work, then the subcontract price shall be reduced by the difference.

28.5 Where the Contractor and the Commissioner can agree upon another method of payment for Extra Work in accordance with Article 26.2, or for Extra Work ordered in connection with omitted work, such method, subject to audit by the EAO, may, at the option of the Commissioner, be substituted for the cost plus a percentage method; provided in Article 28.2; provided, however, that if the Extra Work is performed by a sub-subcontractor engaged by a subcontractor, the subcontractor shall not be entitled to receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such sub-subcontractor's Work as computed in accordance with Article 28.2.

28.6 Unless the parties agree on a lump sum payment for Extra Work, requests for payment for Extra Work performed by construction Subcontractors shall be accompanied by signed time sheets, documenting by date the actual hours worked by specific personnel for whom payment is requested, and any other data as may be requested by the Commissioner.

28.7 The Contractor shall not be entitled to any mark-up whatsoever on payments for Extra Work ordered pursuant to Article 26 hereof performed by Subcontractors.

ARTICLE 29 - 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 30 – RECORD KEEPING FOR EXTRA OR DISPUTED WORK

30.1 While the Contractor or any of its Subcontractors is performing Extra Work on a Time and Material Basis ordered by the Commissioner under Article 28, or is performing disputed Work, or complying with a determination or order under protest in accordance with Article 29 hereof, in each such case the Contractor shall furnish the Commissioner's Representative daily with three (3) copies of written statements signed by the Contractor's representative at the Site showing:

30.1.1 The name and number of each Worker employed on such Work or engaged in complying with such determination or order, the number of hours employed, and the character of the Work each is doing; and

30.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work or compliance with such determination or order, and from whom purchased or rented.

30.2 A copy of such statement will be countersigned by the Commissioner's Representative, noting thereon any items not agreed to or questioned, and will be returned to the Contractor within two (2) Days after submission.

30.3 The Contractor and its Subcontractors, when required by the Commissioner, or the Comptroller, shall also produce for inspection, at the office of the Contractor or Subcontractor, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, and canceled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such Work, or in complying with such determination or order, and the amounts expended therefor, and shall permit the Commissioner and the Comptroller to make such extracts therefrom, or copies thereof, as they or either of them may desire.

30.4 In connection with the examination provided for herein, the Commissioner, upon demand therefor, will produce for inspection by the Contractor such records as the Agency may have with respect to such Extra or disputed Work performed under protest pursuant to order of the Commissioner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

30.5 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Work or compliance with such determination or order.

ARTICLE 31 - OMITTED WORK

31.1 If any Work in a lump sum subcontract, or if any part of a lump sum item in a unit price, lump sum, or percentage-bid subcontract is omitted by the Commissioner pursuant to Article 33, the subcontract price, subject to audit by the Engineering Audit Officer, shall be reduced by a pro rata portion of the lump sum bid amount based upon the percent of Work omitted, subject to Article 31.4. For the purpose of determining the pro rata portion of the lump sum bid amount, the bid breakdown submitted in accordance with Article 42 shall be considered, but shall not be the determining factor.

31.2 If the whole of a lump sum item or units of any other item is so omitted by the Commissioner in a unit price, lump sum, or percentage-bid subcontract, then no payment will be made therefore, except as provided in Article 31.4.

31.3 For units that have been ordered but are only partially completed, the unit price shall be reduced by a pro rata portion of the unit price bid based upon the percentage of Work omitted, subject to Article 31.4.

31.4 In the event the subcontractor, with respect to any omitted Work, has purchased any non-cancelable material and/or equipment that is not capable of use except in the performance of the subcontract and has been specifically fabricated for the sole purpose of the subcontract, but not yet incorporated into the Work, the subcontractor shall be paid for such material and/or equipment, as set forth below; provided, however, such payment is contingent upon the subcontractor’s delivery of such material and/or equipment in acceptable condition to a location designated by the City.

31.4.1 Payment for such material and/or equipment shall be in accordance with Article 28, subject to the following modification. For the purpose of payment hereunder, the percentage for overhead and profit set forth in Article 28.1.8 shall be reduced from twenty (20%) percent to five (5%) percent.

31.5 The Contractor and its subcontractors agree to make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

ARTICLE 32 - THE COMMISSIONER'S REPRESENTATIVE

32.1 The Commissioner's Representative shall be the representative of the Commissioner, and subject to review by the Commissioner, shall have the power, in the first instance, to inspect the performance of the Work and exercise such other authority as the Commissioner may delegate. He shall not however, have the power to issue an Extra Work order, except as specifically designated in writing by the Commissioner.

ARTICLE 33 - THE COMMISSIONER

33.1 The Commissioner, in addition to those matters elsewhere herein expressly made subject to his determination, direction or approval, shall have the power: (a) to review and determine any and all questions in relation to this Agreement and its performance; and (b) to modify or change this Agreement so as to require: (i) the performance of Extra Work (subject, however, to the limitations specified in Article 26 hereof); or (ii) the omission of Work whenever he deems it in the interest of the City to do so; or both; and (c) to postpone, delay, suspend or terminate the whole or any part of the Work, whenever in his judgment such action is required in the interest of the City.

ARTICLE 34 - NO ESTOPPEL

34.1 Neither the City nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by the City, the Commissioner, the Commissioner's Representative, or any other officer, agent or employee of the City, either before or after the final completion and acceptance of the Work and payment therefor:

34.1.1 from showing the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Work or any part thereof does not in fact conform to the requirements of this Agreement; and

34.1.2 from demanding and recovering from the Contractor any overpayments made to him, or such damages as it may sustain by reason of his failure to perform each and every part of his Agreement in strict accordance with its items, or both.

ARTICLE 35 - EMPLOYEES

35.1 The Contractor and its Subcontractors shall not employ on the Work:

35.1.1 anyone who is not competent, faithful and skilled in the Work for which he shall be employed; and whenever the Commissioner shall inform the Contractor, in writing, that any employee is, in his opinion, incompetent, unfaithful or disobedient, he shall be discharged from the Work forthwith, and shall not again be employed upon it; or

35.1.2 any labor, materials or means whose employment, or utilization during the course of this Agreement, may tend to or in any way cause or result in strikes, Work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or his Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Agreement, or by other contractors or their subcontractors pursuant to other contracts, or on any other building or premises owned or operated by the City of New York, its agencies, departments, boards or authorities. Any violation by the Contractor of this requirement may, upon certification of the Commissioner, be considered as proper and sufficient cause for terminating the Contractor for cause and taking such action as set forth in Article 46 hereof, or such other action as the Commissioner may deem proper; or

35.1.3 in accordance with Section 220.3.e of the New York State Labor Law, any apprentice, unless he is registered individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his Work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above shall be paid the wage rate determined by the Comptroller of the City of New York for the classification of Work being actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Contract Work.

35.2 If the total cost of the Work under this Contract is at least two hundred fifty thousand dollars, all laborers, workers, and mechanics employed in the performance of the Contract on the public work site, either by the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, shall be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States department of labor's occupational safety and health administration that is at least ten hours in duration.

ARTICLE 36 - NO DISCRIMINATION

36.1 As required by New York State Labor Law Section 220.e, it is agreed between the parties hereto as follows:

36.1.1 That in the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color 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;

36.1.2 That neither the Contractor, Subcontractor, nor any person on his behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, color or national origin;

36.1.3 That there may be deducted from the amount payable to the Contractor by the City under this Agreement 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 Agreement; and

36.1.4 That this Agreement 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 Agreement.

36.1.5 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.

36.2 As required by New York City Administrative Code Section 6-108:

36.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of building 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.

36.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision 36.2.1 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.

36.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this Agreement.

36.2.4 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 37 - EQUAL EMPLOYMENT OPPORTUNITY

37.1 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 Contractor agrees that:

37.1.1 The Contractor 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;

37.1.2 When it subcontracts, the Contractor 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;

37.1.3 The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without 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;

37.1.4 The Contractor 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

37.1.5 The Contractor 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.

37.2 The Contractor 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:

37.2.1 disapproval of the Contractor;
37.2.2 suspension or termination of the contract;
37.2.3 declaring the Contractor in default; or
37.2.4 in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the DLS may recommend to the Department head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

37.3 The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract in the amount of $750,000 or more 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. The Contractor will take such action with respect to any subcontract as may be directed by the Director of DLS as a means of enforcing such provisions, including sanctions for noncompliance.

37.4 The Contractor 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 38. LABOR LAW REQUIREMENTS

Labor Law Compliance: The CM/Build Contractor shall take appropriate action to ensure compliance by its subcontractors with the Labor Law.

Subcontracts: The CM/Build Contractor shall include the provisions of this Article 38 set forth below in all subcontracts for construction Work for the Project.

LABOR LAW REQUIREMENTS

38.1 The Contractor shall strictly comply with all applicable provisions of the Labor Law, as amended. Such compliance is a material term of this Contract.

38.2 The Contractor specifically agrees, as required by Labor Law Section 220 and 220-d, as amended, that:

38.2.1 Hours of Work: No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar Day, or more than five (5) Days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

38.2.2 In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the Work contemplated by this Contract as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) Day; or five (5) Days in any one (1) week; provided, however, that upon application of any Contractor, the Commissioner shall have first certified to the Commissioner of Labor of the State of New York (hereinafter "Commissioner of Labor") that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

38.2.3 Failure of the Commissioner to make such a certification to the Commissioner of Labor shall not entitle the Contractor to damages for delay or for any cause whatsoever.

38.2.4 Prevailing Rate of Wages: The wages to be paid for a legal day's Work to laborers, workers, or mechanics employed upon the Work contemplated by this Contract or upon any materials to be used thereon shall not be less than the "prevailing rate of wage" as defined in Labor Law Section 220, and as fixed by the Comptroller in the attached Schedule of Wage Rates and in updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed.

38.2.5 Requests for interpretation or correction in the Information for Bidders include all requests for clarification of the classification of trades to be employed in the performance of the Work under this Contract. In the event that a trade not listed in the Contract is in fact employed during the performance of this Contract, the Contractor shall be required to obtain from the Agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Contract at the price at which the Contract was awarded.

38.2.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, all persons employed by the Contractor and any Subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by Law, not less than the sum mandated by Law. Minimum wages shall be the rates fixed by Federal Law and regulations.

38.3 Working Conditions: No part of the Work, labor or services shall be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. Compliance with the safety, sanitary and factory inspection Laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this article.

38.4 Prevailing Wage Enforcement: The Contractor agrees to pay for all costs incurred by the City in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the Agency or the Comptroller, where the City discovers a failure to comply with any of the requirements of this Article 38 by the Contractor or its Subcontractor(s). The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Agency is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

38.4.1 The Labor Law Section 220 and Section 220-d, as amended, provide that this Contract shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than:

(a) The stipulated wage scale as provided in Labor Law Section 220, as amended, or
(b) Less than the stipulated minimum hourly wage scale as provided in Labor Law Section 220-d, as amended.

38.4.2 For any breach or violation of either Working Conditions and Minimum Wages, the party responsible therefore shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any Contracts with the City of such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damage for any other breach of this Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition, the Commissioner shall have the right to cancel Contracts and enter into other Contracts for the completion of the original Contract, with or without public letting, and the original Contractor shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Comptroller, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within two (2) years from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

38.4.3 A determination by the Comptroller that a Contractor and/or its Subcontractor willfully violated Labor Law Section 220 will be forwarded to the City's five District Attorneys for review.

38.4.4 The Contractor's or Subcontractor's noncompliance with this article and Labor Law Section 220 may result in an unsatisfactory performance evaluation and the Comptroller may also find and determine that the Contractor or Subcontractor willfully violated the New York Labor Law.

(a) An unsatisfactory performance evaluation for noncompliance with this article may result in a determination that the Contractor is a non-responsible bidder on subsequent procurements with the City and thus a rejection of a future award of a contract with the City, as well as any other sanctions provided for by Law.
(b) Labor Law Section 220-b, as amended, provides that when two (2) final determinations have been rendered against a Contractor or Subcontractor within any consecutive six (6) year period determining that such Contractor or Subcontractor has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor Law and this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with the City for a period of five (5) years from the second final determination. If the final determination involves the falsification of payroll records or the kickback of wages or supplements, the Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with the City for a period of five (5) years from the first final determination.
(c) Labor Law Section 220, as amended, provides that the Contractor or Subcontractor found to have violated this article may be directed to make payment of wages or supplements including interest found to be due, and the Contractor or Subcontractor may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

38.5 The Contractor and its Subcontractors shall within ten (10) Days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of the Contractor and its Subcontractors engaged in the performance of this Contract are employed, notices furnished by the City, in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Sections 220 and 220-h of the Labor Law, and the Contractor and its Subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services required to be furnished or rendered under this Contract.

38.6 The Contractor shall strictly comply with all of the provisions of Articles 38.6.1 through 38.6.5, and provide for all workers, laborers or mechanics in its employ, the following:

38.6.1 Notices Posted At Site: Post, in a location designated by the City, schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the Site, the City notice that this Project is a public works Project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the City directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the City. The Contractor shall maintain and keep current such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Contractor shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete; and

38.6.2 Daily Site Sign-in Sheets: Maintain daily Site sign-in sheets, and require that Subcontractors maintain daily Site sign-in sheets for its employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began Work and the time the employee left Work, until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services to be furnished or rendered under this Contract unless exception is granted by the Comptroller upon application by the Agency. In the alternative, subject to the approval of the CCPO, the Contractor and Subcontractor may maintain an electronic or biometric sign-in system, which provides the information required by this Article 38.6.2; and

38.6.3 Individual Employee Information Notices: Distribute a notice, to each worker, laborer or mechanic employed under this Contract, in a form provided by the Agency, that this Project is a public work project on which each worker, laborer or mechanic is entitled to receive the prevailing rate of wages and supplements for the occupation at which he or she is working. If the total cost of the Work under this Contract is at least two hundred fifty thousand dollars, such notice shall also include a statement that, that each worker, laborer or mechanic be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States department of labor's occupational safety and health administration that is at least ten hours in duration. Such notice shall be distributed to each worker before he or she starts performing any Work of this Contract and with the first paycheck after July first of each year. Worker, laborer or mechanic includes employees of the Contractor and all Subcontractors and all employees of suppliers entering the Site. At the time of distribution, the Contractor shall have each worker, laborer or mechanic sign a statement, in a form provided by the Agency, certifying that the worker has received the notice required by this article, which signed statement shall be maintained with the payroll records required by this Contract; and

(a) The Contractor and each Subcontractor shall notify each worker, laborer or mechanic employed under this Contract in writing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every worker, laborer and mechanic on their first pay stub and with every pay stub thereafter; and

38.6.4 Site Laminated Identification Badges: Provide laminated identification badges which indicate the worker's, laborer's or mechanic's name, trade, employer's name and employment starting date (month/day/year). Further, require as a condition of employment on the Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the City; and

38.6.5 Language Other Than English Used On Site: Provide the ACCO notice when three (3) or more employees (worker and/or laborer and/or mechanic) on the Site, at any time, speak a language other than English. The ACCO will then provide the Contractor the notices in Article 38.6.1 in that language or languages as may be required. The Contractor is responsible for all distributions under Article 38; and

38.6.6 Provision of Records: The Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Commissioner, the Commissioner's Representative, the ACCO, the Agency EAO, or the Comptroller, such records as are required to be kept by this Article 38.6; and

38.6.7 If this Contract is for an amount greater than $1,000,000, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency). For any subcontract for an amount greater than $750,000, checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency); and

38.6.8 The failure of the Contractor or Subcontractor(s) to comply with the provisions of Articles 38.6.1 through 38.6.7 may result in the Commissioner declaring the Contractor or Subcontractor(s) in default and/or the withholding of payments otherwise due under the Contract.

38.7 The Contractor and its Subcontractors shall keep such employment and payroll records as are required by Section 220 of the Labor Law.

38.8 At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to the Commissioner a written payroll certification, in the form provided by this Contract, of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Labor Law Section 220 and of compliance with the training requirements of Labor law section 220-h set forth in Article 35.2. This certification of compliance with the provisions of this article shall be a condition precedent to payment and no payment shall be made to the Contractor unless and until each such certification shall have been submitted to and received by the Commissioner.

38.9 This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of Section 220 of the Labor Law for the award of the Contract.

38.10 Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Contract, and grounds for cancellation thereof by the City.

ARTICLE 39 - PAYROLL REPORTS

Compliance: The CM/Build Contractor shall take appropriate action to ensure compliance by its subcontractors with the payroll requirements set forth herein.

Subcontracts: The CM/Build Contractor shall include the provisions of this Article 39 set forth below in all subcontracts for construction Work for the Project.

PAYROLL REPORTS

39.1 The Contractor shall maintain on the Site the original payrolls or transcripts thereof which the Contractor and its Subcontractor(s) are required to maintain pursuant to Labor Law Section 220. The Contractor and Subcontractor(s) shall submit original payrolls or transcripts, subscribed and affirmed by it as true, with each and every payment requisition. The Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Commissioner, Commissioner's Representative, the ACCO, the Agency EAO, or the Comptroller, such original payrolls or transcripts thereof, subscribed and affirmed by it as true, and the statements signed by each worker pursuant to this Contract. In addition, the Contractor and Subcontractor(s) shall furnish to the Commissioner's Representative upon written demand any other information to satisfy the Commissioner's Representative that this Contract and the Labor Law, as to the hours of employment and rates of wages, are being observed. The Contractor shall maintain the payrolls or transcripts thereof for six (6) years from the date of completion of the Work on this Contract.

39.2 When directed by the Commissioner's Representative, the Contractor or Subcontractor shall provide an attendance sheet for each Day on which Work is performed on the Site. Such attendance sheet shall be in a form acceptable to the Agency and shall provide information for employees of the Contractor and Subcontractor(s).

ARTICLE 40 - DUST HAZARDS

40.1 Should a harmful dust hazard be created in performing the Work of this Agreement, 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. Failure to comply with this provision after notice shall make this Agreement void.

ARTICLE 41 - NOISE CONTROL CODE PROVISIONS

41.1 In accordance with the provisions of Section 24-216(b) of the Administrative Code of the City ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the City Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the Department of Environmental Protection.

41.2 The Contractor agrees to comply with Section 24-219 of the Administrative Code of the City ("Administrative Code") and implementing rules codified at 15 Rules of the City of New York ("RCNY") Section 28-100 et. seq. In accordance with such provisions, the Contractor, if the Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan at each work site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the New York City Department of Environmental Protection. In addition, the Contractor's certified Construction Noise Mitigation Plan is subject inspection by the Department of Environmental Protection in accordance with 15 RCNY §28-101. No Contract work may take place at a worksite unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

ARTICLE 42 - PAYMENT TERMS AND CONDITIONS

42.1 General

42.1.1 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.

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

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

42.1.4 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in this Article 42, the Commissioner may, by issuance of a No Cost Change Order to the Contractor, reallocate such specific allowance amounts within this Article 42.

42.2 Multipliers

42.2.1 Multiplier for Design Personnel: The Multiplier to be used in calculating payment to the Contractor for staffing expenses for design personnel is set forth in Exhibit A (the "Multiplier for Design Personnel"). The Multiplier for Design Personnel shall be deemed to include: (1) all expenses incurred by the Design Consultant in the performance of all required services for the Project (except as specified below), (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead, and (4) any anticipated profit. The Multiplier for Design Personnel shall include, but not be limited to, the items set forth below:

(a) Compensation paid to personnel of the Design Consultant (other than design personnel identified in the approved Staffing Plan, except for the Principal). Such other personnel of the Design Consultant shall include without limitation all officers, principals, employees and personnel of the Design Consultant, serving in whatever capacity, including the Principal set forth in Exhibit A. 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 design personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include without limitation the items listed in item (a) above.

(c) All expenses incurred by the Design Consultant in connection with the performance of all required design services, including without limitation, transportation, meals and lodging, unless the Design Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, as defined in Article 11.

(d) All expenses incurred by the Design Consultant with respect to 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, estimating expenses, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, postage, and any other office or miscellaneous expenses, except as otherwise expressly provided in an allowance for miscellaneous expenses and/or additional services.

(e) All expenses incurred by the Design Consultant with respect to applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.

(f) All insurance coverage determined by the Design Consultant to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required under this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the Design Consultant in the course of business, including without limitation, burglary and theft, general fidelity and payroll insurance.

(g) Any losses for theft or robbery sustained by the Design Consultant.

(h) All expenses incurred by the Design Consultant with respect to fixed capital, including interest thereon or on monies borrowed.

(i) All expenses incurred by the Design Consultant with respect to legal services.

(j) All management, administrative or overhead expenses of any kind whatsoever incurred by the Design Consultant, including such expenses incurred in the performance of additional services.

(k) Profit.

42.2.2 Multiplier for Construction Management Personnel: The Multiplier to be used in calculating payment to the Contractor for staffing expenses for construction management personnel is set forth in Exhibit A (the "Multiplier for CM Personnel"). The Multiplier for CM Personnel shall be deemed to include: (1) all expenses incurred by the Contractor in the performance of all required CM services for the Project (except as specified below), (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses in connection with providing the related services set forth in Article 11, including without limitation, the Project Office, (4) all expenses related to overhead, and (5) any anticipated profit. The Multiplier for CM Personnel shall include, without limitation, the items set forth below:

(a) Compensation paid to personnel of the Contractor (other than construction management personnel identified in the approved Staffing Plan, except for the Project Executive). Such other personnel of the Contractor shall include without limitation all officers, principals, employees and personnel of the Contractor, serving in whatever capacity, including the Project Executive set forth in Exhibit A. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.

(b) All expenses for compensation paid to construction management personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include

without limitation the items listed in item (a) above.

(c) All expenses incurred by the Contractor in connection with providing the related services set forth in Article 11, including without limitation, (1) Project Office in accordance with the requirements set forth in Exhibit D, and (2) transportation, meals and lodging, unless the Contractor is directed in advance in writing by the Commissioner to provide services which require long distance travel, as defined in Article 11.

(d) All expenses incurred by the Contractor with respect to 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, estimating expenses, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, postage, and any other office or miscellaneous expenses, except as otherwise expressly provided in an allowance for miscellaneous expenses and/or additional services.

(e) All expenses incurred by the Contractor with respect to applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.

(f) All insurance coverage determined by the Contractor to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required under this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the Contractor in the course of business, including without limitation, burglary and theft, general fidelity and payroll insurance.

(g) Any losses for theft or robbery sustained by Contractor.

(h) All expenses incurred by the Contractor with respect to fixed capital, including interest thereon or on monies borrowed.

(i) All expenses incurred by the Contractor with respect to legal services.

(j) All management, administrative or overhead expenses of any kind whatsoever incurred by the Contractor, including without limitation, (1) management and/or administrative expenses in connection with the Design Consultant, and (2)) management and/or administrative expenses in connection with the performance of additional services.

(k) Profit.

42.3 Allowance for Staffing Expenses for Design and Construction Management Personnel

42.3.1 Amount of Allowance: An allowance in the amount set forth in Exhibit A (the "Allowance for Staffing Expenses") is established for payment of the Contractor's staffing expenses for those design and construction management personnel described in Exhibit B, who have been assigned to the Project and identified in the Staffing Plan approved by the Commissioner pursuant to Article 11 (the "Assigned Employee"). The Contractor shall not be entitled to payment for staffing expenses for (1) any Project Executive(s), (2) any principals(s) of the Design Consultant, and (2) any personnel not assigned to the Project and not included in the approved Staffing Plan. Payment of staffing expenses is subject to retainage, as set forth below.

(a) Payment to Design Consultant: The Contractor agrees to pay its Design Consultant the full amount of staffing expenses for design personnel, computed in accordance with the provisions set forth below. The Contractor shall not be entitled to reduce payments to the Design Consultant as compensation for overhead and/or management expenses incurred by the Contractor with respect to the Design Consultant. All such expenses incurred by the Contractor are deemed included in the Multiplier for CM Personnel. The Design Consultant shall not be entitled to payment for staffing expenses for (1) any principals of the Design Consultant, and (2) any design personnel not assigned to the Project and not included in the approved Staffing Plan

42.3.2 Amount of Payment: For any week during which an Assigned Employee performed services for the Project, payment to the Contractor 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 one of the following multipliers: (1) for design personnel, utilize the Multiplier for Design Personnel, and (2) for construction management personnel, utilize the Multiplier for Construction Management Personnel. Both Multipliers are set forth in Exhibit A. Such Multipliers 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. The amount of payment for the services of an Assigned Employee calculated in accordance with this section may be subject to an equitable reduction if the conditions set forth in Article 42.3.3 below apply. All payments are subject to retainage, as set forth below.

(a) Assigned Employee's Direct Salary Rate per hour, as determined and approved in writing by the Commissioner as set forth below. In the event the Contractor receives written authorization from the Commissioner to have an Assigned Employee perform services for the Project during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.

(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services for this Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for the Project for which the Contractor 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) Retainage: Throughout all phases of the Project, the Commissioner shall deduct and retain 5% of all payments for staffing expenses for design and construction management personnel. Upon Final Acceptance of all required work for all assigned Projects, the Contractor shall be entitled to payment of the amount of staffing expense retained.

(d) 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.

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

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

42.3.4 Direct Salary Rates: Direct Salary Rates per hour for each Assigned Employee shall be determined and approved in writing by the Commissioner, as set forth below.

(a) For each Assigned Employee, the Contractor shall submit such employee's actual annual direct salary, as defined below. In addition, the Contractor 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 Contractor's payroll register for the past twelve 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 per hour, the Assigned Employee's actual annual direct salary, as defined above, shall be divided by 2080.

(b) 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 the **LESSER** of (1) the Assigned Employee's actual annual direct salary, computed on an hourly basis as set forth above, or (2) the Estimated Direct Salary Rate per hour for the Assigned Employee's title set forth in Exhibit B.
(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 42.3.5 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 42.3.6 below, in the event the Contractor receives written authorization from the Commissioner to have the Assigned Employee perform services during other than regular business hours.

42.3.5 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, subject to the limitations set forth below. The first such increase shall be made one (1) year after the commencement date (i.e., the date on which the Contract is registered by the Comptroller). Thereafter, for the remainder of the Contract term, including any extension thereof, increases in the Direct Salary Rate(s) shall be made on a yearly basis, on the anniversary of the commencement date. Any increase in the Direct Salary Rate(s) shall be based on an increase in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO"). Any increase in the Direct Salary Rate(s) shall be based on whatever increase may have occurred in the Index for the PRIOR YEAR ONLY, as determined by EAO. If for the prior year, the Index showed an increase, the Direct Salary Rate(s) shall be increased. If, for the prior year, the Index declined or showed no increase, the Direct Salary Rate(s) shall remain unchanged. Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only.

(a) Any increase to an Assigned Employee's Direct Salary Rate per hour shall only be permitted to the extent such increase does not result in a Direct Salary Rate per hour that exceeds the Estimated Direct Salary Rate per hour for the Assigned Employee's title set forth in Exhibit B. 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 Estimated Direct Salary Rate per hour set forth in Exhibit B.

(b) The Contractor 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 to the Assigned Employee, as determined by the Commissioner. The Contractor shall submit its payroll register, as well as the payroll register of its Design Consultant, to verify the amount actually paid to the Assigned Employee.

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

(a) The Contractor's policy is subject to approval by the Commissioner in accordance with Article 11.

(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 Contractor shall not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the Contractor to the Assigned Employee, as evidenced by the Contractor's payroll register.

42.3.7 Requisitions: For any week(s) for which the Contractor is requesting payment for staffing expenses for an Assigned Employee, the Contractor shall submit the documentation set forth below.

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

42.4 Allowance for Construction/Remediation Work

42.4.1 An allowance in the amount set forth in Exhibit A (the "Allowance for Construction/Remediation Work") is established for payment for construction and/or remediation Work for the Project performed by Subcontractors under the supervision and control of the Contractor. Construction and/or remediation Work shall include all required Work for the types of Projects described in Exhibit A, including required pre-design services.

42.4.2 The total amount to be paid from the Allowance for Construction/Remediation Work shall not exceed the cumulative total of the amounts for which subcontracts for Work for the Project are awarded and the amounts of any change orders to such subcontracts. No amounts shall be paid from the Allowance for Construction/Remediation Work, unless the Commissioner has given prior written approval to the amount of award of the subcontract and the amount of any change orders thereto.

42.4.3 Bid Breakdown of Subcontract Price: Upon commencement of construction and/or remediation Work, the Contractor shall submit a bid breakdown of costs on a per subcontract basis, and any other information as may be required by the Commissioner. This breakdown shall be used for checking the Contractor's requests for partial payment for Work performed by Subcontractors and shall not be binding on the Commissioner for any purpose whatsoever.

42.4.4 Partial Payments: Partial payments to the Contractor for Work performed by Subcontractors shall be on the basis of and in proportion to the percentage of completion of all Work required under the subcontract, as determined by the Commissioner. Until Substantial Completion of the Work, the Commissioner shall deduct and retain 5% of the value of the Work certified for payment in each partial payment voucher. Upon determination by the Commissioner that the Work required is substantially complete, the retainage shall be reduced to 1% of the value of the Work certified for payment in each partial payment voucher, which amount shall be retained by the City in accordance with the Article 25 hereof.

(a) With respect to Work, partial payments may be made for materials, fixtures and equipment in advance of their actual incorporation in the work, subject to approval by the Commissioner and compliance with the requirements set forth in Exhibit D.

(b) In connection with every partial payment requisition for Work, the Contractor shall also submit a verified statement in the prescribed form setting forth the information required under Section 220(a) of the Labor Law.

(c) The retainage provisions set forth above shall not apply to subcontracts for pre-design services described in Article 9.

42.4.5 Substantial Completion Requisition: Upon written determination by the Commissioner that the Work of a subcontract is substantially complete, the Contractor shall submit a requisition for a Substantial Completion payment for that subcontract. The Contractor must submit the following with such requisition:

(a) Final verified statement of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of this Contract (including those as

to which details may have been furnished pursuant to Articles 17, 29 and 30 hereof). With respect to each such claim, the Contractor shall set forth the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof, was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Commissioner and the Comptroller shall have the same right to inspect, and to make extracts or copies of, books, vouchers, records, etc., of the Contractor or the Subcontractor, as referred to in Articles 17, 29 and 30 hereof. Nothing contained in this Article is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to Articles 17, 29 and 30 hereof. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor, upon acceptance of the Substantial Completion payment pursuant to this Article, will have waived any such claims arising out of the Work for which payment is requested.

(b) Final written complete punch list and a date for completion of all required Work. The punch list and completion date are subject to the written acceptance of the Commissioner.

(c) If required, a request for a substantial or final extension of time.

42.4.6 Substantial Completion Payment: The Commissioner shall issue a voucher calling for payment to the Contractor of any part or all of the balance due for subcontracted Work for which payment is requested, including moneys retained hereunder, less any and all deductions authorized to be made by the Commissioner, under this Contract or by law, and less twice the amount the Commissioner considers necessary to ensure the completion of the balance of the Work of the subcontract. No further partial payments shall be made to the Contractor after the Commissioner determines that the subcontracted Work is substantially complete, except the Substantial Completion payment and any requisitions for partial payment that were properly filed with the Commissioner prior to the date of Substantial Completion; provided, however, the Commissioner may grant a waiver for further partial payments after the date of Substantial Completion to permit payments for change order work and/or release of retainage and deposits pursuant to Article 25. Such waiver shall be in writing.

42.4.7 Final Payment: After Final Acceptance by the Commissioner of the subcontracted Work, the Contractor shall submit all required certificates and documents, together with a requisition for the balance claimed to be due, less the amount authorized to be retained for maintenance under Article 25 hereof. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Commissioner.

42.4.8 Requisition for Final Payment: The Contractor must also submit with the final requisition for Work performed any amendments to the final verified statement of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of the Work performed for which payment is requested (including those as to which details may have been furnished pursuant to Articles 17, 29 and 30 hereof) that have occurred subsequent to Substantial Completion, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item. With reference to each permissible claim, the Commissioner and the Comptroller shall have the same right to inspect, and to make extracts or copies of, the books, vouchers, records, etc., of the Contractor or Subcontractor, as referred to in Articles 17, 29 and 30 hereof. Nothing contained in this Article, is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to Articles 17, 29 and 30 hereof. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor upon acceptance of the final payment, pursuant to Article 44 hereof, will have waived any such claims arising out of the Work performed for which payment is requested.

42.4.9 Voucher for Final Payment: Upon determining the balance due for subcontracted Work for which payment is requested, other than on account of claims, the Commissioner's Representative will prepare and certify, and the Commissioner will approve, a voucher for final payment in that amount less any and all deductions authorized to be made by the Commissioner under Contract or by law. Such voucher shall thereupon be filed with the Comptroller and a copy thereof delivered to the Contractor. The Commissioner shall certify the voucher for final payment for subcontracted Work for which payment is requested following completion and acceptance of the work, provided all requests for extensions of time have been acted upon, if required. Payment pursuant to such final voucher, less any deductions authorized to be made by the Commissioner under Contract or by law, shall constitute final payment in accordance with Article 44 hereof.

42.4.10 No Mark-Up: The Contractor shall not be entitled to any mark-up whatsoever on payments for subcontracted Work performed by Subcontractors.

42.5 Allowance for Miscellaneous Expenses

42.5.1 An allowance in the amount set forth in Exhibit A (the "Allowance for Miscellaneous Expenses") is established for reimbursement for miscellaneous expenses actually incurred by the Contractor, as set forth below.

42.5.2 The Contractor shall be reimbursed for expenses actually incurred in the procurement of miscellaneous items, in accordance with the terms and conditions set forth below.

(a) No miscellaneous expenses shall be incurred by the Contractor, or reimbursed from this allowance, unless expressly authorized in a written directive from the Commissioner. For miscellaneous expenses in excess of $150, such written authorization must be provided in advance of the expenditure.

(b) In the event the Contractor is directed to purchase any item(s) pursuant to this allowance, such item(s) shall, unless otherwise directed by the Commissioner, be the sole property of the City upon delivery to the designated location. Upon completion of the required work, as directed by the Commissioner, the Contractor shall turn such item(s) over to the City.

(c) With respect to miscellaneous expenses, the Contractor shall utilize the method of procurement and form of payment directed by the Commissioner.

(d) Payment for miscellaneous expenses (except for long distance travel) shall be as set forth below.

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

(e) The Contractor shall not be entitled to a mark-up for overhead and profit on miscellaneous expenses.

(f) Reimbursement for long distance travel expenses, as set forth in Article 11.4.3, 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." The Contractor shall not be entitled to any mark-up with respect to long distance travel expenses. Requests for reimbursement for long distance travel expenses shall be accompanied by receipted bills or any other data required by the Commissioner.

(g) Miscellaneous Items: Miscellaneous items shall be those items determined by the Commissioner to be necessary for the Project and shall include without limitation the items set forth below. Miscellaneous items shall not include any items the Contractor is required to provide pursuant to Exhibit D.

(1) Equipment specified by DDC, other than as set forth in Exhibit D
(2) Printing of contract documents and reports
(3) Express mail postage, except as otherwise provided in Article 11.4.2
(4) Long distance travel, as set forth in Article 11.4.3

42.6 Allowance for Additional Services

42.6.1 An allowance in the amount set forth in Exhibit A (the "Allowance for Additional Services") is established for reimbursement for the provision of additional services hereunder. Additional services shall be as defined in Article 11.8 hereof. No additional services shall be provided by the Contractor, or reimbursed from this allowance, unless expressly authorized in advance in a written directive from the Commissioner.

42.6.2 With respect to additional services, the Contractor shall utilize the method of procurement and form of payment directed by the Commissioner.

42.6.3 Payment for additional services shall be as set forth below.

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

42.6.4 The Contractor shall not be entitled to a mark-up for overhead and profit on additional services.

42.7 Requisitions for Payment

42.7.1 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 Contractor and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into the following categories, to the extent each respective category applies to the payment period: (1) Construction Services; (2) Staffing Expenses; (3) Miscellaneous Expenses, and (4) Additional Services. The Contractor shall submit one (1) original and two (2) copies of each requisition for payment. Requisitions for payment shall be accompanied by the documentation set forth below.

(a) Project Progress Report: The Contractor shall submit a current report indicating (1) the percentage of completion of all required services for the Project, and (2) the services the Contractor was directed to provide during the payment period.

(b) Construction/Remediation Work: For payment for construction and/or remediation Work, the Contractor shall submit the documentation set forth below:

(1) Current report indicating: (1) the name and type of Work performed by each first tier Subcontractor, and (2) the percentage of completion of all required Work under that subcontract. A first tier Subcontractor shall mean a Subcontractor directly engaged by the Contractor.

(2) Certified copies of payroll reports for all Subcontractors of whatever tier which have performed Work for the Project.

(c) Staffing Expenses: For payment of staffing expenses for an Assigned Employee, the Contractor shall submit the documentation set forth below. Payment of staffing expenses is subject to retainage of 5%.

(1) Assigned Employee's name and title;
(2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement;
(3) Assigned Employee's direct salary rate determined by the Commissioner and included in the approved Staffing Plan;
(4) 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.
(5) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for this Project; (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 this Project for which the Contractor is not entitled to compensation, and (5) non-regular business hours, if any.
(6) If applicable, copy of Contractor's or Design Consultant's payroll register for the week(s) in question reflecting the amount actually paid to the Assigned Employee for that week,
(7) Applicable only if services were performed during other than regular business hours: (i) copy of authorization by Commissioner for such services, and (ii) copy of Commissioner's approval of the policy regarding payment of a premium for services performed during other than regular business hours.

(d) Miscellaneous Expenses or Additional Services: For payment for miscellaneous expenses or additional services, the Contractor shall submit the documentation set forth below:

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

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

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

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

42.8.1 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 43 - PROMPT PAYMENT

43.1 The Prompt Payment provisions of the Procurement Policy Board ("PPB") Rules in effect at the time of the solicitation for this Contract shall be applicable to payments hereunder. The provisions require the payment to contractors of interest on payments made after the required payment date, except as otherwise provided in the PPB Rules. The Contractor must submit a proper invoice to receive payment, except where the Contract provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determination of interest due will be made in accordance with the provisions of the PPB Rules. If the Contractor is paid interest, the proportionate share of that interest shall be forwarded by the Contractor to its Subcontractor(s).

43.2 The Contractor shall pay each Subcontractor (including a materials supplier) not later than seven (7) days after receipt of payment out of amounts paid to the Contractor by the City for work performed by the Subcontractor or supplier under this Contract.

43.3 The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth above.

43.4 If Contractor fails to make any payment to any Subcontractor or Materialman within seven (7) days after receipt of payment by the City pursuant to section 43.2 herein, then the Contractor shall pay interest on amounts due to such Subcontractor or Materialman at a rate of interest in effect on the date such payment is made by the Contractor computed in accordance with section 756-b (1)(b) of the NY General Business Law. Accrual of interest shall commence on the day immediately following the expiration of the seventh day following receipt of payment to the Contractor by the City and shall end on the date on which payment is made.

ARTICLE 44 - ACCEPTANCE OF FINAL PAYMENT

44.1 The acceptance by the Contractor, or by anyone claiming by or through him, of final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the City from any and all claims of and liability to the Contractor, or anyone claiming by or through him, for anything theretofore done or furnished for or relating to or arising out of this Contract and the Work done hereunder, and for any prior act, neglect or default on the part of the City or any of its officers, agents or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Agreement or by law, and excepting a claim, not otherwise waived, which is contained in the verified statement filed with the Contractor's final requisitions for any work performed hereunder.

44.2 The Contractor is warned that the execution by him of a release, in connection with the acceptance of any final payment hereunder, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the Commissioner from the final requisition or by the Comptroller from the final payment as certified by the Commissioner's Representative and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.

44.3 Should the Contractor refuse to accept any final payment hereunder as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.

44.4 The Contractor, however, shall not be barred from commencing an action for breach of contract under this provision, provided that a detailed and verified statement of claim is served upon the Department and Comptroller not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

44.5 The provisions of this Article 44 shall apply to final payment(s) for work performed pursuant to subcontracts hereunder.

ARTICLE 45 - RIGHTS OF COMMISSIONER TO POSTPONE AND TERMINATE AGREEMENT

45.1 The Commissioner shall have the right, upon ten (10) days prior written notice to the Contractor, to postpone, delay, suspend or terminate all or any portion of the services to be performed by the Contractor under the Agreement, or any additions thereto or modifications thereof, at any time and for any reason deemed to be in the City's interest. In such event, the Contractor shall be paid such part of the payment items set forth in Article 42 as shall have become due and payable hereunder for the work done by him prior thereto, or for non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement and has been specifically fabricated for the sole purpose of this Agreement and not incorporated into the Work, subject to audit by the Department and post-audit by the Comptroller. Such postponement, delay, suspension or termination shall not give rise to any cause of action for damages or extra remuneration against the City other than that provided for herein.

ARTICLE 46 - TERMINATION OF THIS AGREEMENT FOR CAUSE

46.1 If in the sole determination of the Commissioner: (1) the Contractor fails to perform any of the terms, covenants or provisions of this Agreement on its part to be performed, or (2) the Contractor fails to progress with the Work called for under this Agreement in a satisfactory manner, or (3) the conduct of the Contractor is such that the interests of the City are likely to be impaired or prejudiced, or (4) the Contractor shall violate any of the terms, covenants or provisions of this Agreement, then the Commissioner may, upon written notice to the Contractor, immediately terminate this Agreement for cause.

46.2 Upon such termination, the Contractor shall be entitled to payment of such amount, to be determined by the Commissioner, and subject to post-audit by the Comptroller, as shall fairly compensate him for the work satisfactorily performed prior to the termination date; provided, however, that the Commissioner shall deduct from such amount and from any amount due and payable to the Contractor prior to the termination date, but withheld or not paid, the total amount of additional expenses incurred by the City in order satisfactorily to complete the Work required to be performed by the Contractor under this Agreement, including the expense of engaging another Contractor for this purpose. If such additional expense shall exceed the amounts otherwise due and payable to the Contractor hereunder, the Contractor shall pay the City the full amount of such excess incurred by the City.

46.3 The Commissioner's determination upon which the termination of this Agreement for cause is based, as set forth in Article 46.1, shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the determination of the Commissioner, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

ARTICLE 47 - ACTIONS UPON TERMINATION

47.1 In the event of termination with or without cause, the Contractor shall, upon receipt of such notice, take the following actions:

- 47.1.1 Stop Work on the date specified in the notice;
- 47.1.2 Take such action as may be necessary for the protection and preservation of the City's materials and property;
- 47.1.3 Cancel all cancelable orders for material and equipment;
- 47.1.4 Assign to the City and deliver to the Site or any other location designated by the Commissioner, any non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement and has been specifically fabricated for the sole purpose of this Agreement and not incorporated in the Work;
- 47.1.5 Take no action which will increase the amounts payable by the City under this Agreement.

ARTICLE 48 - CLAIMS AND ACTIONS THEREON

48.1 No claim against the City for damages for breach of contract or compensation for Extra Work shall be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims all as herein before provided.

48.2 Nor shall any such action or proceeding be instituted or maintained on any such claims unless such action or proceeding be commenced within one year after the date of the filing in the office of the Comptroller of the final payment voucher pursuant to Article 42; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Agreement or by law, must be commenced within one year after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and further except that an action or proceeding on a claim based upon the Commissioner's exercise of the right to terminate this Agreement for cause must be commenced within six months after the date the Commissioner exercises such right to terminate for cause.

ARTICLE 49 - SUPPLIES, LABOR, SERVICES, MATERIALS AND TAX EXEMPTION

49.1 The City is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the City pursuant to the provisions of this Agreement. These taxes are not to be included in requests for payment. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which even though they are consumed, are not incorporated into the completed Work (consumable supplies), and the Contractor and his Subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.

49.2 The Contractor and its Subcontractors agree to sell and the City agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the Project covered by this Agreement. The sum paid under this Agreement for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials herein.

49.3 The purchase by the Contractor through its Subcontractors of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Contractor to the City is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, the Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to the City title to such supplies and materials, free of liens or encumbrances, and the Contractor shall mark or otherwise identify all such materials as the property of the City.

49.4 Title to all materials to be sold by the Contractor to the City pursuant to the provisions of the Agreement shall immediately vest in and become the sole property of the City upon delivery of such supplies and materials to the Site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such

materials and supplies in accordance with the provisions of this Agreement, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to the City, until such time as the Work covered by the Agreement is fully accepted by the City. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. In the event that, after title has passed to the City, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

49.5 The purchase by Subcontractors of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to the Contractor (either directly or through other subcontractors) and therefore not subject to the aforesaid Sales or Compensating Use Taxes, provided that the subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Agreement with respect to the separation of the sale of materials from the Work and labor, services, consumable supplies and any other matters to be provided, and provided further that the subcontract agreements provide separate prices for (l) materials and (2) all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other Work and labor and other things to be provided.

49.6 The Contractor and his Subcontractors and materialmen shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the Work covered by this Agreement.

49.7 In the event any of the provisions of this Article 49 shall be deemed to be in conflict with any other provisions of this Agreement or create any ambiguity, then the provision of this Article shall control.

ARTICLE 50 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

50.1 No claim whatsoever shall be made by the Contractor 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 Agreement.

50.2 The Contractor shall require each Subcontractor or consultant to agree in its subcontract not to make any claim against the City, its officers, agents or employees, by reason of such subcontract, or any acts or omissions of the Contractor; provided however, such restrictions shall not apply to (a) demands filed by subcontractors pursuant to Article 10.6 hereof, or (b) disputes submitted by subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in Article 10.2.2 (g) hereof.

ARTICLE 51 - LOCALLY BASED ENTERPRISE PROGRAM

NOTE: If goals have been established for the participation of M/WBEs in the subcontracted Work, the subcontractor is not required to comply with the Locally Based Enterprise Program ("LBE").

51.1 This Contract is subject to the requirements of Administrative Code Section 6-108.1 and regulations promulgated thereunder. The Contractor shall not award any subcontract for Work hereunder unless and until these requirements have been complied with in their entirety.

51.2 The provisions set forth below shall apply to all subcontracts for Work hereunder entered into by the Contractor. The Contractor shall include the provisions set forth below in all subcontracts for Work hereunder.

51.2.1 Unless specifically waived by the Commissioner with the approval of the Office of Economic and Financial Opportunity, if any portion of the subcontract is sub-subcontracted, not less than ten percent of the total dollar amount of the subcontract shall be awarded to locally based enterprises ("LBEs"); except that where less than ten percent of the total dollar amount of the subcontract is sub-subcontracted, such lesser percentage shall be so awarded.

51.2.2 The Subcontractor shall not require performance and payment bonds from LBE sub-subcontractors.

51.2.3 If the Subcontractor has indicated prior to award that no Work will be sub-subcontracted, no Work shall be sub-subcontracted without the prior approval of the Commissioner, which shall be granted only if the Subcontractor makes a good faith effort beginning at least six weeks before the work is to be performed to obtain LBE sub-subcontractors to perform the work.

51.2.4 If the Subcontractor has not identified sufficient LBE sub-subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Administrative Code §6-108.01, recognizes that achieving the LBE requirement is a condition of its subcontract, and shall submit documentation demonstrating its good faith efforts to obtain LBEs. After award, the Subcontractor shall begin to solicit LBE's to perform sub-subcontracted work at least six weeks before the date such work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBE's on each sub-subcontract until it meets the required percentage.

51.3 Failure of the Contractor to comply with the requirements of Administrative Code §6-108.01 and the regulations promulgated

thereunder shall constitute a material breach of contract. Remedy for such breach of contract may include the imposition of any or all of the following sanctions:

51.3.1 Reducing the Contractor's compensation by an amount equal to the dollar value of the percentage of the LBE sub-subcontracting requirement not complied with;
51.3.2 Declaring the Contractor in default;
51.3.3 Where non-compliance is by an LBE, de-certifying and declaring the LBE ineligible to participate in the LBE program for a period of up to three years.

ARTICLE 52 - PARTICIPATION IN AN INTERNATIONAL BOYCOTT

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

52.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof, 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.

52.3 The Contractor shall comply in all respects, 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 53 - INVESTIGATIONS

53.1 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.

53.1.1 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;

53.1.2 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;

53.1.3 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.

53.1.4 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 Article 53.3 below without the City incurring any penalty or damages for delay or otherwise.

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

53.2.1 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

53.2.2 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; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

53.3 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Articles 53.3.1 and 53.3.2 below. He or she may also consider, if relevant and appropriate, the criteria established in Articles 53.3.3 and 53.3.4 below in addition to any other information which may be relevant and appropriate;

53.3.1 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.

53.3.2 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.

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

53.3.4 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 53.2 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 53.1.3 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.

53.4 Definitions Used in this Article

53.4.1 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.

53.4.2 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.

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

53.4.4 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.

53.5 In addition to and not withstanding 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 54 - ALL PRIOR WRITTEN OR ORAL AGREEMENTS EXCLUDED

54.1 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 55 - HEADINGS NOT BINDING

55.1 Article, Section and Chapter headings and the Table of Contents are inserted for convenience only and are not to be considered in the construction or interpretation of any provision hereof.

ARTICLE 56 - ERRORS

56.1 If this Agreement contains any errors, inconsistencies, ambiguities or discrepancies, including typographical errors, the Contractor shall request a clarification of same by writing to the Commissioner whose decision shall be binding on the parties.

ARTICLE 57 - UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

57.1 If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

ARTICLE 58 - ALL LEGAL PROVISIONS DEEMED INCLUDED

58.1 It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall and is inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the 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 hereunder.

ARTICLE 59 - WAIVER

59.1 Waiver by the City of a breach of any provision of this Agreement 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 Agreement unless and until the same be agreed to in writing by the Commissioner.

ARTICLE 60 - ALL DEFENSES RESERVED

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

ARTICLE 61 - CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

61.2 The parties agree that any and all claims asserted by or against the City arising under this Agreement 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 Contractor agrees:

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

61.2.2 With respect to any action between the City and the Contractor in New York State Court, the Contractor 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.

61.2.3 With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor 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.

61.2.4 If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor 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 Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

61.3 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 62 - SERVICES OF NOTICES

62.1 The Contractor hereby designates the business address on page 1 of this Agreement as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place or deposit of the same in a postpaid wrapper addressed thereto in any post office box regularly maintained by the United States Post Office Department shall be conclusively deemed to be sufficient service thereof upon the Contractor as of the date of such delivery or deposit.

62.2 Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Commissioner.

62.3 Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor is a corporation, upon any officer or director thereof.

62.3 The City hereby designates the following as its address for the service of any notice hereunder:

Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101
Attention: David Resnick, Deputy Commissioner

ARTICLE 63 - MODIFICATION

63.1 In addition to the authority of the Commissioner to order Extra Work pursuant to Article 26 hereof or omit certain Work pursuant to Article 33 hereof, this Agreement 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 Work agreed to be performed under this Agreement, provided, however, in no event shall such modification exceed the cost limitation approved by the Bureau of the Budget.

ARTICLE 64 - MacBRIDE PRINCIPLES PROVISIONS

64.1 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.

64.2 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.

64.3 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.

64.4 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.

64.5 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.

64.6 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:

64.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
64.6.2 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;
64.6.3 ban provocative religious or political emblems from the work place;
64.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
64.6.5 establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
64.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
64.6.7 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;
64.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
64.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their

full implementation.

64.7 The Contractor agrees that the covenants and representations in Article 64.5 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 65 – 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 66 – 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 67 Vendex Questionnaires

67.1 Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, the Contractor 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.

67.2 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 Contractor must submit a Confirmation of Vendex Compliance to the Department.

67.3 Obtaining Forms: Vendex Questionnaires, as well as detailed instructions, may be obtained at www.nyc.gov/vendex. The Contractor may also obtain Vendex forms and instructions by contacting the ACCO or the contact person for this contract.

ARTICLE 68: PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

M/WBE Participation: Requirements for the participation of M/WBEs apply to Work for the Project performed by subcontractors under the supervision and control of the Contractor. Prior to the commencement of each type of Work, the City shall provide applicable M/WBE requirements to the Contractor in a form entitled "Schedule B: M/WBE Utilization Plan." The Schedule B: M/WBE Utilization Plan shall be included by the Contractor in Bid Documents for subcontracts for Work for the Project, as directed by the City. Work includes required Work for various Projects, including pre-design services and any related construction and/or remediation Work. Such Work is paid for from the Allowance for Construction/Remediation Work. Bids that do not comply with the requirements for M/WBE participation, as set forth below, shall be deemed non-responsive.

Subcontracts: The Contractor shall include the language set forth below in all subcontracts for Work for the Project.

Locally Based Enterprise (LBE) Program: If Participation Goals have been established for the participation of M/WBEs in the subcontracted Work, the subcontractor is not required to comply with the LBE Program.

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in

New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART B: MISCELLANEOUS

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

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

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

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

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the

Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required Participation Goals.

ARTICLE II. ENFORCEMENT

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

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any M/WBE Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

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

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

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

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

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

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

ARTICLE 69 - INDEMNIFICATION

69.1 Notwithstanding anything to the contrary set forth in this Contract, the City shall indemnify, defend and hold harmless the Contractor, its Consultants and subcontractors, and each of their officers, agents and employees, from and against all claims, liabilities, damages, losses and expenses for bodily injury and property damage brought by third parties which:

69.1.1 Result from environmental impairment and/or pollution, and

69.1.2 Are excluded from coverage under any general liability or other insurance policies maintained by the Contractor, its Consultants and subcontractors, except that the existence of coverage for such claim under any policy(s) held by any of the aforementioned shall not void the City's obligation to indemnify, defend and hold harmless the other entities who do not have such coverage, and

69.1.3 Arise out of or are related to: (a) pre-existing conditions at any of the sites specified hereunder, and/or (b) the performance of the work provided for herein for a period of two years following the completion of all required work, and

69.1.4 Are not attributable to the gross negligence of the Contractor, its Consultants and subcontractors, or any of their officers, agents and employees.

69.2 The City reserves the right to defend the Contractor, its Consultants and subcontractors, and each of their officers, agents and employees, in any claim, suit or cause of action described in Article 69.1 above. In the event the City exercises such right to defend, the Contractor, its Consultants and subcontractors, and their officers, agents and employees, agree, without additional compensation, to render all assistance necessary to the City and to promptly provide any and all documents or other material requested by the City.

69.3 The Contractor, its Consultants and subcontractors, and each of their officers, agents and employees, shall provide immediate notification to the City of the assertion or filing of any claim, suit or cause of action described in above. Such notice shall be provided by certified mail, return receipt requested, and shall be delivered to the Corporation Counsel, 100 Church Street, New York, New York 10007, and shall include a copy of this Article.

69.4 The City retains all rights of subrogation against the Contractor, its Consultants and subcontractors, each of their officers, agents and employees, and their respective insurers for claims which do not meet the criteria set forth in Article 69.1 above.

69.5 Failure by the Contractor, its Consultants and subcontractors, and each or any of their officers, agents and employees, to strictly comply with the requirements set forth in Article 69.2 and 69.3 above shall render this Article 69 void, and the City shall have no indemnification obligation whatsoever hereunder.

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and the Contractor, have executed this agreement in quadruplicate, two of which are to remain with the Commissioner, another to be filed with the Comptroller of the City, and the fourth to be delivered to the Contractor.

THE CITY OF NEW YORK:

By:_____
Deputy Commissioner

CONTRACTOR:

By: _____

Print Name: _____

Title:_____

EIN: _____

APPROVED AS TO FORM AND CERTIFIED
AS TO LEGAL AUTHORITY

_____
Acting Corporation Counsel

DATE _____

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

EXHIBIT A: CONTRACT INFORMATION

(1) TYPE OF SERVICES: Construction Management / design / build services on a requirements basis for the type of projects described below. The Commissioner shall, by written directive, assign various Projects to the Contractor for performance of the required services. Such projects will be located in Brooklyn, Queens and Staten Island.

(2) TOTAL NOT TO EXCEED AMOUNT: $11,000,000.00

Allowance for Staffing Expenses:	$5,500,000.00
Allowance for Construction/Remediation Work:	$5,200,000.00
Allowance for Miscellaneous Expenses:	$200,000.00
Allowance for Additional Services:	$100,000.00

(3) KEY DESIGN AND CONSTRUCTION MANAGEMENT PERSONNEL

KEY CONSTRUCTION MANAGEMENT PERSONNEL

Project Executive: _____
Project Manager: _____
Assistant Project Manager: _____

KEY DESIGN PERSONNEL

Design Consultant: _____
Principal: _____
Project Manager: _____
Senior Project Engineer: _____

(4) MULTIPLIERS

Multiplier for Design Personnel _____
Multiplier for CM Personnel _____

(5) PROJECTS: The types of Projects to be assigned to the Contractor pursuant to this Contract are indicated below. The Projects will be located at various sites, as specified by the Commissioner. Projects assigned to the Contractor may involve any of the following types of sites: (1) sites owned by the City, (2) sites owned by a third party and leased by the City, and (3) sites owned by a third party and not leased by the City, but for which the City has a remediation obligation. If the Contractor is assigned a site owned by a third party, it will be required to name the owner of the site as an Additional Insured on its policy for General Liability Insurance, as set forth in Article 23.

_X_ Remediation Project: A Project which requires the remediation of contamination at the site to ensure compliance with all local state and federal laws, rules and regulations.

Pre-Design Services: Pre-design services for Remediation Projects shall include without limitation the following: drilling services, ground penetrating radar services, laboratory services for soil and ground water analysis, survey services, and tank testing services.

_X_ Replacement Project: A Project which requires the upgrade, replacement or decommissioning of storage tanks at the site, to ensure compliance with all local state and federal laws, rules and regulations. Such tanks may be located underground or above ground.

Pre-Design Services: Pre-design services for Replacement Projects shall include without limitation the following: tank testing services, survey services, and laboratory services for soil and ground water analysis.

_____ Fire Suppression Project: A Project which requires the installation of a fire suppression system at the site, to ensure compliance with all local state and federal laws, rules and regulations.

Pre-Design Services: Pre-design services for Fire Suppression Projects shall include without limitation testing of fire suppression systems.

EXHIBIT B

STAFFING REQUIREMENTS AND ESTIMATED DIRECT SALARY RATES

STAFFING REQUIREMENTS: Overall staffing requirements for design and construction management personnel for the Project have been establish by the Commissioner and are set forth below. Such staffing requirements specify the titles of design and construction management personnel that may be required for the Project, as well as the estimated direct salary rate per hour for each title. A staffing plan for the project shall be established in accordance with the procedure set forth in the Contract.

MINIMUM REQUIREMENTS PER TITLE: Design and construction management personnel for the Project must comply with the minimum requirements per title. Such requirements are set forth on the following page.

DIRECT SALARY RATES FOR ASSIGNED EMPLOYEES: An Assigned Employee's Direct Salary Rate per hour shall be the **LESSER** of (1) the Assigned Employee's actual annual direct salary, computed on an hourly basis (as described in Article 42), or (2) the estimated direct salary rate per hour for the Assigned Employee's title set forth below. An Assigned Employee's Direct Salary Rate is subject to approval by the Commissioner.

DESIGN PERSONNEL

TITLE	**ESTIMATED DIRECT SALARY RATE (per hour)**
Principal	Included in Multiplier for Design Personnel
Project Manager	$67.76
Senior Project Engineer	$67.76
Project Engineer (Electrical)	$49.28
Project Engineer (Mechanical)	$49.28
Project Engineer (Civil)	$49.28
Geologist	$49.28
Inspector	$43.12
CADD Operator	$30.80
Clerical	$30.80

CONSTRUCTION MANAGEMENT PERSONNEL

TITLES	**ESTIMATED DIRECT SALARY RATE (per hour)**
Project Executive	Included in Multiplier for CM Personnel
Project Manager	$67.76
Assistant Project Manager	$67.76
Construction Inspector/Resident Engineer	$49.28
Contract Manager	$49.28
Office Engineer	$36.96
Clerical	$30.80

EXHIBIT B

MINIMUM REQUIREMENTS PER TITLE

DESIGN PERSONNEL			
TITLE	**ACADEMIC QUALIFICATIONS**	**PROFESSIONAL LICENSE**	**RELEVANT EXPERIENCE IN DESIGN**
Project Manager	BS in Engineering (CE, EE, ME, Environ. Eng., Chem. Eng., or Hydro geologist)		7 years
Senior Project Engineer	BS in Engineering (CE, EE, ME, Environ. Eng., Chem. Eng., or Hydro geologist)	PE	7 years
Project Engineer (Electrical)	BS in Elect. Engineering		3 years
Project Engineer (Mechanical)	BS in Mech. Engineering		3 years
Project Engineer (Civil)	BS in Civil/Environ. Engineering		3 years
Geologist	BS in Geology		3 years
Inspector	Bachelor or Associate degree in Engineering		5 years
CADD Operator	12th Grade		2 years
Clerical	12th Grade		2 years

CM PERSONNEL	
TITLE	**RELEVANT EXPERIENCE IN CONSTRUCTION**
Project Manager	10 years OSHA 10 Hour Construction Health and Safety Certificate
Assistant Project Manager	7 years OSHA 10 Hour Construction Health and Safety Certificate
Construction Inspector/Resident	7 years OSHA 10 Hour Construction Health and Safety Certificate
Contract Manager	5 years
Office Engineer	5 years
Clerical	2 years

EXHIBIT C

PARTIAL PAYMENT FOR STORED MATERIAL

The Commissioner may authorize partial payment for certain materials, fixtures and equipment, prior to their incorporation in the Work, but only in strict accordance with and subject to all the terms and conditions set forth in Paragraphs 1 through 16 below. The Contractor may request such partial payment on behalf of its Subcontractors.

1. The Contractor shall submit to the Commissioner a written request, in quadruplicate, for payment for materials purchased or to be purchased for which it desires to be paid prior to their actual incorporation in the Work. The request shall be accompanied by a schedule of the types and quantities of materials, and shall state whether such materials are to be stored on or off the site.
2. Where the materials are to be stored off the site, they shall be stored at a place other than the Contractor's or Subcontractor's premises (except with the written consent of the Commissioner) and under the conditions prescribed or approved by the Commissioner. The Contractor shall set apart and separately store at the place or places of storage all materials and shall clearly mark same "PROPERTY OF THE CITY OF NEW YORK", and further, shall not at any time move any of said materials to another off-site place of storage without the prior written consent of the Commissioner. Materials may be removed from their place of storage off the site for incorporation in the work upon approval of the Commissioner's Representative.
3. Where the materials are to be stored at the site, they shall be stored at such locations as shall be designated by the Commissioner's Representative and only in such quantities as, in the opinion of the Commissioner's Representative, will not interfere with the proper performance of the Work by the Contractor or by other contractors then engaged in performing work on the site. Such materials shall not be removed from their place of storage on the site except for incorporation in the Work, without the approval of the Commissioner's Representative.

4. INSURANCE

   a. STORAGE OFF-SITE: Where the materials are stored off the site and until such time as they are incorporated in the Work, the Contractor shall fully insure such materials against any and all risks of destruction, damage or loss including but not limited to fire, theft, and any other casualty or happening. The policy of insurance shall be payable to the City of New York. It shall be in such terms and amounts as shall be approved by the Commissioner and shall be placed with a company duly licensed to do business in the State of New York. The Contractor shall deliver the original and one copy of such policy or policies marked "Fully Paid" to the Commissioner.
   b. STORAGE ON THE SITE: Where the materials are stored at the site, the Contractor shall furnish satisfactory evidence to the Commissioner that they are properly insured against loss, by endorsements or otherwise, under the policy or policies of insurance obtained by the Contractor to cover losses to materials owned or installed by him. The policy of insurance shall cover fire and extended coverage against windstorm, hail, explosion and riot attending a strike, civil commotion, aircraft, vehicles and smoke.
   c. Subject to approval by the Commissioner, the above described insurance may be provided by the Contractor's Subcontractor.

5. All costs, charges and expenses arising out of the storage of such materials, shall be paid by the Contractor and the City hereby reserves the right to retain out of any partial or final payment made under the Contract an amount sufficient to cover such costs, charges and expenses with the understanding that the City shall have and may exercise any and all other remedies at law for the recovery of such cost, charges and expenses. There shall be no increase in the Contract price for such costs, charges and expenses and the Contractor shall not make any claim or demand for compensation therefor.
6. The Contractor shall pay any and all costs of handling and delivery of materials, to the place of storage and from the place of storage to the site of the work; and the City shall have the right to retain from any partial or final payment an amount sufficient to cover the cost of such handling and delivery.
7. In the event that the whole or any part of these materials are lost, damaged or destroyed in advance of their satisfactory incorporation in the Work, the Contractor at his own cost, shall replace such lost, damaged or destroyed materials of the same character and quality. The City will reimburse the Contractor for the cost of the replaced materials to the extent, and only to the extent, of the moneys actually received by the City under the policies of insurance hereinbefore referred to. Until such time as the materials are replaced, the City will deduct from the value of the stored materials or from any other money due under the Contract, the amount paid to the Contractor for such lost, damaged or destroyed materials.
8. Should any of the materials paid for the City hereunder be subsequently rejected or incorporated in the Work in a manner or by a method not in accordance with the Contract Documents, the Contractor shall remove and replace such defective or improperly incorporated material with materials complying with the Contract Documents. Until such materials are replaced, the City will deduct from the value of the stored materials or from any other money due the Contractor, the amount paid by the City for such rejected or improperly incorporated materials.
9. Payments for the cost of materials made hereunder shall not be deemed to be an acceptance of such materials as being in accordance with the Contract Documents, and the Contractor always retains and must comply with his duty to deliver to the site and properly incorporate in the Work only materials which comply with the Contract Documents.
10. The Contractor shall retain any and all risks in connection with the damage, destruction or loss of the materials paid for hereunder to the time of delivery of the same to the site of the Work and their proper incorporation in the Work in accordance with the Contract Documents.

11. The Contractor shall comply with all laws and the regulations of any governmental body or agency pertaining to the priority purchase, allocation and use of the materials.
12. When requesting payment for such materials, the Contractor shall submit with the partial estimate duly authenticated documents of title, such as bills of sale, invoices or warehouse receipts, all in quadruplicate. The executed bills of sale shall transfer title to the materials from the Contractor to the City (in the event that the invoices state that the material has been purchased by a Subcontractor, bills of sale in quadruplicate will also be required transferring title to the materials from Subcontractor to the Contractor).
13. Where the Contractor, with the approval of the Commissioner has purchased unusually large quantities of materials in order to assure their availability for the Work, the Commissioner at his option, may waive the requirements of paragraph "12" provided the Contractor furnishes evidence in the form of an affidavit of the Contractor in quadruplicate, and such other proof as the Commissioner may require, that he is the sole owner of such materials and has purchased them free and clear of all liens and other encumbrances. In such event, the Contractor shall pay for such materials and submit proof thereof, in the same manner as provided in paragraph "12" hereof, within seven (7) days after receipt of payment therefor from the Comptroller. Failure on the part of the Contractor to submit satisfactory evidence that he has paid in full for all such materials shall preclude him from payments under the Contract.
14. The Contractor shall include in each succeeding partial estimate requisition a summary of materials stored which shall set forth the quantity and value of materials in storage, on or off the site, at the end of each preceding estimate period; the amount removed for incorporation in the Work; the quantity and value of materials delivered during the current period and the total value of materials on hand for which payment thereof will be included in the current payment estimate.
15. Upon proof to the satisfaction of the Commissioner of the actual cost of such materials and upon submission of proper proof of title as required under paragraph "12" or "13" hereof, payment will be made therefore to the extent of 85%, provided however, that the cost so verified, established and approved shall not exceed the estimated cost of such materials included in the approved detailed breakdown estimate submitted in accordance with Article 42 of the Contract; if it does, the City will pay only 85% approved estimated cost.
16. Upon the incorporation in the Work of any such materials, which have been paid for in advance of such incorporation in accordance with the foregoing provisions, payment will be made for such materials incorporated in the Work pursuant to Article 42 of the Contract, less any sums paid pursuant to paragraph "15" herein.

EXHIBIT D: REQUIREMENTS FOR PROJECT OFFICE

(1) General: Throughout the term of this Contract, the Contractor shall be required to provide and maintain a Project Office, dedicated to the activities of personnel in connection with Projects assigned under this Contract. Such Project Office shall be in accordance with the requirements set forth in this Exhibit D. The Project Office shall be located with twenty-five (25) miles of DDC headquarters in Long Island City.

(2) Cost Included in Multiplier for CM Personnel: The Multiplier for CM Personnel shall include all expenses incurred by the Contractor in connection with providing the Project Office in accordance with the requirements set forth in this Exhibit D. The Contractor shall not be entitled to additional compensation for providing the Project Office.

(3) Ownership of Components: In the event the Contractor elects to purchase any of the components of the Project Office to be provided hereunder, such components shall remain the sole property of the Contractor.

(4) Risk of Loss: The entire risk of loss with respect to the Project Office shall remain solely and completely with the Contractor. The Contractor shall be responsible for the cost of any insurance coverage determined by the Contractor to be necessary for the Project Office.

(5) Replacement: In the event the Project Office or any component(s) thereof is lost, damaged, or determined by the Commissioner to be defective or noncompliant with the requirements set forth in this Exhibit D, the Contractor shall be responsible, at its sole cost and expense, to replace such component(s) within two weeks from the date of such loss or damage, or written notice from the Commissioner that the component is defective or noncompliant.

(6) Compliance: The Project Office provided by the Contractor in accordance with this Exhibit D shall comply with all applicable federal, state and local laws, rules and regulations, including without limitation, the New York City Building Code.

(7) Project Office Requirements: The required Project Office shall be sufficient in size to accommodate all personnel assigned to the Project and shall, at a minimum, have the following square footage: (a) 800 square feet of usable office space, and (b) 200 square feet of usable storage space. The Project Office shall have sufficient toilet facilities for all assigned personnel.

(8) Utilities: The Contractor shall be responsible for providing all necessary utilities for the Project Office, including without limitation, water, heat, air conditioning, electricity and telephone service. Cellular telephone service shall include both incoming and outgoing calls.

(9) Maintenance Services: The Contractor shall be responsible for providing all cleaning and maintenance services in connection with the Project Office, including without limitation maintenance of equipment.

(10) Office Supplies: The Contractor shall be responsible for providing all office supplies, including without limitation, pens, pencils, stationery, filtered drinking water and sanitary supplies.

(11) Office Furniture and Equipment: The Project Office provided by the Contractor shall include the offices, furniture, accessories and equipment specified below. All items and /or equipment furnished hereunder shall be in excellent condition and functioning properly. All equipment furnished hereunder shall be the most current model.

(a) Office furniture, cubicles and/or desks for all personnel assigned to the Project
(b) Shared private office for the Project Manager and Assistant Project Manager.
(c) Conference room for at least twelve (12) people.
(d) Flex type multi line telephone system, including modem and fax lines with voice mail
(e) One (1) high volume copier (50 copies per minute)
(f) One (1) fax machine
(g) Minimum of four (4) networked computers, plus file server and all associated computer software, in accordance with Paragraph 13 below
(h) Minimum of one (1) heavy duty laser printer
(i) Mobile communication system (cellular telephones or two way radios) for all personnel assigned to the Project

(12) File Transfer Protocol Site: The contractor shall furnish a File Transfer Protocol (FTP) site for the exchange of electronic project data. The FTP site shall include the ability to create multiple secure folders with unique usernames and access passwords. The storage capacity of the FTP site shall be a minimum of 300 megabytes. It shall be accessible using either Microsoft Windows or Apple Macintosh operating systems. The Contractor shall verify and ensure that the FTP site is compliant with the "client" security and network access restrictions.

(13) Requirements for Computer Equipment: Any personal computers ("PCS") required in this Exhibit D must meet the following specifications.

(a) Personal Computer(s) – Workstation Configuration

(1) Acceptable Models: Dell, Gateway, Toshiba, HP, IBM, or an approved equal. (Note: an approved equal requires written approval of the Assistant Commissioner of ITS.)
(2) Processor: 3.0 GHz Pentium 4 or faster computer - Single Processor.
(3) System RAM: Minimum of 1 GB (gigabytes) of SDRAM or DDR.
(4) Hard Disk Drive(s): 80 GB (Gigabytes) or larger.
(5) CD-RW: Internal CD-RW, 48x Speed or faster.
(6) 16xDVD+/-RWDVD Burner (with double layer write capability) 16x Speed or faster
(7) I/O Ports: Must have at least one (1) Serial Port one, (1) Parallel Port, 2 USB Ports. Serial Ports must consist of UART 16550 Chip or better.
(8) Video Display Card: PCI Interface with a minimum of 64 MB of RAM.
(9) Monitor: 17" TFT LCD monitor.
(10) Available Exp. Slots: System as configured above shall have at least two (2) full size PCI Slots available.
(11) Fax/Modem: Internal Fax/Modem 56 Kbps speed, featuring 3COM or US Robotics Chipset and supporting a minimum of V.92 and MNP5 compliant. Integrated 10/100/1000 Ethernet.
(12) Other Peripherals: Optical scroll Mouse, 101 Key Keyboard, Mouse Pad and all necessary cables.
(13) Software Requirements: Microsoft Windows XP Professional, Microsoft Office 2003 Professional; Microsoft Project 2002 Professional, Adobe Acrobat reader, Anti-Virus with one year updates subscription, Win Zip and Auto Cad 2008 LT.

(b) Computers shall be provided with the following:

(1) One (1) broad-band internet service account. This account will be active for the life of the project.
(2) One (1) 600 DPI HP Laser Jet Printer (twelve (12) pages per minute or faster) with one (1) Extra Paper Tray (Legal Size).
(3) All necessary Cabling.
(4) Storage Boxes for and Blank CDs/DVDs.
(5) Printer Table.
(6) UPS/Surge Surpressor combo.

(c) All Computer Hardware shall come with a three (3) year warranty for on-site repair or replacement. Additionally, and notwithstanding any terms of the warranty to the contrary, the Contractor is responsible for rectifying all computer problems or equipment failures within one (1) business day.

(d) An adequate supply of blank CD's/DVD's, and paper and toner cartridges for the printer shall be provided by the Contractor, and shall be replenished by the Contractor as required.

(e) It is the Contractor's responsibility to ensure that electrical service and phone connections are also available at all times.

(f) Broadband connectivity is preferred at each field office location. Please take into consideration that an extra phone line dedicated to the modem must be ordered as part of the contract unless Internet broadband connectivity, via Cable or DSL, is available at the planned field office location. Any questions regarding this policy should be directed to Raul Canabal, Assistant Commissioner of Information Technology Services at 718-391-1668.

EXHIBIT E

CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

SAFETY REQUIREMENTS

THE DDC SAFETY REQUIREMENTS INCLUDE THE FOLLOWING SECTIONS:

I. POLICY ON SITE SAFETY

II. PURPOSE

III. DEFINITIONS

IV. RESPONSIBILITIES

V. SAFETY QUESTIONNAIRE

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

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

VIII. EVALUATION DURING WORK IN PROGRESS

IX. SAFETY PERFORMANCE EVALUATION

I. POLICY ON SITE SAFETY

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

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

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

II. PURPOSE

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

III. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. RESPONSIBILITIES

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

A. Resident Engineer / Construction Project Manager / Construction Manager

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

B. Contractors

- Complete a Safety Questionnaire and submit with its bid or as part of a pre-qualification package.
- Provide a Written Job Hazard Assessment (JHA) that identifies expected safety issues of the work to be performed. JHA shall be included with the Site Safety Plan submitted by the contractor.

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

V. SAFETY QUESTIONNAIRE

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

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

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

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

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

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

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

1. Responsibility and Organization: Identify the person or persons with authority and responsibility for implementing the Site Safety Plan. Provide an organization chart and define levels of authority and responsibility. Identify the Competent Person, the Construction Superintendent (if required), the Job Safety Coordinator and the Qualified Person required for this project.

2. Communication: Establish a system for communicating with employees and subcontractors on matters relating to worker and public safety and health and environmental protection, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. An emergency response notification protocol is to be established that also includes after hours contact numbers. The plan must also include provisions for weekly safety meetings held by the Job Site Safety Coordinator.

3. Job Hazard Assessment: A written document submitted by the contractor, used to identify expected job hazards and public safety risks and state the specific means and methods to reduce, control or eliminate those hazards. This part of the Site Safety Plan must also include how on-going evaluations of those risks and hazards will be carried out, including plans for periodic inspections to identify unsafe conditions, work practices and public safety hazards.

4. Accident/Exposure Investigation: Establish a procedure to investigate and report occupational and public injury or illness, property damage, vehicle accidents or other mishaps.

5. Hazard Correction: Establish means, methods and/or procedures for correcting unsafe or unhealthy conditions that might be exposing both the public and workers to hazards. Corrective actions must be taken immediately when observed or discovered. Should an imminent hazard exist which cannot be immediately abated without endangering employees, the public and/or property, remove or restrict all exposed persons from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards. When corrective actions cannot be taken immediately, temporary measures should be taken until such time permanent measures are taken to eliminate the potential risks or hazards

6. Training: Describe site-specific hazard training programs. In addition to the required safety orientation, additional site specific training, in the form of required weekly safety meetings, will be required. Contractors must also initiate training when: a) new employees are hired; b) employees are given new job assignments for which training has not been previously received; c) new substances, processes, procedures or equipment are introduced that might represent a new public or worker hazard; d) the employee is made aware of a new or previously unrecognized hazard; e) new supervisors are assigned to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed; and f) after a jobsite incident or accident has occurred.

7. Recordkeeping: Establish procedures to maintain records of scheduled and periodic inspections, weekly safety meetings, and training records. Updated records shall be maintained at the jobsite, accessible to the Construction Safety Auditors and/or Quality Assurance Auditors/RE/CPM, and retained in accordance with DDC policy.

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

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

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

- Basic Personal Protective Equipment
- Compressed Air
- Compressed Gas Cylinders
- Cranes, Derricks and Hoists
- Demolition
- Electrical safety
- Excavations and Trenching
- Fall Protection – Floor openings/Stairways
- Fall Protection – Guardrails Toe boards etc.

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

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

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

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

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

VIII. EVALUATION DURING WORK IN PROGRESS

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

A. Use of a safety checklist by a representative of the Construction Safety Unit or other designated DDC representative or Consultant during regular, unannounced inspections of the job site. Field Exit Conferences will be held with the RE/CPM, Contractor Superintendents or Safety Representatives.

B. The RE/CPM will continually monitor the safety and environmental performance of the contractor's employees and work methods. Deficiencies shall be brought to the attention of the contractor's representative on site for immediate correction. The DDC representative will maintain a written record of these deficiencies and forward them to the Construction Safety Unit on a weekly basis. Any critical deficiencies shall be immediately reported to QACS phone# (718) 391-1624 or (718) 391-1911.

C. If the Contractor's safety performance during the project is not up to DDC standards (safety performance measure, accident/incident rate, etc.) the Director- QACS, or designee will meet with the Contractor's safety representative, the DDC project manager, the RE/CPM, or the DDC Environmental Specialist (if environmental issues are involved). The purpose of this meeting is to 1) determine the level of non-compliance; 2) explain and clarify the safety/environmental provisions; 3) agree on a future course of action to correct the deficiencies.

D. If the deficiencies continue to occur with inadequate attention by the contractor, this shall, among other remedies available, be grounds for default.

E. The contractor shall inform the Construction Safety Unit and ACCO Insurance and Risk Management Unit of all medical injuries or illnesses that require doctors' treatment resulting from an on-the-job incident within 24 hours of the occurrence. The Construction Safety Unit shall also be immediately informed of all fatalities, catastrophic accidents with more than one employee hospitalized, any injuries to members of the general public and major equipment damage (e.g., property damage, equipment rollovers, loads dropped from crane). QACS shall maintain a record of all contractor injuries and illnesses during the project and provide regular reports to the Agency.

F. The Construction Safety Unit shall be immediately notified at the start of any NYS-DOL/ NYC-COSH/ OSHA/ EPA inspections. The Director of Quality Assurance & Construction Safety shall maintain a log of all contractor OSHA/EPA inspections and citations during the project.

IX. SAFETY PERFORMANCE EVALUATION

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

APPENDIX A

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

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions……1

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement……1

Section 2.02 Conflicts of Interest…….2

Section 2.03 Fair Practices……...2

Section 2.04 VENDEX……..2

Section 2.05 Political Activity……...3

Section 2.06 Religious Activity…….....3

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

Section 2.08 Bankruptcy and Reorganization……3

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment……...…3

Section 3.02 Subcontracting…….……4

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status……..5

Section 4.02 Employees…….5

Section 4.03 Removal of Individuals Performing Work……5

Section 4.04 Minimum Wage……...5

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

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records…….…...7

Section 5.02 Retention of Records…….....……7

Section 5.03 Inspection……..….8

Section 5.04 Audit……...8

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

Section 5.06 Electronic Records……...……..8

Section 5.07 Investigations Clause…….8

Section 5.08 Confidentiality……...……10

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS AND ANTITRUST

Section 6.01 Copyrights……..11

Section 6.02 Patents and Inventions…….……12

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

Section 6.04 Antitrust……...……...12

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure…….……12

Section 7.02 Commercial General Liability Insurance ……..……12

Section 7.03 Professional Liability Insurance…….……...…..12

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance ……....…...……..…13

Section 7.05 Unemployment Insurance ……13

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

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

Section 7.08 Proof of Insurance…….……..……...13

Section 7.09 Miscellaneous …….….…...14

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions……..…….……15

Section 8.02 Protection of City Property…….…….……15

Section 8.03 Indemnification …….……..…….15

Section 8.04 Infringement Indemnification …….……15

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation.….….….15

Section 8.06 Actions By or Against Third Parties…….…….…..15

Section 8.07 Withholding of Payments……...….……..…16

Section 8.08 No Third Party Rights……..……..…16

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes…….……..…16

Section 9.02 Changes Through Fault of Contractor…….…….……..…16

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause…….…….…...16

Section 10.02 Reductions in Federal, State and/or City Funding……...……...….17

Section 10.03 Contractor Default ……..……...17

Section 10.04 Force Majeure ……..……...18

Section 10.05 Procedures for Termination……...…19

Section 10.06 Miscellaneous Provisions ……...19

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment…….…....19

Section 11.02 Electronic Funds Transfer……..……....20

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law…….…….....20

Section 12.02 Jurisdiction and Venue……..…….20

Section 12.03 Resolution of Disputes……...…..20

Section 12.04 Claims and Actions …….…23

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

Section 12.06 General Release……...…24

Section 12.07 No Waiver……..……...…24

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules……..……..…24

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

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

Section 13.04 Compliance With Laws……...……24

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

Section 13.06 Not Used ……..…..…25

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

Section 13.08 MacBride Principles……...….25

Section 13.09 Not Used…….……..25

Section 13.10 Not Used……..…….25

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent……...……...25

Section 14.02 Merger……...……..……..25

Section 14.03 Headings……..…….25

Section 14.04 Notice……..……..26

Section 14.05 Monies Withheld…….…26

Section 14.06 Whistleblower Expansion Act Rider…….26

AFFIRMATION……...……...28

CERTIFICATION BY BROKER……...……..…...29

APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

representations and warranties in the execution of this Agreement.

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

Section 2.02 Conflicts of Interest

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

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

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

D. through H. Not Used

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

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

Section 2.05 Political Activity

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

Section 2.06 Religious Activity

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

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

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

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

Section 3.02 Subcontracting

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

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

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

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

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

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

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

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

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

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

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

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

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

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

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

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

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

or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

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

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

Section 7.03 Professional Liability Insurance

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

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

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

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

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars ($1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or

5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City of a claim upon demand, the Contractor shall reimburse the City for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officers and employees with a defense or reimbursement for attorney's fees.

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

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

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State and/or City Funding

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business Days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination

date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required

payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

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

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

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars ($25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

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

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

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

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

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

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

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

Head.

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

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of

the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

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

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved

Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Not Used

Section 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

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

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.08 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Not Used

Section 13.10 Not Used

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

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

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

Section 14.05 Monies Withheld

When the Commissioner shall have reasonable grounds for believing that: (1) the Contractor will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Contractor or the City arising out of the negligence of the Contractor or the Contractor's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Contractor hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Contractor, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

Section 14.06 Whistleblower Protection Expansion Act Rider

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

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

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

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

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

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

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

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

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

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder *[below]*

_____

Address_____

City_____ State_____ Zip Code_____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

☐ B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

☐ C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By_____

Signature

_____

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

_____
[Name of broker (typewritten)]

_____
[Address of broker (typewritten)]

_____
[Signature of authorized officer of broker]

_____
[Name of authorized officer (typewritten)]

_____
[Title of authorized officer (typewritten)]

_____
[Contact Phone Number for Broker (typewritten)]

_____
[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

_____

NOTARY PUBLIC