



**REQUEST
FOR
PROPOSALS**

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

RFP



PIN

PRE-PROPOSAL CONFERENCE

PROJECT

SUBMISSION DEADLINE

MICHAEL R. BLOOMBERG
Mayor

DAVID J. BURNEY, FAIA
Commissioner

DAVID RESNICK, AIA
Deputy Commissioner
Division of Structures

DEPARTMENT OF DESIGN AND CONSTRUCTION

REQUEST FOR PROPOSALS

PROJECT:

**Consultant for Architectural, Engineering Design and Services during Construction
for James A. Thomas Center, Reconstruction Phase II, Rikers Island**

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PREFACE

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

SECTION I. TIMETABLE

A. RFP Issuance

Pre-Proposal Conference

A pre-proposal conference will be held at 9:30AM on Friday, July 11, 2008 at the Department of Correction, Control Post, 14-14 Hazen Street, Queens, NY 11101, (on 19th Avenue, on the Queens side of the Rikers Island Bridge). Attendance is recommended but not mandatory to propose on the contract described in this RFP, however it is strongly encouraged. **Anyone who wishes to attend must pre-register by completing a typed DOC Clearance Request Form, (see Appendix 2) and return to the contact person listed below, on or before 3:00PM on Monday, July 7, 2008.**

Submission Deadlines

The proposer shall deliver, on or before 4:00 PM on Tuesday, July 22, 2008, the proposal in a clearly marked envelope or package. The proposal shall consist of three clearly marked, sealed packages containing the following (1) Technical Proposal (1 original and 6 copies), (2) Subcontractor Utilization Plan (1 original), and (3) Doing Business Data Form (1 original).

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

Belkis Palacios, (718) 391-1866
Professional Contracts Section
Department of Design and Construction
30-30 Thomson Avenue, 4th Floor (Entrance on 30th Place)
Long Island City, NY 11101
E-mail: palaciob@ddc.nyc.gov

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

B. Inquiries

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website. All inquiries must be directed ONLY to the contact person listed above.

C. Addenda

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the "Acknowledgement of Addenda" form (Attachment 4) to the technical proposal. All addenda shall become a part of the requirements for this RFP.

D. RFP Schedule

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

- a. Identify Consultant: Within six weeks of submission deadline
- b. Complete Contract Registration: Approximately three months from date of consultant selection.
- c. Commence Work: Upon receipt of Notice of Award

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. General

The New York City Department of Design and Construction, Division of Structures, is seeking an appropriately qualified architectural firm to perform architectural, engineering, and construction-related services for the reconstruction of the James A. Thomas Center (JATC), Rikers Island.

The selected consultant shall demonstrate an understanding of and commitment to our goal of design excellence consistent with DDC's mission to deliver the City's construction projects in a safe, expeditious and cost-effective manner while maintaining the highest degree of architectural, engineering and construction quality.

B. Background and Objectives of Project

The reconstruction of the JATC, Rikers Island, will contribute to the Department of Correction's ability to meet projected inmate counts in state-of-the-art facilities at strategically optimal locations to serve the five counties of the City of New York.

C. Joint Ventures and Other Consultant Relationships

The proposer is advised that submission of proposals by joint ventures is permitted. There is no minimum requirement for the proportion of work by either of the two joint ventured parties. Joint ventures must carry the required insurance either as policies written specifically for the joint venture entity, or by using their existing single entity policies with endorsements written for the joint venture activity.

DDC does not recognize the corporate configuration wherein one company is "in association with" another. Relationships between two or more firms shall be either as joint venture or prime consultant/subconsultant. In the event that a proposal is received wherein two or more firms are described as being "in association with" each other, DDC will treat the relationship as one of prime consultant/subconsultant(s). The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms will be relegated to Exhibit C, which lists any subconsultants.

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Project Objectives

It is the objective of this project to complete the restoration of the James A. Thomas Center, Rikers Island, New York, to contemporary functionality as an 1194-bed Men's Detention Center, as part of a program to replace antiquated accommodations and meet projected bed-capacity. There shall be a pre-preliminary phase in which the scope of work shall be finalized. Presently the work is envisaged as including, window and roofing replacement, new HVAC systems, structural remediation and upgrade of the existing 1933 building's functions to current standards. Detailed "Project Objectives" which provide a comprehensive description of the project, including the specific design services required are included in the contract document.

B. Cost Estimate and Contract Term

The estimated cost of the required construction work for the project is \$82,500,000. The term of the contract shall commence on the date of the advice of award and continue until final acceptance of all work designed by the consultant. The time frame for completion of design documents shall be 730 consecutive calendar days, including submission review, response and resubmission periods, allotted as follows:

Pre-preliminary Design	- 5 months
Schematic Design	- 4 months
Design Development	- 5 months
Final Design	- 5 months
Bid, Award, Register Contracts	- 5 months

Value Engineering Sessions shall be 70 consecutive calendar days, in addition to the 730 ccds for design.

C. Insurance

The consultant and all subconsultants performing services for this contract must provide the types and amounts of insurance specified in the contract. The proposer is advised to carefully review such insurance requirements.

D. Contract Provisions

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

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

Projects designed under this contract are subject to Local Law 86 of 2005 (The Green House Building Law)

Local Law 86 applies to capital projects for or in new buildings, for additions to existing buildings and in existing buildings subject to substantial reconstruction, including fit-outs of condominiums units and leased space, costing \$2 million or more. Most covered projects must be built to achieve a “Silver” rating under the Leadership in Energy and Environmental Design (LEED) rating system of the U.S. Green Building Council (LEED “Certified” rating for educational and certain type’s institutional projects). There are additional requirements in the law regarding energy and water efficiency: including those for plumbing systems, boiler replacements, and/or lighting and HVAC comfort control systems, above certain dollar threshold. The law does not apply to projects within spaces classified in certain occupancy groups, including residential and industrial, and is subject to certain exemptions.

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

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

The contract resulting from this Request for Proposals will be subject to Local Law 129 of 2005, the Minority-Owned and Women-Owned Business Enterprise (M/WBE) program. Please refer to Attachment 6 for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms.

If an M/WBE Subcontractor Utilization Plan is required for this proposal, the plan must be submitted in a separate, sealed envelope marked “Subcontractor Utilization Plan” at the same time the technical proposal is submitted. This envelope will be opened only when and if the firm is selected for fee negotiations. Failure to include or properly fill out the Subcontractor Utilization Plan will result in the rejection of the Proposal as non-responsive. If a full waiver has been granted, the proposer shall include the signed waiver form in the envelope *in lieu of* a Subcontractor Utilization Plan. If a partial waiver has been granted, the proposer shall include the signed waiver form in the envelope with its Subcontractor Utilization Form.

Note: As fully explained in Attachment 6, if you are planning to request a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be considered.

G. Compliance with Local Law 34 of 2007

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

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

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

Submit proposal in a clearly labeled, sealed package as follows:

1. Technical Proposal (1 original and 6 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus completed forms 254 and 255 for Proposer and its subconsultants. (These forms are available at <http://www.nyc.gov/html/ddc/html/otherfrm.html>)
 2. Fee Proposal(s) (1 original): **To be submitted ONLY upon request.** The Fee Proposal shall consist of the elements requested in Subsection C Below. The form for the submission of the fee proposal is included as Attachment 3 of this RFP.
- B. Technical Proposal (1 original and 6 copies): The Technical Proposal shall contain the information described below.
1. A cover letter of no more than three pages, including the company name and address, and the name, address and telephone number of the person authorized to represent the responding firm. (***Be sure to refer to the proper DDC project number and title.***) Include a brief history of the firm, the overall firm organization, its goals and objectives, and a statement of its design philosophy.
 2. Experience of Consultant and Subconsultants

Submit Attachment 2 (Part A) to identify by name the subconsultants the proposer intends to use for this project. Submit the following for the proposer and each subconsultant identified in Attachment 2:

- A SF-254 Form, which lists the number of full-time staff currently employed and the projects on which the firm is currently working, has completed and future projects and commitments. Provide the value of these contracts and their schedules. (This form is available at <http://nyc.gov/html/ddc/html/otherfrm.html>).

- Provide examples of up to five completed projects similar in scope and type to this project completed within the last ten years. Visual materials can take the form of a printed brochure, photographs, drawings or similar images.
- In-house or subconsultant expertise must be provided for the disciplines set forth in Attachment 2. If any subconsultants will be utilized to deliver the required services, discuss and demonstrate the extent and quality of each sub consultant's relevant experience inclusive of client satisfaction information and a discussion of problems that may have arisen during delivery of services and how they were resolved.

3. Key Personnel for the Project

Submit Attachment 2 (Part B) to identify by name the individuals the proposer and its subconsultant will provide as Key Personnel for the Project. Submit the following for each individual identified in Attachment 2 (Part B):

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

4. Technical Approach

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

5. Project Methodology

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

6. Statement of Understanding:

The Statement of Understanding form included as Attachment 1 of this RFP should be signed by a partner or corporate officer of the proposing firm and submitted with the firm's Technical Proposal.

7. Acknowledgement of Addenda:

The Acknowledgement of Addenda form (Attachment 4) serves as the proposer's acknowledgement of the receipt of addenda to this RFP that may have been issued by DDC prior to the Proposal Due Date and Time. The proposer should complete this form as instructed on the form.

C. Fee Proposal

A Form for the submission of the fee proposal is included as Attachment 3 of the RFP. Upon written notification, the proposer must submit the Fee Proposal in a separate clearly labeled, sealed package within ten business days of such notice. The Fee Proposal shall consist of the two fee components outlined below: (1) Design Fee, and (2) All Inclusive Hourly Rates for specific titles of personnel. Once DDC and the selected proposer have negotiated these fee components, the proposer shall then be required to submit a detailed Staffing Plan for the Pre-preliminary Services set forth in the Project Objectives. DDC and the selected proposer shall negotiate a Maximum Amount for Pre-preliminary Services. As indicated in the contract, payment for Pre-preliminary Services shall be on a time card basis, up to the Maximum Amount agreed to by the parties. The Consultant shall not be entitled to payment in excess of the Maximum Amount, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

Design Fee: The Design Fee shall be an amount that shall cover all costs and expenses incurred by the consultant an/or its subconsultant(s) in the performance of all required design and construction related services for the Project, as set forth in Article 7 of the attached contract, including all expenses related to management, overhead and any anticipated profit.

All Inclusive Hourly Rates: The Proposer shall submit All Inclusive Hourly Rates for specified titles of personnel. Such rates SHALL ONLY BE USED for services the consultant is directed to perform on a Time Card basis (Pre-Preliminary Services or Additional Professional Services). Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the consultant and/or its subconsultant(s) in the performance of all required services for the Project; (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. Such rates shall apply to all hours during which such personnel perform services for the Project, including overtime hours.

D. Proposal Package Contents (“Checklist”)

The Proposal Package should contain the following three packages:

1. Technical Proposal (1 original and 6 copies):
Sealed envelope clearly marked as “Technical Proposal”, including
 - Statement of Understanding (Attachment 1)
 - Technical Proposal – Forms (Attachment 2)
 - Acknowledgement of Addenda (Attachment 4)

2. Subcontractor Utilization Plan (Attachment 6)
Sealed envelope clearly marked as “Subcontractor Utilization Plan”.

3. Doing Business Data Form (Attachment 7)
Sealed envelope clearly marked as “Doing Business Data Form” containing a completed doing Business Data Form.

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Technical Proposal Evaluation

1. Selection Process:

This is a Quality Based Selection (QBS) project. DDC will rank proposals by technical merit, and negotiate a fair and reasonable price with the highest ranked. A DDC evaluation committee will review, evaluate and score all Technical Proposals in accordance with qualitative and quantitative criteria established in Subsection 2 below. This evaluation and scoring will determine the proposer's score. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their Technical Proposals, after which their scores may be re-evaluated. Proposers shall be ranked in accordance with the scores. The ranking will be submitted to the Executive Consultant Selection Committee (ECSC) who will certify the results and authorize fee negotiation to commence with the highest ranked firm. Should negotiations fail with the highest ranked firm, the ECSC will authorize fee negotiation with the next highest ranked firm. The firm whose proposal is determined to be the most advantageous to the City will be awarded the project.

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

- a. Experience of Firm and Subconsultant(s) (Weight 40%)
- b. Key Personnel (Weight 30%)
- c. Firm's Technical Approach and Project Methodology (Weight 30%)

3. Basis of Award

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

4. Supply and Service Report

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

5. VENDEX

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

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

(a) Submission: Vendex Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9th Floor, New York, New York 10007.

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

6. Contract Finalization

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

SECTION VI. GENERAL INFORMATION TO PROPOSERS

- A. Non-Binding Acceptance of Proposals: This RFP does not commit the City to award a contract for any services.
- B. Incurring Proposal Costs: The City of New York is not liable for any costs incurred in the preparation of a response to this RFP. If Proposers choose to participate in negotiations, they may be asked to submit such price, technical data, or other revisions to their proposals as may be required by the City.
- C. Confidentiality: The contents of a Proposer's RFP response are not deemed confidential unless the Proposer identifies those portions of its response which it deems confidential, or containing proprietary information, or trade secrets. The Proposer must provide justification as to why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal.
- D. Reserved Rights: All proposal material submitted becomes the property of the City and the City reserves the right, at its sole discretion, to:
1. Reject any and all proposals received in response to this RFP;
 2. Award a contract to other than the lowest-fee Proposer;
 3. Waive, modify or correct any irregularities in proposals received, after prior notification to the Proposer;
 4. Use without limitation any or all of the ideas from submitted proposals;
 5. Contract for all or selected parts of the Proposer's proposal, selecting from the services offered without affecting the itemized pricing;
 6. Extend the time for submission of all proposals after notification to all prospective Proposers known to have received the RFP;
 7. Conduct discussions with offerers submitting acceptable proposals, award may be made without any discussion;
 8. Terminate negotiations with a selected Proposer and select the next most responsive Proposer, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable time of the commencement of negotiations as determined by the Commissioner;
 9. Postpone or cancel this RFP, in whole or in part, and to reject all proposals.

E. Contractual Requirements

1. Any firm awarded a contract as a result of this RFP will be required to sign the City's standard contract for Consultant Services. The requirements for performance of this contract, as well as insurance, payment terms and all other provisions are contained in the contract.
2. Any information that may have been released either orally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither the City nor the Proposer.
3. The City will deal only with the consultant and the City has no financial obligation to sub-consultants. However, all sub-consultants are subject to the City's contracting requirements including Equal Employment Opportunity (Executive Order #50 of 1980 as revised).
4. The prompt Payment provisions set forth in the edition of the Procurement Policy Board Rules in effect at the time of this solicitation shall be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to vendors of interest payments made after the required payment date except as set forth in the Rules. The consultant must submit a proper invoice to receive payment, except where the contract provides that the consultant shall be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

Determinations of interest due shall be made in accordance with the provisions of the Procurement Policy Board Rules and General Municipal Law 3-a.

5. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, 10th Floor, New York, NY 10007; the telephone number is (212) 669-3232. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.
6. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provision of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by accessing the City's website at nyc.gov/ppb.
7. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City

Mac Bride Principles Law; submission by the proposer of the New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to Local Based Enterprises program and its implementation rules.

8. Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal agency non-responsiveness determinations and agency non-responsibility determinations and to protest an agency's determination regarding the solicitation or award of a contract.
9. Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.
10. The Agency has determined that the contract to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

ACCO Signature

Date

ATTACHMENT 1

STATEMENT OF UNDERSTANDING

By signing in the space provided below, the undersigned certifies that the respondent (i) has read and understands the scope and requirements of this project, as described in the RFP and all attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the standard design contract, attached hereto, and (iv) will, if its proposal is accepted, enter into the attached standard contract with the New York City Department of Design and Construction.

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

- Yes**
- No**

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

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

Name of Proposer

By: _____
Signature of Partner or Corporate Officer

Date

Printed Name

Title

Firm

EIN #

Address

Email Address

ATTACHMENT 2

TECHNICAL PROPOSAL FORMS

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

As set forth in Section IV(B)(2) of the RFP, the Proposer must identify by name the specific Subconsultants the proposer intends to use to perform the required services. Specifically, identify the Subconsultants for the services set forth below. If for any of the areas set forth below, the Proposer intends to perform the services with its own employees, so indicate by inserting the words "In House".

Architectural Design Services: _____

Structural Engineering Design Services: _____

Electrical Design Services: _____

HVAC & Fire Protection Design Services: _____

Plumbing Design Services: _____

Landscape Architectural Design Services: _____

High Performance Design Services: _____

Energy Efficient Lighting Design Services: _____

Security Systems Design Services: _____

Interior Design Services: _____

Cost Estimating Services: _____

ATTACHMENT 2 (continued)

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

As set forth in Section IV(B)(3) of the RFP, identify by name the individuals who will perform the required services for the titles of Key Personnel set forth below. The individuals identified as Key Personnel will be included in Exhibit C to the attached contract. Submit the following for each individual identified below:

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

Architectural Design Services:

Principal: _____
 Project Manager: _____
 Project Architect: _____
 Senior Architectural Designer: _____

Structural Engineering Services:

Project Engineer: _____
 Senior Structural Designer: _____

Electrical Engineering Services:

Project Engineer: _____
 Senior Electrical Designer: _____
 Fire Alarm Specialist: _____

HVAC/Fire Protection Services:

Project Engineer: _____
 Senior HVAC Designer: _____
 Senior Fire Protection Designer: _____

Plumbing Engineering Services:

Project Engineer: _____
 Senior Plumbing Designer: _____

Interior Design Services:

Senior Interior Designer: _____

Landscape Architectural Services:

Senior Landscape Architect: _____

High Performance Design Services:

High Performance Designer: _____
LEED Specialist: _____

Security Systems Design Services:

Senior Security System Designer: _____

Energy Efficient Lighting Design Services:

Lighting Designer: _____

Cost Estimating Services:

Senior Estimator: _____

ATTACHMENT 3

FEE PROPOSAL FORM: FEE CURVE FOR DESIGN FEE

FMS ID: C135JATC

Project: Consultant for Architectural, Engineering Design and Services during Construction for James A. Thomas Center, Reconstruction Phase II, Rikers Island

Submission: To be submitted ONLY upon request: The proposer shall submit Attachment 3 as its Fee Proposal. Attachment 3 is to be submitted together in a clearly marked, sealed envelope.

(1) Design fee: In the space provided below, for each \$5,000,000 increment in estimated construction cost from \$75,000,000 to \$150,000,000, the proposer shall indicate a design fee, calculated as a percent of the total estimated cost of construction. For estimated construction costs between the \$5,000,000 levels designated, the design fee will be interpolated on a straight line basis between the corresponding two dollar levels.

<u>Total Estimated Construction Cost</u>	<u>Design Fee as a Percent of Estimated Construction Cost</u>	<u>Amount of Estimated Design Fee</u>
\$75,000,000	_____ %	\$ _____
\$80,000,000	_____ %	\$ _____
\$85,000,000	_____ %	\$ _____
\$90,000,000	_____ %	\$ _____
\$95,000,000	_____ %	\$ _____
\$100,000,000	_____ %	\$ _____
\$105,000,000	_____ %	\$ _____
\$110,000,000	_____ %	\$ _____
\$115,000,000	_____ %	\$ _____
\$120,000,000	_____ %	\$ _____
\$125,000,000	_____ %	\$ _____
\$130,000,000	_____ %	\$ _____
\$135,000,000	_____ %	\$ _____
\$140,000,000	_____ %	\$ _____
\$145,000,000	_____ %	\$ _____
\$150,000,000	_____ %	\$ _____

ATTACHMENT 3- (continued)

FEE PROPOSAL FORM

Project: Consultant for Architectural, Engineering Design and Services during Construction for James A. Thomas Center, Reconstruction Phase II, Rikers Island

(2) ALL-INCLUSIVE HOURLY RATES: The Proposer shall submit All Inclusive Hourly Rates for specified titles of personnel. Such rates SHALL ONLY BE USED for those services the consultant is directed to perform on a Time Card basis (Pre-Preliminary Services or Additional Professional Services). Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project, (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. Such rates shall apply to all hours during which such personnel perform services for the Project, including overtime hours.

ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Architect.....	_____
Project Manger (Architecture).....	_____
Senior Architectural Designer.....	_____
Junior Architectural Designer.....	_____
Architectural Technician.....	_____
Senior Draftperson/CAD.....	_____
Junior Draftperson/CAD.....	_____

STRUCTURAL ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (Structural Engineering).....	_____
Project Manger (Structural Engineering).....	_____
Senior Structural Designer	_____
Junior Structural Designer	_____
Engineering Technician.....	_____
Senior Engineering Draftperson/CAD.....	_____
Junior Engineering Draftperson/CAD.....	_____

ELECTRICAL ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (Electrical Engineering).....	_____
Project Manger (Electrical Engineering).....	_____
Senior Electrical Designer	_____
Junior Electrical Designer	_____

Fire Alarm Specialist:	_____
Engineering Technician.....	_____
Senior Engineering Draftperson/CAD.....	_____
Junior Engineering Draftperson/CAD.....	_____

HVAC AND FIRE PROTECTION DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (HVAC Engineering).....	_____
Project Manger (HVAC Engineering).....	_____
Senior HVAC Designer	_____
Junior HVAC Designer	_____
Senior Fire Protection Designer	_____
Junior Fire Protection Designer	_____
Engineering Technician.....	_____
Senior Engineering Draftperson/CAD.....	_____
Junior Engineering Draftperson/CAD.....	_____

PLUMBING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (Plumbing Engineering).....	_____
Project Manger (Plumbing Engineering).....	_____
Senior Plumbing Designer	_____
Junior Plumbing Designer	_____
Engineering Technician.....	_____
Senior Engineering Draftperson/CAD.....	_____
Junior Engineering Draftperson/CAD.....	_____

INTERIOR DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Interior Designer.....	_____
Junior Interior Designer.....	_____

LANSCAPRE ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Landscape Architect.....	_____
Junior Landscape Architect.....	_____

COST ESTIMATING SERVICES:

TITLE

ALL INCLUSIVE HOURLY RATE

Senior Estimator.....
Junior Estimator.....

HIGH PERFORMANCE DESIGN SERVICES:

TITLE

ALL INCLUSIVE HOURLY RATE

High Performance Designer.....
LEED Specialist.....

SECURITY SYSTEMS DESIGN SERVICES:

TITLE

ALL INCLUSIVE HOURLY RATE

Senior Security System Designer
Junior Security System Designer

ENERGY EFFICIENT LIGHTING DESIGN SERVICES:

TITLE

ALL INCLUSIVE HOURLY RATE

Lighting Designer

Do not leave blanks - do not retype this sheet.

Name of Proposer

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Firm

EIN #

ATTACHMENT 4

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS:	PIN:
--	-------------

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

___ Part I

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

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

___ Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT 5

CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of Vendex Compliance.

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

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

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

ATTACHMENT 6

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

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

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

The Contractor must comply with all applicable M/WBE requirements for this Contract.

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

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

PART A

PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The **Target Subcontracting Percentage** applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line (1)).

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

A prospective contractor may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at poped@ddc.nyc.gov. or via facsimile at (718) 391-1885. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)).

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1 million.

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

4. If **Subcontractor Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under \$1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the **Target Subcontracting Percentage**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below.

THE BIDDER/PROPOSER MUST FULLY COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). BIDS/PROPOSALS WHICH DO NOT INCLUDE A

COMPLETED SUBCONTRACTOR UTILIZATION PLAN WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE SUBCONTRACTOR UTILIZATION PLAN (SCHEDULE B, PART II) INDICATES THAT THE BIDDER/PROPOSER DOES NOT INTEND TO AWARD THE TARGET SUBCONTRACTING PERCENTAGE, THE BID/PROPOSAL WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS THE AGENCY HAS GRANTED A WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE (SCHEDULE B, PART III).

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

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

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

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

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

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

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

(a) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(b) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;

(d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

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

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

PART B

MISCELLANEOUS

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

2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

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

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals**.

ARTICLE II. ENFORCEMENT

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

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

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

(a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;

(b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Contractor is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Contractor to be in breach of Contract;

(f) withholding payment or reimbursement;

(g) determining not to renew the Contract;

(h) assessing actual and consequential damages;

(i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

(j) exercise rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or

(k) take any other appropriate remedy.

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

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

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

ATTACHMENT 6

M/WBE PROGRAM

SUBCONTRACTOR UTILIZATION PLAN

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

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

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

Rejection of the Proposal: The proposer must fully complete the Subcontractor Utilization Plan (Part II) set forth on the following pages. Proposals that do not include a completed Subcontractor Utilization Plan (Part II) will be deemed to be non-responsive, unless a full waiver of the Target Subcontracting Percentage is granted (Subcontractor Utilization Plan, Part III). In the event that the proposer’s Subcontractor Utilization Plan (Part II) indicates that the proposer does not intend to award the Target Subcontracting Percentage, the proposal will be deemed to be non-responsive, unless the Agency has granted a waiver of the Target Subcontracting Percentage (Subcontractor Utilization Plan, Part III).

Tax ID #: _____

PIN#: _____



THE CITY OF NEW YORK

Subcontractor Utilization Plan -Part I: Agency's Target

This page to be completed by contracting agency

Contract Overview

Pin # 8502008CR0017P FMS Project ID#: C135JATC
 Project Title James H. Thomas Center (JATC)-Reconstruction at Rikers Island
 Contracting Agency Department of Design and Construction
 Agency Address 30-30 Thomson Ave City Long Island City State NY Zip Code 11101
 Contact Person James A. Cerasoli Title MWBE Senior Compliance Analyst
 Telephone # (718) 391-1549 Email cerasoli@ddc.nyc.gov

Project Description *(attach additional pages if necessary)*

Consultant for Architectural, Engineering Design and Serviced During Construction for James A. Thomas Center Reconstruction Phase II, Rikers Island.

(1) **Target Subcontracting Percentage**
 Percentage of total contract dollar value that agency estimates will be awarded to subcontractors in amounts under \$1 million for construction and professional services. _____ 25%

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

Group	Construction	Professional Services
Black American	_____	20 %
Hispanic American	_____	10 %
Asian American	_____	No Goal
Caucasian Female	No Goal	35 %
Total Participation Goals	(2) %	(3) 65 %

Tax ID #: _____

Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan

This page and the next (Part II herein) are to be completed by the bidder/proposer. NOTE: Bids/proposals which do not include a completed subcontractor utilization plan (Part II herein) will be deemed to be non-responsive, unless a full waiver of the target subcontracting percentage is granted (Part III herein).

Section I: Prime Contractor Contact Information

Tax ID # _____ FMS Vendor ID # _____
 Business Name _____ Contact Person _____
 Address _____
 Telephone # _____ Email _____

Section II: General Contract Information

1. Define the industry in which work is to be performed.

- **Construction** includes all contracts for the construction, rehabilitation, and/or renovation of physical structures. This category does include CM Build as well as other construction related services such as: demolition, asbestos and lead abatement, and painting services, carpentry services, carpet installation and removal, where related to new construction and not maintenance.
- **Professional Services** are a class of services that typically require the provider to have some specialized field or advanced degree. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health services, pure construction management, environmental analysis, scientific testing, architecture and engineering, and traffic studies, and similar services.

a. Type of work on Prime Contract (Check one):

- Construction
- Professional Services

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

- Construction
- Professional Services
- Other

2. What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts? _____ %

3. Will you award subcontract(s) in amounts below \$ 1 million for construction and/or professional services contracts within the first 12 months of the notice to proceed on the contract? Yes No

Section III: Subcontractor Utilization Summary

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

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

- Subcontracts under \$1M (construction/professional services):** Enter the value you expect to award to subcontractors in dollars for amounts under \$1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2.
- Total Bid/Proposal Value:** Provide the dollar amount of the bid/proposal.
- Calculated Target Subcontracting Percentage:** The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under \$1 million for construction and/or professional services. **This percentage must equal or exceed the percentage listed by the agency on page 1, at line (1).**

! Important: The "Calculated Target Subcontracting Percentage" MUST equal or exceed the Target Subcontracting Percentage listed by the agency on Page 1, Line (1) or the bid/proposal will be deemed non-responsive.

Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan – cont.

Step 2:
Calculate value of subcontractor participation goals

		Subcontracts under \$1M (construction/professional services)	
a.	Copy value from Step 1, line (4) – the total value of all expected subcontracts under \$1M for construction and/or professional services	\$	
		↓	↓
b.	<ul style="list-style-type: none"> • From line a. above, allocate the dollar value of "Subcontracts under \$1M" by Construction and Professional Services. • If all subcontracts under \$1M are in one industry, enter '0' for the industry with no subcontracts. • Amounts listed on these lines should add up to the value from line a. 	Construction	Professional Services
c.	<p style="text-align: center;">Subcontracts under \$1M by Industry</p> <ul style="list-style-type: none"> • For Construction enter percentage from line (2) from Page 1. • For Professional Services enter percentage from line (3) from Page 1. • These Percentages must be copied from the Agency Plan, or the bid/proposal will be deemed non-responsive. 	\$ _____	\$ _____
		x _____ %	x _____ %
d.	Value of Total Participation Goals	\$ _____	\$ _____

Step 3:

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

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

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

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

Section IV: Vendor Certification

I hereby 1) acknowledge my understanding of the MWBE requirements as set forth herein and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder; 2) affirm that the information supplied in support of this subcontractor utilization plan is true and correct; 3) agree, if awarded this Contract, to comply with the MWBE requirements of this Contract and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this contract; and 4) agree, if awarded this contract, to make all reasonable, good faith efforts to attain the Target Subcontracting Percentage as specified by the Agency, and to solicit and obtain the participation of MWBEs so as to meet the required Subcontractor Participation Goals.

Signature _____	Date _____
Print Name _____	Title _____

ATTACHMENT 7 **DOING BUSINESS DATA FORM**

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

What is the purpose of this *Data Form*?

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

Why have I received this *Data Form*?

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

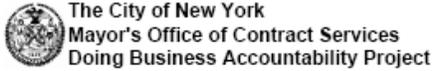
What are the new campaign contribution limits for people doing business with the City?

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

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

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

5/16/08



Doing Business Data Form

To be completed by the City Agency prior to distribution	
Agency: DDC	Transaction ID: 8502008CR0017P
Check One:	Transaction Type (check one):
<input checked="" type="checkbox"/> Proposal	<input type="checkbox"/> Concession <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise <input type="checkbox"/> Grant <input type="checkbox"/> Pension Investment Contract

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

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

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

Section 1: Entity Information

Entity Name: _____
 Entity EIN/TIN: _____

Entity Filing Status (select one): <input type="checkbox"/> Entity has never completed a Doing Business Data Form. <i>Fill out the entire form.</i> <input type="checkbox"/> Change from previous Data Form dated _____. <i>Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.</i> <input type="checkbox"/> No Change from previous Data Form dated _____. <i>Skip to the bottom of the last page.</i>
--

Entity is a Non-Profit: Yes No

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

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

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

Doing Business Data Form

EIN/TIN: _____

Page 2 of 4

Section 2: Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

This person replaced former COO: _____ on date: _____

Doing Business Data Form

EIN/TIN: _____

Page 3 of 4

Section 3: Principal Owners

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

There are no owners listed because (select one):

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

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not vendor): _____

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

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Doing Business Data Form

EIN/TIN: _____

Page 4 of 4

Section 4: Senior Managers

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

Senior Managers:

First Name: _____ MI: _____ Last: _____
Office Title: _____ Employer (if not vendor): _____
Birth Date (mm/dd/yy): _____ Home Phone #: _____
Home Address: _____

First Name: _____ MI: _____ Last: _____
Office Title: _____ Employer (if not vendor): _____
Birth Date (mm/dd/yy): _____ Home Phone #: _____
Home Address: _____

First Name: _____ MI: _____ Last: _____
Office Title: _____ Employer (if not vendor): _____
Birth Date (mm/dd/yy): _____ Home Phone #: _____
Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____
Name: _____ Removal Date: _____
Name: _____ Removal Date: _____

Vendor Certification

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

Name: _____
Signature: _____ Date: _____
Vendor Name: _____
Title: _____ Work Phone #: _____

Return the completed Data Form to the contracting agency along with your proposal.

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



The City of New York Department of Correction		Special Operations Division Rikers Island Security Unit
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Form	CLEARANCE REQUEST AND AUTHORIZATION FORM	Effective 3/16/98
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SECTION #1 – Instructions

Complete all of the required information in Sections #2, #3 and #4. Submission of a clearance request does not necessitate approval. The command receives notification of denials via fax and/or in writing. Confirmation of approvals shall be telephonically effected as follows:

Wardens/Commanding Officers or Deputy Wardens shall initiate facility clearance requests. All other commands (bureaus, divisions or units) – Senior Staff Members or Commanding Officers or Executive Officers, only. It is the responsibility of each facility/command to ensure that visitors are advised of the security/safety issues of the Riker’s Is. Correctional Complex (e.g., speed limit, securing vehicles, display of ID/pass, unauthorized items)

<u>Category</u>	<u>Clearance Location</u>	<u>Telephone #</u>
Vehicle	Construction Control	(718) 546-1578
Access/Passes	Trailer	(718) 546-1565
Public Transportation	Rikers Is. Main Control Bldg.	(718) 546-1539
Problems/Information	Rikers Is. Clearance Office	

SECTION #2 – Command Requests / Escort Information

Date Requested:	Requested By (Print Last and First)	Rank/Title:	Shield/ID#	Command	Telephone #:
Uniform Escort <input type="checkbox"/> Yes <input type="checkbox"/> No	Escort Officer (Print Last and First)	Rank:	Shield #:	Command:	Telephone #: (___) ___ - ____
Command <input type="checkbox"/> Approved <input type="checkbox"/> Denied	Sr. Staff/Comm. Off./Dep.	Rank/Title:	Shield/ID #:	Command:	Telephone #:

SECTION #3 – Clearance / Visit Information - COMPANY NAME:

Date of Visit:	Visitors' Full Name	Title	Visitors' Full Name	Title	Visitors' Full Name	Title
	1.		6.		11.	
Estimated Time of 10:00 AM	2.		7.		12.	
Agency / DOC	3.		8.		13.	
DDC/JATC	4.		9.		14.	
	5.		10.		15.	

Destinations (Check All That Apply):

<input type="checkbox"/> ARDC	<input checked="" type="checkbox"/> JATC	<input type="checkbox"/> Assets	<input type="checkbox"/> Correction Industries Div./Support	<input type="checkbox"/> Riker's Is Main Control	<input type="checkbox"/> Riker's Is Visitor Control
<input type="checkbox"/> AMKC	<input type="checkbox"/> NIC	<input type="checkbox"/> Bureau Chiefs' Trailer	<input type="checkbox"/> DDC (Dept. of Design & Construction)	<input type="checkbox"/> Transportation Div.	
<input type="checkbox"/> CIFM/HHP	<input type="checkbox"/>	<input type="checkbox"/> Chapel	<input type="checkbox"/> Dockhouse/Ferryboats (OBCC Annex)	<input type="checkbox"/> Shore Rd. Trailer (Specify	
<input type="checkbox"/> GMDC	<input type="checkbox"/>	<input type="checkbox"/> Chief of Department's Field Office	<input type="checkbox"/> Firehouse/K-9 Unit	<input type="checkbox"/> Special Operations Div. (Specify	
<input type="checkbox"/> GRVC	<input type="checkbox"/> WF/CDU	<input type="checkbox"/> Construction Management Unit	<input type="checkbox"/> Powerhouse	<input type="checkbox"/> Other (Specify	

Reason For	<input type="checkbox"/> Delivery	<input type="checkbox"/> Repair	<input type="checkbox"/> Volunteer Work	Type of	<input type="checkbox"/> Gate #1	<input type="checkbox"/> East/West Parking
JATC	<input type="checkbox"/> Clergy	<input checked="" type="checkbox"/> Meeting	<input type="checkbox"/> Survey	<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Gate #2 Restricted	<input type="checkbox"/> Gate #1
						<input type="checkbox"/> Other (Specify)

SECTION #4 – Vehicle Information

Check Here if None **In the event the number of vehicles exceeds four (4), attach additional vehicle information on a**

Vehicle	Year	Make	Model	Color	License Plate	State	Vehicle Type				
#1							<input type="checkbox"/> Car	<input type="checkbox"/> Van	<input type="checkbox"/> Bus	<input type="checkbox"/> Truck	<input type="checkbox"/> Other
#2							<input type="checkbox"/> Car	<input type="checkbox"/> Van	<input type="checkbox"/> Bus	<input type="checkbox"/> Truck	<input type="checkbox"/> Other
#3							<input type="checkbox"/> Car	<input type="checkbox"/> Van	<input type="checkbox"/> Bus	<input type="checkbox"/> Truck	<input type="checkbox"/> Other
#4							<input type="checkbox"/> Car	<input type="checkbox"/> Van	<input type="checkbox"/> Bus	<input type="checkbox"/> Truck	<input type="checkbox"/> Other

SECTION #5 – FOR SOD USE ONLY:

Date Received:	Reviewed By (Clearance Officer)	Rank:	Shield #:	<div style="border: 3px double black; padding: 10px; width: 100%; height: 100%;"> SOD Time Stamp </div>
Time Received:	Approved By (SOD/RISU)	Rank:	Shield #:	
Final Determination <input type="checkbox"/> Approved <input type="checkbox"/> Denied	Type of Access/Pass:	<input type="checkbox"/> Gate #1 Restricted	<input type="checkbox"/> East/West Parking Field	
		<input type="checkbox"/> Gate #1 Unrestricted	<input type="checkbox"/> Other (Specify)	

Remarks:

THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF STRUCTURES
30-30 THOMSON AVENUE
LONG ISLAND CITY, NEW YORK NEW YORK 11101

CONTRACT FOR
ARCHITECTURAL, ENGINEERING
AND CONSTRUCTION RELATED SERVICES

PROJECT: **James A. Thomas Center**
Reconstruction Phase II

FMS ID: **C135JATC**

REGISTRATION
NUMBER: _____

PIN NUMBER: **8502008CR0017P**

CONSULTANT:

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

WITNESSETH:

WHEREAS, the City desires to have architectural, engineering and construction related services performed for the Project described in the Project Objectives (Exhibit B), and

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

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

ARTICLE 1 Definitions

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

Exhibit A	Contract Information
Exhibit B	Project Objectives
Exhibit C	Key Personnel and Subconsultants
Exhibit D	Design Fee
Exhibit E	Titles and All Inclusive Hourly Rates
Exhibit F	Minimum Requirements Per Title
Exhibit G	M/WBE Subcontractor Utilization Plan
Exhibit H	Design Consultant Guide dated August 2003
Exhibit I	DDC High Performance Building Guidelines dated October 2005

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

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

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

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

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

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

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

1.9 "Contract" or "Contract Documents" shall mean the Agreement and all components thereof, as set forth in Article 1.1.

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

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

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

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

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

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

1.16 "Project" shall mean the Project for which architectural, engineering and construction related services are required, as set forth in the Project Objectives (Exhibit B).

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

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

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

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

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

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

ARTICLE 2 Compliance with Laws

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

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

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

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

ARTICLE 3 Agreement to Serve

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

ARTICLE 4 The Project

4.1 The Consultant shall provide all architectural, engineering and construction related services required for the Project set forth in the Project Objectives (Exhibit B).

ARTICLE 5 The Consultant's Personnel

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

5.2 Key Personnel: The individuals listed in Exhibit C were identified as Key Personnel by the Consultant in its Proposal for the Contract. The Consultant specifically agrees to assign to the Project for its entire duration the individuals identified in Exhibit C as Key Personnel, unless otherwise approved by the Commissioner. Failure by the Consultant to provide such Key Personnel shall be grounds for termination for cause in accordance with Article 14.

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

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

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

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

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

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

5.4 Services on a Time Card Basis: The Consultant may be directed to perform services for the Project on a time card basis. Such services include, but are not limited to, Pre-preliminary Services and Additional Professional Services. Services on a time card basis shall not be performed by the Consultant unless expressly authorized in advance in a written directive from the Commissioner. The requirements set forth below apply to the performance of such services.

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

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

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

- (a) Key Personnel: Required titles and specific individual for each title
- (b) Other Personnel: Required titles and specific individual for each title
- (c) All Inclusive Hourly Rates for each specific individual, in accordance with Exhibit E
- (d) Total estimated hours for each title
- (e) Total estimated amount for each title
- (f) Total estimated amount for all required titles

5.4.4 Payment Limitation: In accordance with Article 7, payment to the Consultant for the performance of services on a time card basis shall be limited to those personnel set forth in the approved Staffing Plan. The Consultant shall not be entitled to payment for any personnel who are not included in the approved Staffing Plan. The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Exhibit F, and (2) such principal is included in the approved Staffing Plan for such title.

5.4.5 Proposed Staffing Plan: Within five (5) business days of written direction from the Commissioner,

the Consultant shall submit a proposed Staffing Plan for services on a time card basis. Such proposed Staffing Plan shall include the information set forth above. With respect to the proposed personnel, the Consultant shall submit the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications.

5.4.6 Review and Approval of Staffing Plan: The Commissioner shall review the Consultant's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. The Consultant shall revise the proposed Staffing Plan as directed, until the same is approved in writing by the Commissioner.

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

5.5 Employees of the Consultant: The Consultant is solely responsible for the work and department of all its personnel and its Subconsultants. These are employees of the Consultant or its Subconsultant and not of the City.

ARTICLE 6 Scope of Services

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

6.2 Pre-preliminary Services: The Consultant shall provide Pre-preliminary Services, as set forth in the Project Objectives.

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

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

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

6.3.2 Design Criteria: All required Design Services shall be in accordance with the following: (1) the Project Objectives, (2) the Design Consultant Guide, (3) High Performance Building Guidelines, (4) the Client Agency Design Standards, and (5) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code, Local Law 86, and the Americans With Disabilities Act. In the event of any conflict between the Project Objectives and the Design Consultant Guide, the Project Objectives shall prevail.

6.3.3 Green Building Law: The Project designed under this contract is subject to Local Law 86 of 2005 (the Green Building Law). Local Law 86 applies to capital projects for or in new buildings, for additions to existing buildings and in existing buildings subject to substantial reconstruction, including fit-outs of condominium units and leased space, costing \$2 million or more. Most covered projects must be built to achieve a "Silver" rating under the Leadership in Energy and Environmental Design (LEED) rating system of the U.S. Green Building Council (LEED "Certified" rating for educational and certain types of institutional projects). There are additional requirements in the law regarding energy and water efficiency: including those for plumbing systems, boiler replacements, and/or lighting and HVAC comfort control systems, above certain dollar thresholds. The law does not apply to projects within spaces classified in certain occupancy groups, including residential and industrial, and is subject to certain exemptions.

In addition to preparing the required documentation for LEED certification, if applicable, the consultant will be required to provide project data for the purposes of project reporting using the Local Law 86 reporting worksheet, as

requested by the agency. Such data includes project description, construction costs, LEED credits sought and earned (if applicable), reductions in energy cost and in water use, and incremental constructions costs.

6.3.4 Separate Design Documents: The Consultant shall prepare and organize the design documents to permit the separate bidding and award of contracts for general construction work, plumbing work, electrical work and HVAC work. All costs for the preparation of separate design documents are deemed included in the Design Fee set forth in Article 7 hereof.

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

6.3.6 Approval of Design Documents: All required design documents, including cost estimates, are subject to review and written approval by the Commissioner. Final design documents are subject to approval by all regulatory agencies whose approval of the design is required, including without limitation the Department of Buildings, and, if required, the Art Commission and the Landmarks Preservation Commission.

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

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

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

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

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

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

- (a) Services set forth in the Design Consultant Guide, Section VII (B)
- (b) Changes to the design documents, as set forth in Articles 6.8.1(b) and 6.8.2 below
- (c) any other professional services, determined by the Commissioner to be necessary for the Project.

6.4.2 Additional Professional Services shall not include services set forth in Articles 6.8.1(a) and 6.8.3.

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

6.5 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project. The Consultant shall provide such Reimbursable Services, if so directed in writing by the Commissioner. The Consultant shall provide such Reimbursable Services through entities approved by the Commissioner, and shall utilize the method of procurement and form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with Article 7.

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

- (a) Conducting exploratory probes and/or tests to investigate concealed construction
- (b) Printing design documents beyond requirements set forth in the Design Consultant Guide
- (c) Laboratory services for controlled inspection
- (d) Long distance travel. In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant's home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (e) Filing fees and related application fees for New York City agencies
- (f) Any other services, determined by the Commissioner to be necessary for the Project

6.6 Non-reimbursable Services: Throughout the Project, the Consultant shall be responsible for providing the non-reimbursable services set forth below. All costs for such services are deemed included in payments to the Consultant as set forth in Article 7 hereof.

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

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

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

6.6.3 The Consultant shall provide all expediting services necessary and required with respect to securing all required regulatory approvals of the design.

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

6.8 Provisions Regarding Changes to the Design Documents

6.8.1 Changes Not Involving Scope:

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

6.8.2 Decrease in Scope: The Commissioner shall have the right to reduce the scope of the services of the

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

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

ARTICLE 7 Payment Terms and Conditions

7.1 Total Payments

7.1.1 Maximum Amount: The Maximum Amount of the Contract is set forth in Exhibit A. Total payments for all services performed and all expenses incurred pursuant to this Agreement shall not exceed the Maximum Amount. The Maximum Amount does not represent a commitment or guarantee on the part of the City to pay such amount, unless it has been determined to be due and payable to the Consultant in accordance with the terms and conditions set forth herein. The Maximum Amount is comprised of the following: (1) Estimated Design Fee, (2) Allowance for Services on a Time Card Basis, and (3) Allowance for Reimbursable Services, as described below.

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

	<u>Type of Service</u>	<u>Form of Payment</u>	<u>Article Reference</u>
(a)	Pre-Preliminary Services	Time Card	Article 7.3
(b)	Design Services	Design Fee	Article 7.2
(c)	Additional Professional Services	Time Card	Article 7.3
(d)	Reimbursable Services	Reimbursement / 5% mark-up	Article 7.4

7.1.3 Allowances: In the event the amount of the allowances set forth in Exhibit A are not sufficient, as determined by the Commissioner, to cover the cost of services which the Consultant is directed to provide, the Commissioner will increase the amount of such allowances. Notwithstanding the specific amounts allocated for allowances, as set forth in this Article 7, the Commissioner may, by issuance of a No Cost Change Order to the Consultant, reallocate such specific allowance amounts within this Article 7.

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

7.2 Payment for Design Services

7.2.1 Design Fee: For the performance of all required Design Services for the Project, the City agrees to pay and the Consultant agrees to accept a total Design Fee.

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

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

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

Schematic Design Documents	10% of the Design Fee
Design Development Documents	20% of the Design Fee
Final Design Documents	45% of the Design Fee

- (b) Partial Payments During Design Phase: Partial payments of the lump sum fee per deliverable, as set forth in paragraph (a) above, may be made to the Consultant on a monthly basis, based upon the Commissioner's determination that the Consultant is progressing the required work for the deliverable in a satisfactory fashion and in accordance with the schedule set forth in Exhibit B; provided, however, partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work. Total payment of the lump sum fee per deliverable shall not be made until written acceptance by the Commissioner of the deliverable.
- (c) Construction Phase: For the performance of all required services during construction for the Project, the Consultant shall be paid twenty-five (25%) percent of the Design Fee. Partial payment of this amount shall be in accordance with the percentage of completion of all required services during construction, as determined by the Commissioner.

7.2.3 Estimated Design Fee: The Estimated Design Fee is set forth in Exhibit A. Partial payments of the Design Fee shall be based upon the Estimated Design Fee until calculation of the Design Fee as set forth in Exhibit D.

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

7.2.5 Additional Professional Services: In the event the Commissioner directs the Consultant to perform Additional Professional Services, payment for such services shall be based upon staffing hours, as set forth in Article 7.3, except as otherwise provided below.

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

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

7.3 Services on a Time Card Basis

7.3.1 Allowance: An Allowance for Time Card Services is set forth in Exhibit A. Such Allowance is established for payment for services the Consultant is directed to perform on a time card basis, including: (1) Pre-preliminary Services, and (2) Additional Professional Services. Such services shall not be performed by the Consultant, or paid from this allowance, unless expressly authorized in advance in a written directive from the Commissioner. If the Consultant is directed to perform such services through its Subconsultant(s), all requirements for documentation set forth below shall apply to such Subconsultant(s).

7.3.2 Maximum Amount for Pre-preliminary Services: The Not to Exceed Amount set forth in Exhibit A shall constitute the maximum amount payable to the Consultant for providing Pre-preliminary Services, as set forth in the Project Objectives. The Consultant shall not be entitled to payment in excess of such amount, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

7.3.3 Staffing Plan: In the event the Consultant is directed to perform services on a time card basis, a Staffing Plan must be approved by the Commissioner prior to the commencement of services. Such Staffing Plan shall specify the items set forth below.

- (a) Personnel: The personnel specified in the approved Staffing Plan shall be considered Assigned Employees for the purpose of payment on a time card basis. The Consultant shall not be entitled to payment for: (1) any personnel not included in the approved Staffing Plan, or (2) any principal(s), except as otherwise provided below.
- (b) All Inclusive Hourly Rates: All Inclusive Hourly Rates for the personnel specified in the Staffing Plan shall be in accordance with Exhibit E. Such All Inclusive Hourly Rates shall apply to all hours during which an Assigned Employee performs services for the Project on a time card basis, including overtime hours. No increase in such rates shall be provided for services performed during overtime hours. Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project on a time card basis, (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.
- (c) No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services for the Project in accordance with one of the titles set forth in Exhibit F, and (2) such principal is included in the approved Staffing Plan for such title.

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

- (a) All Inclusive Hourly Rate applicable to the Assigned Employee.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for the Project on a time card basis. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for this Project, as set forth in Articles 6.8.1(a) and 6.8.3, for which the Consultant is not entitled to compensation, and (4) any overtime hours, unless otherwise authorized in advance, in writing by the Commissioner.
- (c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed for this Project. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

7.3.5 Overtime: Performance of services during overtime hours requires the prior written authorization of the Commissioner. The Consultant shall not be entitled to any increase in the All Inclusive Hourly Rates set forth in Exhibit E for services performed during overtime hours.

7.3.6 Increases: The Commissioner may, in his/her sole discretion, increase the All Inclusive Hourly Rates set forth in Exhibit E, based upon satisfactory performance by the Consultant. The Consultant shall be eligible for such increase at the beginning of the third year of the Contract term, and each year thereafter. Such increase, if any, shall be

based upon an increase in the Employment Cost Index for Professional, Specialty and Technical Occupations, compiled and published by the U.S. Bureau of Labor Statistics (the "Index"). If for the prior year, the Index showed an increase, the All Inclusive Hourly Rates shall be increased. If, for the prior year, the Index declined or showed no increase, the All Inclusive Hourly Rates shall remain unchanged. Any increase in the All Inclusive Hourly Rates shall be applied on a prospective basis only and shall have no impact on the rates paid to date.

7.3.7 Change Order Services: The Consultant may be directed to perform services pursuant to a change order issued in accordance with Article 17. If so specified in the change order, the Consultant agrees to perform the services specified therein as Additional Professional Services, on a time card basis, as set forth herein. Such change order shall specify a not to exceed amount for the performance of the Consultant's services.

7.4 Reimbursable Services

7.4.1 Allowance: An Allowance for Reimbursable Services is set forth in Exhibit A. Such Allowance is established for payment for Reimbursable Services the Consultant is directed to provide, as set forth in Article 6.5. No Reimbursable Services shall be provided by the Consultant, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$150, such written authorization must be provided in advance of the expenditure.

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

7.4.3 Form of Payment: With respect to Reimbursable Services, the Consultant shall utilize the form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with one of the following methods: (a) lump sum; (b) unit price, or (c) actual cost, except as otherwise provided in Article 7.4.4 below.

7.4.4 Long Distance Travel: Payment for long distance travel, as set forth in Article 6.5.1, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses."

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

7.4.6 Payment: Payment for Reimbursable 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.

7.5 Requisitions for Payment

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

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

- (a) Project Progress Report: The Consultant shall submit a statement indicating the percentage of completion of all required services for the Project.

- (b) Design Services:
- (1) In the event the Consultant is requesting payment of any portion of the Design Fee for the preparation of design documents, the Consultant shall state that the Commissioner's written approval of the required deliverable(s) has been obtained, or the payment is otherwise authorized in accordance with Article 7.
 - (2) In the event the Consultant is requesting payment of any portion of the Design Fee for services during construction, the Consultant shall submit a statement indicating the percentage of completion of such services.
- (c) Services on a Time Card Basis: In the event the Consultant is requesting payment for services performed on a time card basis, the Consultant shall submit the documentation set forth below:
- (1) Assigned Employee's name and title.
 - (2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.
 - (3) All Inclusive Hourly Rate applicable to the Assigned Employee, as set forth above.
 - (4) Number of hours worked each day by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for the Project on a time card basis.
 - (5) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for this Project on a time card basis; (2) actual hours during which the employee performed services for this Project which are covered under the Design Fee; (3) actual hours during which the employee performed services for other projects; (4) non-billable hours, as defined above; (5) actual hours, if any, during which the Assigned Employee spent performing services for this Project, as set forth in Articles 6.8.1(a) and 6.8.3, for which the Consultant is not entitled to compensation, and (5) overtime hours, if any.
- (d) Reimbursable Services: In the event the Consultant is requesting payment for Reimbursable Services, the Consultant shall submit:
- (1) Description of the Reimbursable Service the Consultant was directed to provide.
 - (2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required services.
 - (3) If payment is on a unit price basis, a report indicating the number of completed units.
 - (4) If payment is based on actual cost, receipted bills or any other data required by the Commissioner.

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

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

7.6 Prompt Payment: The prompt payment provisions of the PPB Rules in effect at the time of the solicitation for this Contract shall be applicable to payments made under this Contract. The provisions require the payment to contractors of interest on payments made after the required payment date, except as set forth in the PPB Rules. The Consultant must submit a proper invoice to receive payment. Determination of interest due shall be made in accordance with the PPB Rules and General Municipal Law 13-a. If the Consultant is paid interest, the proportionate share of that

interest shall be forwarded by the Consultant to its Subconsultant.

7.7 Final Payment: The last and final payment to the Consultant shall become due and payable upon written acceptance by the Commissioner of all required services hereunder and the submission by the Consultant of all required records and documentation in connection with the Project. The acceptance by the Consultant or its assignees of the final payment under this contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release to the City from any and all claims of and liability to the Consultant, of which the Consultant was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

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

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

ARTICLE 8 Time Provisions

8.1 Term of Contract: This Contract shall commence as of the date of the written advice of award and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all services required hereunder. Time frames for the Pre-Preliminary Phase and the Design Phase are set forth in Exhibit A.

8.2 Extension of Contract: Upon written application by the Consultant, 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 9 Ownership of Documents

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

9.2 Should such documents prepared under this Contract be re-used by the City for other than the Project originally

created, it is understood that the Consultant bears no responsibility whatsoever for such re-use except in those instances where he is re-employed for re-use of the documents.

ARTICLE 10 Patented and Proprietary Items

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

10.2 The Consultant 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 Consultant in the performance of this Contract.

ARTICLE 11 Insurance

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

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

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

11.1.2 Professional Liability Insurance: The Consultant shall provide Professional Liability Insurance covering as insured the Consultant in the minimum amount of \$1,000,000 per claim, \$3,000,000 aggregate. Subconsultants performing professional services shall also provide such coverage in the minimum amount of \$1,000,000 per claim, \$3,000,000 aggregate. The professional liability insurance policy(s) provided shall include the endorsement set forth in Article 11.2.4 below.

11.1.3 Worker's Compensation Insurance: The Consultant shall provide Worker's Compensation Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

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

the insured.

11.2 General Requirements for Insurance Policies

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

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

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

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

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

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

11.3 Proof of Insurance

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

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

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

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

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

ARTICLE 12 Indemnification

12.1 If persons or property of the City, or of others sustain loss, damage or injury resulting, either directly or indirectly from the acts, conduct, omissions, negligence, carelessness or lack of good faith of the Consultant or its officers, agents, employees, or any person, firm, company, agent or others engaged by the Consultant hereunder, in their performance of this Agreement, or from his or their failure to comply with any of the provisions of this Contract or of law, the Consultant shall indemnify and hold the City harmless from any and all claims and judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason thereof.

12.2 The Consultant shall indemnify and hold harmless the Commissioner and the City, each officer, agent and employee of the Commissioner and the City, against all claims against any of them for bodily injury or wrongful death or property damage arising out of the negligent performance of services, including professional services, or caused by

any error, omission or negligent act of the Consultant or anyone employed by the Consultant, in the performance of this Contract.

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

12.4 The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Contract.

12.5 In the event that any City property is lost or damages, except for normal wear and tear, then the City shall have the right to withhold further payments hereunder for the purpose of set off, in sufficient sums to cover such loss or damage.

ARTICLE 13 Consultant Independent Contractor

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

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

ARTICLE 14 Suspension or Termination of Performance

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

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

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

ARTICLE 15 – Resolution of Disputes

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

- (a) This Article shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules, or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
- (b) This Article shall apply only to disputes about the scope of work delineated by the Contract, the interpretation of Contract documents, the amount to be paid for extra work or disputed work performed in connection with the Contract, the conformity of the Contractor's work to the Contract, and the acceptability and quality of the Contractor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the Contractor disagrees.

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

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

4. Presentation of Dispute to Commissioner.

- (a) Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Commissioner within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the detailed written submission comprising the complete Notice of Dispute, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Commissioner all materials he or she deems pertinent to the dispute. Following initial submissions to the Commissioner, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.
- (b) Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor, the ACCO, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Commissioner may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Commissioner's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Commissioner participated therein. The Commissioner may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Contract and that contractor shall be bound by the decision of the Commissioner. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Article as the Contractor initiating the dispute.
- (c) Commissioner Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Commissioner shall make his or her determination and

shall deliver or send a copy of such determination to the Contractor, the ACCO and the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, as applicable, together with a statement concerning how the decision may be appealed.

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

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

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

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

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

regularly represent persons, companies, or organizations having disputes with the City.

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

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

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

ARTICLE 16 Consultant's Report Information

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

ARTICLE 17 Contract Changes

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

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

17.3 The Consultant 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 Consultant may be entitled to an extension of time for performance.

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

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

ARTICLE 18 Accounting Records

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

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

ARTICLE 19 Audit and Examination

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

ARTICLE 20 Monies Withheld

20.1 When the Commissioner shall have reasonable grounds for believing that: (1) the Consultant will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Consultant or the City arising out of the negligence of the Consultant or the Consultant's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Consultant, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold 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.

ARTICLE 21 Assignments

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

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

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

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

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

ARTICLE 22 Consultant's Performance

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

ARTICLE 23 Claims - Limitation of Action

23.1 No action shall be maintained by the Consultant, his successors or assigns, against the City on any claim based upon or arising out of this Contract unless such action shall be commenced within six (6) months after the date of filing

of the voucher for final payment hereunder in the office of the Comptroller, or within six (6) months of the termination or conclusion of this contract, or within six (6) months after the accrual of the cause of action, whichever is earliest.

ARTICLE 24 No Claim Against Officer, Agents or Employees

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

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

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

ARTICLE 25 Notices

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

ARTICLE 26 Investigations

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

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

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

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

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

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

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

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

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

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

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

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

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

26.4 Definitions Used in this Article

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

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

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

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

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

ARTICLE 27 Unlawful Provisions

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

ARTICLE 28 Modification

28.1 This Contract may be modified from time to time in a writing signed by both parties in order to carry out and complete more fully and perfectly the services agreed to be performed under this Contract; provided, however, in no event shall such modification exceed the cost limitation approved by the Office of Management and Budget.

ARTICLE 29 Errors

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

ARTICLE 30 Representations, Warranties and Affirmations

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

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

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

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

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

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

30.3.3 No attempt has been made or will be made by the Consultant to induce any other person, partnership

or corporation to submit or not to submit a proposal for the purpose of restricting competition.

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

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

ARTICLE 31 No Discrimination

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 32 Equal Employment Opportunity

32.1 This contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O.50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have

been complied with in their entirety. By signing this contract, the Consultant agrees that:

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

32.1.2 When it subcontracts, the Consultant will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status;

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

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

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

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

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

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

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

ARTICLE 33 All Prior Written or Oral Agreements Excluded

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

ARTICLE 34 Head Notes and Marginal Notations

34.1 Notations in the margins and headnotes are not part of the contract and are for reference purposes only. They

in no way define, limit or describe scope or intent of the article or section of the Agreement nor in any way affect this Agreement.

ARTICLE 35 Dust Hazards

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

ARTICLE 36 Participation in an International Boycott

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

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

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

ARTICLE 37 Effective and Binding

37.1 This contract shall neither be binding nor effective unless:

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

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

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

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

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

ARTICLE 38 Choice of Law, Consent to Jurisdiction and Venue

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

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

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

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

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

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

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

ARTICLE 39 Waiver

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

ARTICLE 40 All Defenses Reserved

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

ARTICLE 41 MacBride Principles Provisions

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

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

41.3 Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine,

in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

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

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

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

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

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

ARTICLE 42 Vendex Questionnaires

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

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

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

ARTICLE 43 – Ultra Low Sulfur Diesel Fuel

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

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

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

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

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

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

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

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

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

II. Ultra Low Sulfur Diesel Fuel

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

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

C. Contractors shall not be required to comply with this Part II where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Contractor in its fulfillment of the requirements of this contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of this Part II shall be in full force and effect unless the agency renews the finding in writing and such renewal is approved by the DEP Commissioner.

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

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

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

III. BEST AVAILABLE TECHNOLOGY

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

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

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

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

1. Where the agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.

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

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

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

V. COMPLIANCE

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

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

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

VI. REPORTING

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE TO ALL PROSPECTIVE CONTRACTORS

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions

contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

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

The Contractor must comply with all applicable M/WBE requirements for this Contract.

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

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

PART A: PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

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

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

A prospective contractor may seek a full or partial pre-award waiver of the Target Subcontracting Percentage in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the Target Subcontracting Percentage, a prospective contractor must complete the Subcontractor Utilization Plan (Part III), and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at poped@ddc.nyc.gov or via facsimile at (718) 391-1885. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The Subcontractor Participation Goals established for this Contract are set forth in the Subcontractor Utilization Plan (Part I) included in this Contract [see First Page, line (2) and/or line (3)].

The Subcontractor Participation Goals represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1 million.

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

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

THE BIDDER/PROPOSER MUST FULLY COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN (PART II) INCLUDED IN THE RFP. BIDS/PROPOSALS WHICH DO NOT INCLUDE A COMPLETED SUBCONTRACTOR UTILIZATION PLAN (PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SUBCONTRACTOR UTILIZATION PLAN, PART III). IN THE EVENT THAT THE SUBCONTRACTOR UTILIZATION PLAN INDICATES THAT THE BIDDER/PROPOSER DOES NOT INTEND TO AWARD THE TARGET SUBCONTRACTING PERCENTAGE, THE BID/PROPOSAL WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS THE AGENCY HAS GRANTED A WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE (SUBCONTRACTOR UTILIZATION PLAN, PART III).

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

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

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

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

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

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

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

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

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

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

PART B: MISCELLANEOUS

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

2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

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

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required Subcontractor Participation Goals.

ARTICLE II. ENFORCEMENT

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

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-

129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

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

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the contractor is in default of the contract;
- (d) terminating the contract;
- (e) declaring the contractor to be in breach of contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the contract;
- (h) assessing actual and consequential damages;
- (i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;
- (j) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or
- (k) take any other appropriate remedy.

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

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

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

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

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

CONSULTANT:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY CORPORATION

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

EXHIBIT A

CONTRACT INFORMATION

- Maximum Amount of Contract: Not to Exceed \$ _____
[Comprised of (1), (2) and (3) below]

- (1) Estimated Design Fee: \$ _____

- (2) Allowance for Time Card Services: Not to Exceed \$ _____
[Comprised of (a) and (b) below]

- (a) \$ _____ Not to Exceed Amount for Pre-preliminary Services

- (b) \$ _____ Not to Exceed Amount for Additional Professional Services

- (3) Allowance for Reimbursable Services: Not to Exceed \$ 500,000

- **Term of Contract:** The Contract shall commence as of the date of the advice of award and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all services required hereunder. Submission of deliverables during each phase shall be in accordance with the schedule set forth in Exhibit B.

Pre-Preliminary Phase: The time frame for completion of all required services for the Pre-Preliminary Phase shall be the number of consecutive calendar days (CCDs) set forth below. Such time frame shall commence as of the date of the written advice of award and shall not include any review time by agencies whose approval the Consultant is required to obtain.

Time Frame for Completion of all Pre-Preliminary Services: 152 CCDs

Design Phase: The time frame for completion of all required services for the preparation of Design Documents for the Project, including services in connection with value engineering, shall be the number of consecutive calendar days (CCDs) set forth below. Such time frame shall commence as of the date on which the Consultant is directed to proceed with the Design Phase and shall not include any review time by agencies whose approval the Consultant is required to obtain. Such time frame does not include services during construction.

Time Frame for Completion of all Design Documents for the Project: 648 CCDs

EXHIBIT B
PROJECT OBJECTIVES

[THE PROJECT OBJECTIVES ARE SET FORTH AFTER EXHIBIT G.]

High Performance
Design Services:

High Performance Designer: _____
LEED Specialist: _____

Security Systems
Design Services:

Senior Security System Designer: _____

Energy Efficient
Lighting Design Services:

Lighting Designer: _____

Cost Estimating Services:

Senior Estimator: _____

EXHIBIT D

FEE CURVE FOR DESIGN FEE

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

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

- Architectural Design Services
- Structural Engineering Services
- Electrical Design Services
- Heating, Ventilating and Air-Conditioning (HVAC) and Fire Protection Design Services
- Plumbing Design Services
- Landscape Architectural Design Services
- High Performance Design Services
- Energy Efficient Lighting Design Services
- Security Systems Design Services
- Interior Design Services
- Cost Estimating Services

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

<u>Service</u>	<u>Form of Payment</u>	<u>Article Reference</u>
Pre-Preliminary Services	Time Card	Article 7.3
Additional Professional Services	Time Card	Article 7.3
Reimbursable Services	Reimbursement / 5% mark-up	Article 7.4

(2) Calculation of Design Fee: The Design Fee shall be calculated as a percent of the total estimated cost of construction for the Project in accordance with the Fee Curve set forth in this Exhibit D. For the purpose of applying the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development. If the total estimate of the cost of construction falls between the dollar levels designated in the Fee Curve, the Design Fee shall be interpolated on a straight line basis between the corresponding two dollar levels. The Design Fee shall not be subject to adjustment for services performed during overtime hours.

(3) Exclusions From the Estimate: For the purpose of applying the Fee Curve, the total estimate of the cost of construction of the Project shall not include any costs or expenses in connection with the items set forth below.

- (a) New furniture and/or new equipment.
- (b) Components of the Project involving food services.
- (c) Existing stored equipment and materials the Consultant is directed by the Commissioner to use for the Project. In such case, the estimate shall include only the cost of relocating such existing equipment and materials.
- (d) Components of the Project for which design services were paid for on a time card basis.
- (e) Components of the Project for which design services were provided by the City.
- (f) Reimbursable Services, as set forth in Article 6.

EXHIBIT D

FEE CURVE FOR DESIGN FEE

For the purpose of applying the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development.

TOTAL ESTIMATED CONSTRUCTION COST	DESIGN FEE AS A PERCENT OF ESTIMATED CONSTRUCTION COST	AMOUNT OF DESIGN FEE
\$75,000,000	_____ %	\$ _____
\$80,000,000	_____ %	\$ _____
\$85,000,000	_____ %	\$ _____
\$90,000,000	_____ %	\$ _____
\$95,000,000	_____ %	\$ _____
\$100,000,000	_____ %	\$ _____
\$105,000,000	_____ %	\$ _____
\$110,000,000	_____ %	\$ _____
\$115,000,000	_____ %	\$ _____
\$120,000,000	_____ %	\$ _____
\$125,000,000	_____ %	\$ _____
\$130,000,000	_____ %	\$ _____
\$135,000,000	_____ %	\$ _____
\$140,000,000	_____ %	\$ _____
\$145,000,000	_____ %	\$ _____
\$150,000,000	_____ %	\$ _____

EXHIBIT E

TITLES AND ALL INCLUSIVE HOURLY RATES

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

Rates: The All Inclusive Hourly Rates set forth below apply only if the Consultant is directed to perform services on a time card basis.

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

ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Architect.....	_____
Project Manger (Architecture).....	_____
Senior Architectural Designer.....	_____
Junior Architectural Designer.....	_____
Architectural Technician.....	_____
Senior Draftsperson/CAD.....	_____
Junior Draftsperson/CAD.....	_____

STRUCTURAL ENGINEERING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (Structural Engineering).....	_____
Project Manger (Structural Engineering).....	_____
Senior Structural Designer	_____
Junior Structural Designer	_____
Engineering Technician.....	_____
Senior Engineering Draftsperson/CAD.....	_____
Junior Engineering Draftsperson/CAD.....	_____

ELECTRICAL ENGINEERING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (Electrical Engineering).....	_____
Project Manger (Electrical Engineering).....	_____
Senior Electrical Designer	_____
Junior Electrical Designer	_____
Fire Alarm Specialist:	_____
Engineering Technician.....	_____
Senior Engineering Draftsperson/CAD.....	_____
Junior Engineering Draftsperson/CAD.....	_____

HVAC AND FIRE PROTECTION DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (HVAC Engineering).....	_____
Project Manger (HVAC Engineering).....	_____
Senior HVAC Designer	_____
Junior HVAC Designer	_____
Senior Fire Protection Designer	_____
Junior Fire Protection Designer	_____
Engineering Technician.....	_____
Senior Engineering Draftsperson/CAD.....	_____
Junior Engineering Draftsperson/CAD.....	_____

PLUMBING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer (Plumbing Engineering).....	_____
Project Manger (Plumbing Engineering).....	_____
Senior Plumbing Designer	_____
Junior Plumbing Designer	_____
Engineering Technician.....	_____
Senior Engineering Draftsperson/CAD.....	_____
Junior Engineering Draftsperson/CAD.....	_____

INTERIOR DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Interior Designer.....	_____
Junior Interior Designer.....	_____

LANDSCAPE ARCHITECTURAL DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Landscape Architect.....	_____
Junior Landscape Architect.....	_____

COST ESTIMATING SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Estimator.....	_____
Junior Estimator.....	_____

HIGH PERFORMANCE DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
High Performance Designer.....	_____
LEED Specialist.....	_____

SECURITY SYSTEMS DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Security System Designer	_____
Junior Security System Designer	_____

ENERGY EFFICIENT LIGHTING DESIGN SERVICES:

TITLE	ALL INCLUSIVE HOURLY RATE
Lighting Designer	_____

EXHIBIT F

MINIMUM REQUIREMENTS PER TITLE

After selection of the Consultant, DDC will finalize this Exhibit by including the qualifications of individuals identified by the Consultant as Key Personnel.

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

ARCHITECTURAL DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Architect.....		
Project Manger (Architecture).....		
Senior Architectural Designer.....		
Junior Architectural Designer.....	3	
Architectural Technician.....	1	
Senior Draftsperson/CAD.....	5	
Junior Draftsperson/CAD.....	3	

STRUCTURAL ENGINEERING SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Structural Engineering).....		
Project Manger (Structural Engineering).....	5	
Senior Structural Designer		
Junior Structural Designer	3	
Engineering Technician.....	1	
Senior Engineering Draftsperson/CAD.....	5	
Junior Engineering Draftsperson/CAD.....	3	

ELECTRICAL ENGINEERING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Electrical Engineering).....		
Project Manger (Electrical Engineering).....	5	
Senior Electrical Designer		
Junior Electrical Designer	3	
Fire Alarm Specialist:		
Engineering Technician.....	1	

Senior Engineering Draftsperson/CAD.....	5
Junior Engineering Draftsperson/CAD.....	3

HVAC AND FIRE PROTECTION DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (HVAC Engineering).....		
Project Manger (HVAC Engineering).....	5	
Senior HVAC Designer		
Junior HVAC Designer	3	
Senior Fire Protection Designer		
Junior Fire Protection Designer	3	
Engineering Technician.....	1	
Senior Engineering Draftsperson/CAD.....	5	
Junior Engineering Draftsperson/CAD.....	3	

PLUMBING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer (Plumbing Engineering).....		
Project Manger (Plumbing Engineering).....	5	
Senior Plumbing Designer		
Junior Plumbing Designer	3	
Engineering Technician.....	1	
Senior Engineering Draftsperson/CAD.....	5	
Junior Engineering Draftsperson/CAD.....	3	

INTERIOR DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Senior Interior Designer.....		
Junior Interior Designer.....	3	

LANDSCAPE ARCHITECTURAL DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Senior Landscape Architect.....		
Junior Landscape Architect.....	3	

COST ESTIMATING SERVICES:

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

HIGH PERFORMANCE DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
High Performance Designer.....		
LEED Specialist.....		

SECURITY SYSTEMS DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Senior Security System Designer	5	
Junior Security System Designer	3	

ENERGY EFFICIENT LIGHTING DESIGN SERVICES:

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Lighting Designer		

EXHIBIT G

M/WBE SUBCONTRACTOR UTILIZATION PLAN

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

EXHIBIT B: PROJECT OBJECTIVES

City of New York Department of Design and Construction

FMS ID: C135JATC

PROJECT TITLE: James A. Thomas Center
Reconstruction Phase II

SITE LOCATION: 14-14 Hazen Street
Rikers Island, Bronx, NY

DATE: April 2, 2008

PROJECT OBJECTIVES:

The prime objective of this project is to design and execute the reconstruction of the James A. Thomas Center (JATC) on Rikers Island for the New York City Department of Correction (DOC). The reconstructed facility will house approximately 1194 male detainees and associated administrative, health service, and support functions. The work will include, but not be limited to: (1) structural repair; (2) facade repair and restoration to provide a moisture tight condition; (3) upgraded or new HVAC, plumbing, electrical, fire life safety, and CCTV surveillance systems; (4) upgraded or new emergency lighting, interior lighting, and exterior lighting; (5) partial or complete window and roofing replacement; and (6) architectural modifications to modernize this dated facility. The reconstruction of the facility is an important component of the DOC Master Plan that addresses system-wide needs for inmate housing, as well as the general upgrade of the overall system.

Design Services include a Pre-preliminary Phase to accomplish the following: (1) establish the existing physical and programmatic conditions of the facility, (2) ascertain the extent of work completed in a prior project, (3) conduct an inventory and evaluation of stockpiled materials from the same prior project, and (4) generate a scope of work, including cost estimates, detailing the measures necessary to achieve the overall reconstruction of the facility in compliance with all applicable New York City and New York State standards and regulations for Detention Facilities and the needs of DOC. The Pre-preliminary and subsequent design shall incorporate sustainable design principals to achieve a LEED Silver rating.

BACKGROUND

The James A. Thomas Center was constructed in 1933, with subsequent additions made in the 1960's. The facility is the oldest on Rikers Island and is one of the few structures built within the limits of the original island, except for its most western portion. The building is approximately 417,000 square feet in total area.

The building is organized into modules of housing units and support spaces arranged along an 1150 foot long central spine or corridor. The largely free standing modules contain eight distinct housing units, administrative offices, an auditorium and chapel complex, a library, a kitchen, mess halls, visitation facilities, and a gymnasium. The modules are separated by courtyards. The facility was originally designed by Sloan & Robertson, Architects with 3480 beds in double bunk cells. The existing 1740 cells are arranged in three tiers, with open balconies on the two upper tiers, all facing upon triple height windowed common areas along either outside face of the housing unit.

Over the course of time, differential settlement has occurred undermining many portions of the building. A prior project identified as C135RENO was to provide repairs to JATC, but was suspended in 2001 with

approximately 54% of the contract completed. The scope of work developed for the prior project included: reconstruction of floor slabs and related structures; upgrade and replacement of ventilation and hot-water systems; indoor and outdoor lighting; CCTV surveillance system; and modernization of the original fan systems.

APPROACH:

1. All required work shall be in accordance with the following:
 - a. the Project Objectives
 - b. the Design Consultant Guide
 - c. DDC High Performance Building Guidelines
 - d. DOC/DDC Design Standards
 - e. New York City Board of Correction Minimum Standards and New York State Commission of Correction Minimum Standards
 - f. ACA Standards for Adult Local Detention Facilities, on a recommendation basis
 - g. all applicable local, state, and federal laws, rules and regulations, including without limitation, the New York City Building Code, Local Law 86, and the Americans with Disabilities Act.In the event of any conflict between the Design Consultant Guide and (1) the Project Objective, or (2) the DOC Design Standards, the Project Objectives or the DOC Design Standards shall prevail.
2. The Consultant shall obtain and evaluate all existing DDC, DOC, and Department of Buildings (DOB) documentation, as well as documentation from other relevant agencies. The scope of work developed by the Consultant, as well as the resulting design, shall address, close out, and correct all items noted in existing open applications and/or violations, so that upon completion of the project, DDC is able to obtain and deliver to DOC a final Certificate of Occupancy. The Consultant shall assist DDC by providing whatever documentation is necessary to secure the Certificate of Occupancy.
3. The facility is currently not housing detainees; however it is still being utilized for administrative purposes and all standard Rikers Island security procedures must be adhered to during all phases of design and construction.
4. The Consultant shall conduct all necessary interviews and meetings with DOC civilian and uniformed employees and DDC staff to realize the project objectives.
5. DOC has numerous security requirements or standards regarding operation, materials, equipment, furniture, and methods of installation. These will be discussed and transmitted to the Consultant during the design process.
6. The Consultant shall investigate design criteria such as security, control, maintenance, ease of operation, noise control, site utilization, the use of day light, flexibility, etc. to evaluate alternative designs. All reconstructed areas shall be designed in conformance with current security and design standards.
7. The Consultant shall create a Pre-preliminary Report that: (1) analyzes existing information and conditions of the JATC facility, including without limitation, pertinent information from previous studies and reports, (2) compiles and analyzes additional information, (3) identifies existing deficiencies, (4) develops a prioritized list of issues to resolve, and (5) synthesizes these into a coherent scope of work that will accommodate the needs of DOC. The approved scope of work may direct phasing of construction and the issuance of multiple construction contracts as determined necessary to facilitate the project.
8. The Consultant is responsible, at each stage of the design, to produce a design that conforms to the budget. Reconciled estimates that are agreed upon by DDC, DOC, and the Consultant during each phase of the design will be used to evaluate the design's conformance to the budget.

9. The Consultant will be required to coordinate their work with a Construction Manager (CM) retained by DDC during the design and/or construction phases. The Consultant shall provide the CM with current documentation as directed throughout the duration of the project
10. In developing the scope of work, the Consultant shall, to the fullest extent possible, incorporate the guidelines for the development of sustainable building design as described in DDC's High Performance Building Guidelines.
11. JATC will be required to achieve LEED (Leadership in Energy and Environmental Design) Silver rating certification under the provisions of Local Law 86. All design, research, tasks, submittals, and any filing/registration to ultimately meet this standard and receive certification shall be part of the Consultant's work to the full extent possible within the parameters of the recommended scope.
12. Representatives of DOC shall participate in all phases of the project's development and shall review the Consultant's submittals throughout the Pre-preliminary, Preliminary, Final Design, and Construction Phases.
13. The Consultant shall provide all Pre-preliminary Services and all Design Services required for the project. The Consultant shall provide these services either through Subconsultants retained by the Consultant, or through its own qualified personnel. Such services shall include, without limitation, the disciplines set forth in Exhibit 'C'.

SCOPE OF WORK:

A. GENERAL

1. The Consultant shall provide (1) Pre-Preliminary Services, (2) Services for Preliminary and Final Design, and (3) Services during Construction. Services provided by the Consultant shall be in accordance with these Project Objectives, as well as all requirements for execution of the work and preparation of deliverables as specified in the DDC Design Consultant Guide unless otherwise specified.

Any task or service to be provided by the Consultant, as specified in these Project Objectives and or in the Design Consultant Guide, shall be deemed to include all necessary and usual components and or ancillary services in connection with the specified task or service

The Consultant may be directed to perform Additional Professional Services. Additional Professional Services are professional services which the Commissioner determines are required for the Project and are in addition to or beyond the necessary and usual services in connection with design services.

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

2. At the conclusion of the Pre-preliminary Design Phase, DDC and DOC shall review the Pre-preliminary report and determine how to proceed with design services for the identified scope of work. Specifically, DDC and DOC shall determine whether to direct the Consultant to proceed with design services for the entire project or any component thereof.
3. This project may require approval of the Art Commission in relation to the alteration or effects upon an existing WPA era mural as identified in the approved scope of work. Refer to the Art Commission website for submission requirements. Should the Art Commission not accept the initial preliminary or

final submission, the Consultant will be compensated for additional submissions necessary to obtain approval.

4. The Consultant will be required, as part of basic design services, to participate in at least one value engineering study and workshop as described in the Design Consultant Guide. This includes providing all required data and documentation, attending meetings, and modifying the construction documents as required. If DDC directs the Consultant to participate in more than one value engineering study of the Project, such services shall be considered Additional Professional Services.
5. When directed by the DDC project manager, the Consultant shall deliver submittals directly to the DOC office at 60 Hudson Street, New York. Submittals at project meetings are not acceptable.
6. Specifications are to be in the latest CSI MasterFormat 2004 Edition (50 Division).
7. The following documents shall be provided by DDC to the Consultant:
 - a. Topographical and Project Limit Line maps as specified by the Consultant.
 - b. Subsurface information including borings, probes, and special tests as requested for specified test locations identified by the Consultant.
 - c. Hazardous Materials Findings.

PRE-PRELIMINARY DESIGN PHASE

B. ARCHITECTURE

1. During the development of the Pre-preliminary report, the Consultant shall submit a minimum of three significantly different schemes to achieve the approved scope of work. Following the selection of the preferred scheme by DOC and DDC, a Pre-preliminary report shall be submitted.
2. As part of the Pre-preliminary Phase, the Consultant shall work with the project team to create detailed spatial and functional relationships that will locate and explain all activities within and external to JATC, and shall coordinate the information so that overlap is minimal and coordination is seamless. The Consultant shall incorporate portions or whole components of the existing facility's uses and spaces without significant change as determined by DDC and DOC. The Consultant will prepare a detailed space and function program to be reviewed and approved by DOC and DDC.
3. The analysis of the existing facility shall be guided by careful consideration of DOC security procedures, functional efficiency, clarity of circulation and operation, and awareness of the particular needs of the many different users: correction officers, civilian employees, health service workers, detainees and their family members, delivery personnel, and business visitors. The design should reflect imaginative effective solutions for both the necessary separation of many of the users and their monitored interaction.
4. Pre-preliminary Report
The pre-preliminary phase for JATC will entail three stages:
 - Comprehensive Inventory and Analysis of Existing Conditions
 - Issue Identification and Development Options
 - Development Option Refinement and Draft and Final Pre-preliminary Reports
 - a. Stage 1 - Inventory and Analysis
 1. Inventory: Inventory activities shall include, but are not limited to, document research, interviews, and empirical observation. The Consultant shall investigate all of the items listed below.

The Inventory is comprised of the following:

- i. History: Review of documents available for the original building and any subsequent modifications to develop a chronology of modifications.
 - ii. Prior contract completed work: Review, document, and analyze the design and construction work completed.
 - iii. Inventory and determine condition of stored materials at the site.
 - iv. Regulatory Considerations: Document applicable codes, criteria, and guidelines having effect upon the JATC project.
 - v. Prepare a building envelope condition report documenting the material, structural, and waterproofing deficiencies of the exterior walls, windows, and roofs. The report shall include elevations and plans with keyed photographs of all adverse conditions.
 - vi. Prepare an interior conditions report documenting and inventorying the condition of existing interior floor, wall, and ceiling finishes, lighting, plumbing, and other fixtures and installations with regard to viability of their retention or their obsolescence.
2. Analysis: Based upon the Inventory, the Consultant shall identify opportunities and constraints to the reconstruction of JATC, and evaluate their relevance to these Project Objectives and the proposed scope of work.

The analysis shall address and clearly present the following considerations and any others that may have an impact on the project:

- i. Investigate feasibility and cost of improvements required to use the third tier of the cell blocks.
 - ii. Investigate and address the abandoned area behind the stage.
 - iii. Investigate the types available and the impact of utilizing a new gang release system for the cellblocks.
 - iv. Regulatory requirements including but not limited to the building and fire codes.
 - v. Design standards and guidelines for correctional facilities, including but not limited to; New York City Board of Correction Minimum Standards, New York State Commission of Correction Minimum Standards and ACA Standards for Adult Local Detention Facilities.
 - vi. Analyze the data of the building envelope condition report and make recommendations on the need for any probes or material testing required to finalize the scope of work and budget estimates for remedial or replacement work to the building envelope, including but not limited to, the walls, windows, and roofs.
 - vii. Analyze the data of the interior conditions report and make recommendations on the need for any probes, material, or product testing required to finalize the scope of work and budget estimates for remedial and or replacement work to interior finishes, appliances, installations, and fixtures.
 - viii. Time and schedule constraints.
 - ix. Special conditions which impact scheduling and phasing, i.e. hazmat remediation, funding, etc.
3. The Consultant shall submit for review and approval a Detailed Space and Function Program that shall consist of the following:
- i. Each component shall have an objective statement, function statement, an operation description, and a description of adjacency requirements.
 - ii. Each component shall have a space allocation summary.
 - iii. Each space within that component shall have a space description, function description, area computation, orientation, time of use, and identify the finish materials for the ceiling, floor, wall, and base.
 - iv. The following utilities for each space shall be listed: plumbing requirements and security fixtures, HVAC requirements and security fixtures, electrical requirements, physical security requirements, network and telecommunication requirements, electronic security

requirements, fire/life safety requirements, furniture requirements, and miscellaneous comments for unique requirements.

b. Stage 2 – Issue Identification and Development Options

Issue Identification

The Consultant shall identify and consider all relevant opportunities and constraints revealed by the analysis.

1. Conduct all probes and tests identified in the analysis phase and compile all relevant findings.
2. Identify all issues raised and or verified through the investigative probes and tests.

Development Options

Based on the issues identified, the Consultant shall develop at least three distinct schemes with associated cost estimates for the reconstruction of JATC. Each of the options shall strive to:

1. Achieve coherence between the various components of the program, both physical and functional;
2. Strike a balance between security concerns and perceptions.
3. Incorporate fully principles and technologies of Sustainable Design.

c. Stage 3 – Development Option Refinement and Draft and Final Pre-preliminary Reports

1. The Consultant shall advocate one of the three schemes with associated cost estimates, presenting reasons to DOC and DDC for that choice, as well as reasons for not adopting the other two. Subsequently, DOC and DDC shall evaluate each of the three schemes, and collectively shall select one option, along with the scope of work, approach, and design considerations, and provide the Consultant with reasons for their selection.
2. The Consultant shall collect, document and evaluate the feedback from the meetings with DOC and DDC. Based upon this, the Consultant shall further develop the recommended scheme. The Consultant shall:
 - i. Incorporate and amplify the criteria received from DOC and DDC.
 - ii. Incorporate the best features of the recommended scheme.
 - iii. Include associated cost estimates.

At this stage, the Consultant shall also propose design criteria that will guide the reconstruction. The design criteria shall be responsive to the identified issues and address programmatic, functional, and aesthetic concerns, as well as these project objectives.

3. The Consultant shall complete a draft “JATC Pre-preliminary Report” for review and approval. In addition to recounting the preceding stages, the document shall provide recommendations for implementation phasing, with clearly defined scopes of work and Cost Estimates for each implementation phase. This document shall be fully illustrated with sketches, plans, details, photos, flowcharts, models and photographs, renderings, and additional materials to clarify its content and presentation.
 - i. The Consultant shall present the preferred development scheme with all supporting background. The narration and depiction shall include, at minimum:
 - a. Plans and related illustrations and data.
 - b. Implementation phasing;
 - c. Projected, itemized implementation costs.
 - ii. The Consultant shall propose the scope of work to be utilized during the Preliminary and Final Design Phases.

- iii. Appendices: as necessary to include:
 - a. Documentation of interviews;
 - b. Copies of pertinent record or legal documents;
 - c. Detailed space and function program;
 - d. Supplemental, detailed descriptions of existing site systems;
 - e. Records of research and investigation activities including tests, reports, etc. by identified sub-consultants and third parties.
4. Following approval of the draft Pre-preliminary Report, the Consultant shall provide the final Pre-preliminary Report.

C. LANDSCAPE ARCHITECTURE

The Subconsultant for Landscape Architectural Design Services shall be responsible for a concise, coherent site inventory and analysis to be part of an Existing Conditions Survey and Evaluation Report that shall include:

1. Development History of the Site: Brief research and review of extant documents, as required, to develop an understanding of a chronology of site modifications.
2. Natural Systems: Including, at minimum, such features and attributes of the JATC site and its courtyards as their topography and drainage characteristics.
3. Site Utilities: Determine and document as applicable to the work of this project, the locations, condition, sizes, capacities of, surface and sub-surface structures associated with, the following systems: [1] Storm drainage; [2] Site lighting.
4. ADA Compliance: Evaluate all entrances into and egresses out of JATC relative to their potential need for modifications to make them ADA-compliant. Evaluate exterior areas relevant to sidewalk accessibility (including handicapped ramps and ramping at curb-cuts), emergency egress, and refuge.

D. STRUCTURAL

1. As part of the pre-preliminary phase of the work, the Subconsultant for Structural Engineering Services shall perform a comprehensive structural evaluation on the condition of the existing building and its sections, determine the necessity and extents of any repair, reinforcement or replacement of existing structural elements such as interior walls, floors, columns, beams, and roof construction, and submit the findings in the Pre-preliminary Report explaining the results of the findings and the extents of the repairs/modifications recommended.
2. Renovation of this facility had previously been started but was abandoned in 2001, with only part of the required work having been completed. The Subconsultant for Structural Engineering Services shall review the completed portions of work, analyze their acceptability to meet determined needs and incorporate these findings as part of the overall requirements so as to complete all structural work.

E. HVAC

1. The H.V.A.C. Subconsultant for HVAC Design Services shall provide a Pre-preliminary report outlining the present set-up and future development of the ventilation system at JATC. The Subconsultant for HVAC Design Services shall fully investigate, survey, and report on the existing H.V.A.C. system operations, conditions, and estimate the useful life service. Remedial measures, modification, or replacement of major equipment shall be presented with new design for correcting and implementing established priorities, phasing the most critical repair.

2. The Subconsultant for HVAC Design Services shall propose new dedicated HVAC system for the entire housing areas, auditorium, gym, dining, visiting area and other program space. The Subconsultant for HVAC Design Services shall provide construction cost estimates for each alternative, and incorporate them in the Pre-preliminary report.

F. ELECTRICAL

1. At the outset of the project the Subconsultant for Electrical Design Services shall interview staff, survey the building, site and all systems, review available program information, review and document electrical characteristics of all the facility's present and proposed equipment, and establish and document a clear statement of project objectives. Consider energy conservation for all aspects of the work.
2. The Pre Preliminary Phase of work shall consist of studies of the electrical systems for the project such as lighting, power, intercom, telecommunication, local area network, security and equipment, and any other work and special systems to establish the basic design. Clear documentation such as study worksheets, background data, calculations, drawings, specifications, catalog data, etc., shall be presented to DOC and DDC with all reports, drawings, and analysis.

G. PLUMBING

1. The Subconsultant for Plumbing Design Services shall submit a pre-preliminary study investigating all existing utilities, including without limitation, sanitary, storm water, gas, sprinkler service, and domestic hot & cold water. Include associated water meters and backflow preventers. All services shall show connection to existing utilities.
2. The Subconsultant for Plumbing Design Services shall survey the existing utilities, interview the staff and utilize and review any program information to determine what services may be reused or removed and or replaced with new. The services shall include all required plumbing systems for: sanitary, storm water, gas, sprinkler service, and domestic hot and cold water.

H. HISTORIC PRESERVATION

1. As part of the interior and exterior condition survey of JATC, the Consultant shall identify spaces, surfaces, and finishes which may warrant retention for their special architectural or artistic character, which would thereby serve to maintain the dignity and integrity of the public spaces and appearance of this civic building of the City of New York designed by Sloan & Robertson, Architects, and constructed in 1933.
2. Such spaces and surfaces may include:
 - a. The monumental recessed Art Deco style entrance portal facing east on Hazen Street with decorative cast metal tympanum including the coat of arms of the City of New York, and the adjacent inscribed foundation stone.
 - b. The skylit main entrance hall, with terrazzo floor and wall finishes, decorative plaster ceiling, metal doors, and window grilles.
 - c. The 87" x 485" oil on canvas mural "Reconstruction, Home & Family" located in a former public waiting room near the main entrance hall painted by Anton Refregier in 1943.
3. Should any restoration or conservation of such forms or features of special architectural or artistic character be deemed necessary in this project, the consultant shall be directed to procure the necessary expertise to design the required work as a Reimbursable Service.

PRELIMINARY AND FINAL DESIGN

The Consultant shall proceed when directed by DDC with design services based upon the scope of work approved by DDC and DOC at the end of the Pre-preliminary Phase.

I. ARCHITECTURE

1. During the Schematic Design Phase the Consultant shall present a minimum of three significantly different design schemes for the approved scope of work identified in the Pre-preliminary Report. Following the selection of the preferred Schematic Design by DOC and DDC, the scheme will be developed through all subsequent phases of design: Schematic Design, Design Development, and Final Design, in accordance with the Design Consultant Guide.
2. The design shall incorporate, without limitation, the following: (1) the scope of work set forth in these objectives, and (2) the approved scope of work, including program requirements, generated in the Pre-preliminary Phase and further developed in the Schematic Design Phase. It shall be the responsibility of the Consultant to update the approved scope of work, including program requirements, from the Pre-preliminary Phase to reflect changes, developments, and modifications that may occur during Preliminary Design, Final Design, and the construction period.
3. The Consultant's design shall include provision for the demolition of areas deemed structurally unsafe or functionally inadequate or obsolete to meet the needs of DOC.
4. Regarding Hazardous Materials, the Consultant shall locate and describe all locations, areas, components, and materials in any fabric or component that will be subject to disturbance, alteration, demolition, or affected in any way as a result of the renovation and construction work. The Consultant shall supply this information on annotated plans or sketches acceptable to the City. The Consultant shall incorporate into their design documents, documents provided by DDC for removal or remediation of hazardous materials as deemed necessary by the approved scope of work.
5. Various methods for incorporating sustainable daylight strategies shall be explored. Design and selection of exterior windows shall meet all function and security requirements and reflect the usage of detainee versus staff and public spaces. Operable sash is not permitted in any areas where detainees have access. Window design, hardware, and security provisions shall meet DOC requirements. Energy efficiency, operable area (where permitted), durability, ease and cost of maintenance, and replacement shall all be factors in window selection. Provide insect screens at all operable windows. Provide window treatments where directed by DOC.
6. Roofing systems shall be long lasting, require low maintenance, meet sustainable design criteria, and receive DDC and DOC approval.
7. Alterations that affect existing spaces and surfaces identified in the Pre-preliminary report as worthy of retention for their special architectural or artistic character shall be designed as far as practical to respect the original designed integrity of those spaces and surfaces.
8. The design of interior spaces within JATC shall enhance the delivery of services in a humane dignified environment. Particular attention should be given to visitor, staff-only, and day room spaces.
9. The Consultant shall be responsible for the design of interior spaces. This includes the design of all built-in furniture, millwork, cabinetry, and equipment necessary to the project. All built-in items shall be included in the design documents.
10. The Consultant will be responsible for the layout and selection of loose furniture which will be procured by others. The Consultant shall provide assistance in connection with requisitions and/or purchase orders for the procurement of loose furniture.

11. Interior finishes and furnishings shall be of the highest quality, durable enough to sustain the facility's heavy use, and require low maintenance, particularly in detainee areas. Acoustical materials shall control noise and provide privacy in spaces where programmatically and functionally required.
12. The Consultant shall design interior and exterior signage and graphics as required and in coordination with DOC standards, ADA, and LL#58.

J. LANDSCAPE ARCHITECTURE

1. Pursuant to the foregoing Pre-preliminary Phase, the Subconsultant for Landscape Architectural Design Services shall provide design documents for:
 - a. ADA-compliant ramps into and out of the JATC.
 - b. Grading of exterior spaces to provide positive drainage away from the building.
2. Make certain that all grading proximate to the entire perimeter of the JATC and its entrances / egresses – as well as within all the courtyard areas – ensures that stormwater runoff is “positive”, and runs away from the JATC building into proper drainage channels and structures.
3. To the extent possible, make certain that all new paving materials to be installed around the JATC are permeable and have a high albedo, so as to reduce the Urban Heat Island (UHI) effect.

K. STRUCTURAL

All structural work shall conform to the latest edition of the NYC Building Code. Steel and concrete design shall conform to the latest edition of the structural steel and concrete codes, the AISC and ACI respectively.

The Subconsultant for Structural Engineering Services shall provide structural design documents for the structural work involving the superstructure, foundation, as well as for any structural modifications or repairs required. The work shall include, but is not limited to, the following:

1. GENERAL:
 - a. The superstructure and the foundations shall be investigated to meet all the structural integrity, serviceability and appearance criteria as defined by the building codes or by DDC. Serviceability criteria include floor or roof vibrations, floor-to-floor drift and water-tightness.
 - b. The structural design shall provide for crack control, resistance to corrosion, and shall correct or eliminate any detrimental effects of existing and anticipated settlements.
 - c. The Subconsultant for Structural Engineering Services shall coordinate his work with that of all other consultants to accurately show on the contract drawings all major openings through structural walls, roofs, floors etc with necessary framing and dimensions. No openings shall be determined in the field (except minor openings that shall be defined by the consultant and may be drilled by the respective contractor).
 - d. While meeting with all strength and serviceability criteria, the design is expected to be economical.
 - e. The Subconsultant for Structural Engineering Services shall comply with the new earthquake provisions of the Local Law 17/95 of the New York City Building Code, if applicable.
 - f. The structural design shall conform to the DDC High Performance Building Guidelines. Fly ash should be specified for concrete.

- g. For the concrete specifications, conform to the CSI format providing separate specification sections for Concrete Reinforcement, Concrete Formwork, Cast-In-Place Concrete, and Concrete Curing.

2. FOUNDATION DESIGN:

- a. The Subconsultant for Structural Engineering Services shall evaluate the boring data to determine the most suitable and economical type of foundation for any new walls or columns; which shall then be properly designed, detailed, and specified on the final structural drawings and specifications.
- b. The Subconsultant for Structural Engineering Services shall evaluate the existing data, where available, and perform additional tests, where required, to evaluate the capacity of the foundations to support any additional loads that may be imposed on them. Based on this, the repairs, strengthening or reinforcing of new foundations may be designed, detailed and specified on the final structural drawings and specifications.
- c. The Subconsultant for Structural Engineering Services shall evaluate the boring data and well-point to determine the ground water conditions. The designs shall minimize excavation below the high water table. If waterproofing is to be specified, all pertinent waterproofing details shall be shown on the structural drawings. The testing method for waterproofing shall be specified.
- d. All new and/or relocated utility lines, where settlement could have detrimental effects on facility operations, shall be provided with adequate foundation support.

3. STRUCTURAL DESIGN:

- a. The structural drawings shall have loading schedule clearly indicating the dead and live loads for the different areas as well as equipment loads and concentrated loads. They shall also indicate such stress information as may be necessary for the proper development of all members in detailing of connections. Total cumulative loads at the base of each column shall be indicated on the column schedule.
- b. The schematic submission shall include an analysis of alternate structural systems with technical and economic evaluations and comparisons. The Subconsultant for Structural Engineering Services will recommend one scheme enumerating the reasons for it being the best, most suitable, and economical for the project.
- c. The Subconsultant for Structural Engineering Services shall provide structural framing plans with all required details, including connections of new members to existing, where applicable. Where welding to existing steel is required, the consultant shall verify weldability of existing steel.
- d. The Subconsultant for Structural Engineering Services shall coordinate work with all MEP documents to assure capacity of existing or modified structural system to support all existing or new loads related to MEP systems.
- e. Use a minimum compressive strength for structural concrete of 4000psi. All concrete exposed to weather or soil shall be air-entrained.
- f. The concrete specifications shall indicate the optimal level for slump, water-cement ratio, admixtures etc and shall comply, at a minimum, with the latest ACI publication on Durability of Concrete.

- g. Exposed lintels for all exterior walls shall be galvanized steel.
- h. Rooftop mechanical units, if supported on dunnage, shall rest on pipe posts to facilitate flashing and waterproofing. All exposed steel dunnage is to be galvanized.
- i. All parapets and other masonry structural elements, where required to be replaced or strengthened, are to be designed by the structural engineer.
- j. The Subconsultant for Structural Engineering Services shall submit a comprehensive set of structural design calculations, arranged in a logical sequence, with sheets properly numbered, labeled and indexed, clearly explaining all assumptions made and references to codes where applicable. Include any working drawings that may be required for proper documentation, showing detailed stress analysis of critical component parts of the foundations and the superstructure members. The set shall consist of the original design notes, or a suitable reproduction thereof, made by the structural engineer.

L. HVAC

1. The Subconsultant for HVAC Design Services shall provide complete design documents for a new ventilation system, security ventilation system, heating system, and fire protection system that will satisfy the approved scope of work of the James A. Thomas Center. The Subconsultant for HVAC Design Services shall analyze the technical requirements of introducing the security ventilation system and climate control applicable to the designated building areas and other major spaces; and shall set forth the approved scope of work and requirements based on the Subconsultant's comprehensive study of modern, energy efficient, and easily maintainable HVAC systems. The new HVAC system shall be capable of year-round operation and be economically compatible with the architecture, structure, and electrical system; provisions for zoning with consideration to the following:
 - a. Comfort
 - b. Energy Conservation
 - c. Areas with independent cooling requirements, exposures, occupancy and hours of usage per day
2. In the Schematic Design report, the Subconsultant for HVAC Design Services shall submit an analysis presenting at least three suitable schemes for heating and security ventilation for the reconstructed JATC facility. Evaluate feasibility, advantages, disadvantages, potential equipment location, design features, estimated first cost, annual operating cost of each scheme. Analyze each HVAC scheme separately and in conjunction with the applicable architectural and lighting schemes. The Subconsultant for HVAC Design Services shall recommend one scheme. The schematic report shall be reviewed by DOC, all requirements for spare capacity and redundancy of the proposed new HVAC system and DDC who will make the final selection for design including any recommended modifications to be incorporated by the Subconsultant for HVAC Design Services. Of the alternates studied, one shall be of such air conditioning refrigeration horsepower and quantity of units with special consideration that it conform to all the requirements of the New York City Fire Code and will not require a licensed operator. Alternates shall consider ease of maintenance and operation of each system.
3. Based on the program intent, the Subconsultant for HVAC Design Services shall provide all modifications of the existing mechanical system as required to suit the architectural, electrical, structural, and plumbing as needed for renovation or ADA compliance. The design documents shall clearly detail the construction phasing and temporary services required to maintain the facilities operation. Access, construction staging, and other constraints shall be clearly defined in the documents.

4. Design Temperatures:
Summer [Security ventilated areas] Indoor: 78 degrees DB; Outdoor: 95 degrees DB.
Winter [Occupied areas] Indoor 72 degrees DB; Outdoor: -5 degrees with 15mph Wind.
5. The Subconsultant for HVAC Design Services shall incorporate the DOC'S Building Management System into the new HVAC system and automatic temperature control system. It shall be the Subconsultant's responsibility to study the Energy Management and Control System, meet DOC'S Project Manager to review the approved scope of work and requirements and provide all investigative research and design as required to properly interface the new equipment with this system based on the operating managements' functional programs.
6. HVAC design drawings shall provide single line diagrams for all heating and security ventilation automatic temperature control wiring. A description of the intended control system shall be included in the preliminary design documents. The Subconsultant for HVAC Design Services shall ensure that the control system features all the necessary different kinds of temperatures, pressures, relative humidity, pump or fan, air handler, converter, or other pieces of HVAC equipment status mode of operation and other specific control requirements [points that are required], including but not limited to the requirements of DOC 's standard.
7. All HVAC equipment shall be thoroughly and aesthetically integrated into the architectural design. The Subconsultant for HVAC Design Services shall locate all equipment air intake / exhaust with security in mind in areas where inmates have access to them, security ceiling with lockable access panels shall be used. Interior equipment shall be designed with ample space for routing piping and ductwork, access for maintenance, removal and replacement, no interruption of building services and availability of replacement parts. Any outdoor equipment shall be designed with security and appearance in mind, and shall be set-back from the parapet or recessed into special designed equipment well.
8. The HVAC equipment shall be selected and designed for minimum vibration and low noise level. Equipment which may cause vibration shall be mounted upon single vibration eliminator pads or base except for major items of equipment which shall be mounted in accordance with the manufacturer recommendation or sound engineering good practice. The Subconsultant for HVAC Design Services shall investigate the proposed location for all the new equipment based on structural load, noise & vibration, and sufficient space removal, repair, and maintenance needed.
9. Security Ventilation:
 - a. All areas of JATC 's program space shall be security ventilated except those areas prohibited by code. Provide ventilation or exhaust for those spaces without security ventilation to exceed Code requirements.
 - b. Provide cooling load calculations for all architectural alternatives. Analyze the life cycle cost of equipment and the security ventilation distribution system for all proposed alternatives outlining all their advantages and disadvantages.
 - c. Provide security ventilation at all voice and data closets having equipment.
 - d. Provide economizer cycle for the security ventilation units in accordance with NYS Energy Conservation Code, including capability for smoke evacuation. All equipment shall be specified to have minimum 25 year life expectancy.
10. Heating:
 - a. The heating system shall be suitable for the building structure and capable of maintaining the minimum specified temperature for all areas.
 - b. The Subconsultant for HVAC Design Services shall provide computerized heating load calculations based on the proposed architectural schemes.
 - c. The Subconsultant for HVAC Design Services shall perform an analysis of different heating / cooling systems such as "all air" for heating and cooling, hot / chilled water system for heating and

cooling, hot water perimeter radiation, etc. The operation of the heating system shall be fully automatic.

11. Ventilation and Exhaust:

- a. Provide an enhanced level (exceeding code) of year-round mechanical ventilation and exhaust for all areas not security ventilated. Consideration shall be given to use fresh air as the cooling medium during intermediate seasons. All fresh air for building use shall be taken from locations with minimum of dust, dirt, or other contaminants.
- b. Provide heating and freeze proof pre-heat coils to temper all outside air.
- c. Exhaust system serving toilets, storage rooms and other locker room shall not be combined with any other exhaust system.

12. Fire Protection:

- a. The Subconsultant for HVAC Design Services shall verify the adequacy of existing Sprinkler system in the entire JATC. Any abnormalities, or observation of low pressure on the existing gauges, control valves, alarm devices, sprinkler heads, pipe leak and testing & inspection certificate shall be up-graded or replaced to meet all requirements set out for new program proposed areas. All alteration work involving sprinklers system, main pipe distribution, fire / booster pump, control valves, and alarm sensors shall be re-installed to suit and serve the new architectural scheme.
- b. The Subconsultant for HVAC Design Services shall specify any associated fire protection equipment (i.e. smoke detectors / sensors, dampers, fan shut down, etc.) for the new security ventilation system as needed to meet requirements of all applicable regulations directives, and codes.

M. ELECTRICAL

1. The Subconsultant for Electrical Design Services shall submit alternative schemes to include all phases of the work as required, to provide for a complete and economical and secured electrical design for the following:

- a. Expand electrical distribution system or provide new service for lighting and power, including panels as required.
- b. Vandal proof lighting system, convenience and special outlet systems.
- c. Exterior lighting and outside security lighting.
- d. Telephone distribution system
- e. Fire alarm system as required.
- f. Exit light and emergency lighting system.
- g. Security system to include door control, CCTV, alarm, & panic (duress) system compatible with existing Rikers Island Security System.
- h. Public address system as required.
- i. Expand existing emergency power distribution or provide new generator to provide 100% backup.
- j. All power wiring and connection to equipment furnished by others.
- k. Master antenna system
- l. Intercom system
- m. Clock system
- n. Audio monitoring/communication and entertainment system
- o. Passive infrared system
- p. Drag wire shall be included in all empty conduit that is installed.
- q. Temporary lighting and security lighting system during construction.
- r. IP based Voice and Data system
- s. IP based CCTV and recording system

4. The floor plan shall show detailed layout of concentrated conduit runs to eliminate conflicts and interference with other trades.

5. The lighting fixture schedules and summaries shall be given either in the specifications or on the

drawings.

6. The Subconsultant for Electrical Design Services shall provide for the coordination of work with other trades to eliminate costly change orders.
7. All work shall match existing conditions. All new systems shall be tied into existing systems.
8. The Subconsultant for Electrical Design Services shall thoroughly investigate the functional needs and building systems requirements for facility use and equipment and develop a complete program and design to reflect all project requirements.
9. Electric Service
 - a. The Subconsultant for Electrical Design Services shall analyze the adequacy of the existing electric service & emergency power. The Subconsultant for Electrical Design Services will analyze existing emergency generators and distribution system.
 - b. Develop the power requirements for the proposed work.
 - c. Determine if the available power from the normal service and emergency generators are sufficient to serve the proposed work. The Subconsultant for Electrical Design Services will provide load calculations based on original design drawings & actual field survey to determine any discrepancies.
 - d. A single line diagram or diagrams shall be prepared showing any required reinforcement of the existing service, the distribution scheme, and the emergency generators.
10. General Design Requirements
 - a. All power panels and lighting panels shall be of the circuit breaker type and in general arranged for three phase, four wire. All panels shall be provided with 25% spare conduits to permit future expansion.
 - b. Riser diagram shall be provided for power, telephone, alarm systems and communication systems. Complete conduit and wiring for each system shall be shown on the drawings.
 - c. Prepare and show on the drawings a single line and impedance diagram which shall include short circuit calculation of the distribution system for all significant points. All fuses and circuit breakers shall coordinate for selective tripping and selected for the interruption capacity required.
 - d. Electric contract plans shall include separate drawings for lights and separate drawings for convenience receptacles, power, telephone and other low voltage systems. A symbol list shall be included in the drawings.
 - e. Schematic single line drawings shall be prepared for affected electrical service, main panelboard, emergency power board, motor control centers, and connected lighting and power panels.
 - f. Schedules for main panelboard shall include feeder designations, circuit breaker type and trip ratings, feeder conduit and cable sizes, feeder lengths, estimated feeder loads and voltage areas.
 - g. All lighting and power panels shall have complete schedules given each circuit number, circuit breaker type and trip rating, load in watts and circuit destination.
 - h. All homes runs shall be shown and properly indexed as to number and size of conduit and wires and destination.
 - i. All fixtures shall be marked with the fixture types and control point.
 - j. All emergency power outlets shall be marked or so identified.
 - k. Provide separate scale drawings showing demolition work in Schematic Design Phase. The Drawings shall show location of lighting fixtures, panelboards, service entrance equipment, communication equipment and any other electrical equipment. The specification shall contain detailed requirements for the demolition work including any site lighting.
12. Miscellaneous Details: A Schedule of all motors showing horsepower, location starter type and methods of control and source of power shall be included in design documents.
13. The Subconsultant for Electrical Design Services shall obtain Fire Department Preliminary approval of

proposed expansion of, or installation of new Fire Alarm System. Completed drawings are to be filed with FDNY.

N. PLUMBING

1. The Subconsultant for Plumbing Design Services shall submit alternative schemes to determine phasing of the Plumbing work including sanitary, storm, gas, hot and cold water systems.
2. Provide a complete sanitary and vent system from the point of exit up to the stack penetrations through the roof. Plumbing system shall be gravity flow; any fixture unable to utilize gravity flow shall be conveyed to a duplex sewage ejector pump and receiver tank or pit. The sewage ejector discharge shall connect into gravity sanitary system on the street side of the house trap.
3. Provide a complete storm water system from any roof or area drains that receive storm water. Any storm drains that do not flow by gravity to the existing sewer shall be conveyed to a dedicated storm system duplex sump pump and receiver tank or pit.
4. Provide a new complete domestic cold water service: including a new water meter, backflow preventer and connection into existing on-site water main. Water distribution shall supply cold water to all plumbing fixtures, exterior wall hydrants and equipment where required. Subject to a hydrant flow test provide a water pressure booster system, if water pressure is not adequate at the most remote fixture. Note: Rikers Island has separate water and fire protection systems.
5. Provide for a new complete domestic hot water system to all plumbing fixtures and equipment that may require hot water, including but not limited to, steam to water generated hot water storage tank, hot water distribution, hot water circulation piping circulation pump and all related controls.
6. Provide a new sprinkler service if required, including new water meter backflow preventer, supports and connection into existing on-site water main.
7. Provide all new plumbing fixtures, accessories in all toilet rooms, holding cells, showers, janitor closets, pantries and mechanical room floor drains.
8. Provide insulation on all domestic hot & cold water, hot water circulation piping and horizontal storm water piping. Include electric heat tracing on all piping systems subject to freezing.
9. Provide handicap accessible and low flow plumbing fixtures where required by applicable codes.
10. Provide for self contained all water cooled HVAC equipment, all pertinent accessories, including chair carriers, secondary supports, traps and stops.
11. The Subconsultant for Plumbing Design Services shall provide for the discontinuance of and removal of, if necessary of any existing gasoline tank or diesel oil tank including all related piping systems discovered on the site buried below the basement level or below grade.
12. The Subconsultant for Plumbing Design Services shall provide for the test of new services and connections to any existing services as required by codes.

O. SUSTAINABLE DESIGN

1. High Performance Project: The scope for this work shall include all services required in a High Performance Pilot Project as defined in the DDC *Design Consultant Guide, August 2003* www.nyc.gov/html/ddc/html/desguide.html.

The objectives and suggested measures are detailed in the DDC *High Performance Building Guidelines, April 1999*. www.nyc.gov/html/ddc/html/ddcgreen/highperf.html .

2. LL86/ 2005

- a. In addition to the services required in a High Performance Pilot project, the Consultant's tasks shall consist of meeting all the requirements of Local Law 86 in accord with the Mayor's Office of Environmental Coordination's Green Building Standards Rules ("Rules"), which can be accessed at www.nyc.gov/html/oec/downloads/df/LL86/2Green_Buildings%20Rules-Final_Text-Legal_1680311_.pdf
- b. Identified as occupancy group H-1 by the NYC Building Department, this reconstruction project affecting more than 50% of total floor area of the existing building and including rehabilitation work to all three major service systems must obtain at least a Silver rating certification as prescribed by Leadership in Energy and Environmental Design (LEED) for New Construction 2.2. The Consultant's services shall include filing and certifying the project with the US Green Buildings Council (USGBC) to meet the requirements of this program. All tasks, submittals, filing/ registration activities and fees required to successfully meet this standard and to receive formal certification shall be part of the consultant's work.
- c. Beyond the energy savings required by LEED and as indicated in the referenced "Rules", due to the expected construction budget for this project in excess of \$30M, it will be required to show a reduction in energy cost by a minimum of 25%, plus up to 30% savings if there are additional energy efficiency measures with a simple payback of seven years or less. Likewise, it must be shown that potable water consumption will be reduced by 30% using LEED methodology (or 20% if Department of Buildings does not approve or DOC objects to the use of waterless urinals). Services shall include all analyses, projections and reports to objectively indicate how these percentages and paybacks will be accomplished.
- d. In addition to LEED related items, Local Law 86 requires energy analysis and reporting. Meeting this requirement will be a joint effort between the consultant and DDC. An example of a design development phase energy analysis and required reporting can be found at www.nyc.gov/html/ddc/html/ddcgreen/documents/examples/sample_ea.pdf . The Consultant must provide most reporting data at the end of final design. Examples of data required include (1) soft costs associated with LEED certification, (2) an assessment of all measures of energy efficiency including storm water run-off and potable water use achieved as compared to a base case project, (3) Assessment of the initial capital investment in energy efficiency and the estimated payback period resulting from energy cost savings, (4) heat island effect reduction, and (5) construction waste diversion.

3. Commissioning: In conformance with the Design Guide for Consultants and LEED methodology, the Subconsultant for High Performance Design Services will provide all services as necessary to support the commissioning agent to be hired under a separate contract by DDC. Commissioning services will be sufficient to achieve the LEED prerequisite and credit for enhanced commissioning.

4. Time Line

- a. The Local Law 86/2005 LEED Project Timeline www.nyc.gov/html/ddcgreen/documents/1186/timeline.pdf shall be followed, including design tasks and deliverables for all phases indicated from pre-design to post warranty. Examples of deliverables can be viewed at the DDC sustainable website, www.nyc.gov/html/ddc/html/ddcgreen/forms.html
- b. As an initial step, the Subconsultant for High Performance Design Services shall organize and facilitate an all inclusive LEED Workshop. The purpose of the workshop is to set goals in establishing and integrating LEED and high performance criteria in relation to other project

priorities. Prior to the workshop a draft energy analysis plan, among other interim deliverables, shall be prepared as indicated herein and on the timeline. An example of such energy analysis plan can be viewed at www.nyc.gov/html/ddc/html/ddcgreen/forms.html. This energy analysis plan shall indicate the modeling software...etc. All involved parties concerned including consultant representatives, sub-consultants, client agency, operations and DDC shall participate.

- c. Based on the workshop, the Subconsultant for High Performance Design Services will prepare a deliverable called the LEED (High Performance) Plan, an example of which can be found at www.nyc.gov/html/ddc/html/ddcgreen/. This base plan will be available to the entire project team and serve as a tracking device to establish milestones and progress as well as assign tasks.
5. Expertise Specific to this Project
- a. Since this is a LEED NC 2.2 project, several site related issues such as permeability, storm water runoff, shading, emissivity, and water efficient landscaping must be addressed. The first step would be to establish the exact extent of the site plan, and review each issue for possible LEED credits while respecting overall facility security concerns.
 - b. Site access – Review of Department of Corrections protocol with regard to the secured movement of staff and visitors on the island should be conducted with the LEED Site Transportation credits in mind to determine feasibility of obtaining those points.
 - c. HVAC Modeling – The project presents unique HVAC circumstances in that the program calls for complete facility security ventilation (not provided for previously), large volumes of space incorporating three story high window walls facing east and west creating dramatically different temperature ranges within the building over the course of the day, and heating provided by community steam generation. In order to consider the Energy and Indoor Environmental Quality LEED credits under these circumstances, the conventional modeling will need to be tailored to meet these conditions.
 - d. Architectural materials expert – Both building re-use and materials re-use will influence the LEED credits in this project since much of the existing interior surfaces are re-usable. Also, materials from a previous unfinished contract, being stored at the site, should be assessed by the Consultant for re-use suitability, recycled content and local origination.
 - e. Day Lighting – Analysis and modeling of existing and proposed translucent/transparent building materials and architectural methods that admit daylight while meeting the Department of Corrections security requirements will be necessary.
 - f. Site and interior building lighting – The expertise of a lighting designer will be required to develop a high quality, energy efficient lighting design (including controls) that respects and enhances Department of Correction security issues.
 - g. LEED – A LEED certified specialist to administer the forms and submittals to register and obtain LEED certification for this project will be required.

P. SUBMISSION REQUIREMENTS

1. The Consultant shall submit the final documents to DDC on CD, paper, and mylar media.
2. Schedule of deliverables:
 - a. Preliminary Design Documents Required:
 - i. Renderings:
 - ii. Presentation Documents:
 - iii. Materials Boards:

b. Prints and Copies for A&E:

Contract Stage	Reports	Drawings	Specs	Estimates
Pre-preliminary Stages				
Stage 1 – Inventory and Analysis	8	8	-	-
Stage 2 – Issue Identification and Development Options	8	8	-	4
Stage 3 – Development Option Refinement and Draft and Final Master Plan including Structural Report	8	8	-	4
Schematic Design	8	8	-	4
Design Development		8	8	4
75% Construction Documents		8	8	4
100% Construction Documents		8	8	4
Compliance		8	8	4

c. Prints and Copies for Project Management and Estimating:

Contract Stage	Reports	Drawings	Specs	Estimates
Pre-preliminary Stages				
Stage 1 – Inventory and Analysis	6	6	-	-
Stage 2 – Issue Identification and Development Options	6	6	-	6
Stage 3 – Development Option Refinement and Draft and Final Master Plan including Structural Report	6	6	-	6
Schematic Design	6	6	-	6
Design Development		6	6	6
75% Construction Documents		6	6	6
100% Construction Documents		6	6	6
Compliance		6	6	6

N. SUBMISSION SCHEDULE

1. Pre-Preliminary Phase: The time frame for completion of all required services for the Pre-Preliminary Phase is 152 consecutive calendar days (ccds). Such time frame shall commence as of the date of the written advice of award and shall not include any review time by agencies whose approval the Consultant is required to obtain. During the Pre-Preliminary Phase, the Consultant shall submit deliverables in accordance with the requirements set forth in the DDC Design Consultant Guide.

2. Design Phase: The time frame for completion of all required services for the Design Phase is 648 consecutive calendar days (ccds). Such time frame shall commence as of the date on which the Consultant is directed to proceed with the Design Phase and shall not include any review time by agencies whose approval the Consultant is required to obtain. During the Design Phase the Consultant shall submit deliverables in accordance with the requirements set forth in the DDC Design Consultant Guide and in accordance with the time schedule set forth below.

Schematic Design Documents (including services in connection with value engineering)	192 ccds
Design Development Documents	152 ccds
Final design Documents	152 ccds
Bid, Award, & Registration	152 ccds