

DCC

Department of
Design & Construction

City of New York

Michael R. Bloomberg
Mayor

David J. Burney, AIA
Commissioner

RFP

Request for Proposal

A&E Design Requirements
Contract for
Commissioning
Services

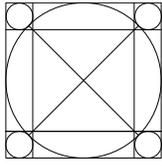
Pre-Proposal Conference
April 21, 2005

SUBMISSION DEADLINE

PIN

PROJECT





DDC

Request For Proposals

Consultant Services for Commissioning

***PROJECT: A/E Design Requirements
Contract for Commissioning Services***

**PIN: 8502005RQ0004P
8502005RQ0005P**

**MICHAEL R. BLOOMBERG
MAYOR**

Department of Design and Construction
David J. Burney, AIA, *Commissioner*

Division of Architecture and Engineering
David Resnick, *Associate Commissioner*

**PRE-PROPOSAL CONFERENCE: April 21, 2005
SUBMISSION DEADLINE: May 3, 2005**

Details, Pages 3 and 4

04/05/05

DEPARTMENT OF DESIGN AND CONSTRUCTION

A/E DESIGN REQUIREMENTS CONTRACT FOR COMMISSIONING SERVICES

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REQUEST FOR PROPOSALS: DESIGN REQUIREMENTS CONTRACT FOR COMMISSIONING SERVICES

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
- B. Pre-Proposal Conference

A pre-proposal conference will be held at 10:00AM on Thursday, April 21, 2005 at DDC headquarters, 30-30 Thomson Avenue, Long Island City, NY 11101, in the 4th floor Conference Room 401. Attendance is recommended but not mandatory to propose on the contract described in this RFP, it is strongly encouraged.

- 1. Submission Deadline

The proposer shall deliver 1 original and 4 copies of the Technical Proposal and 1 original of the Fee Proposal for each proposed contract option in a separate, clearly marked, sealed packages, on or before 4:00pm on Tuesday, May 3, 2005. Any proposals received after the prescribed due date and time will be rejected unless, pursuant to the Procurement Policy Board Rules, the Agency Chief Contracting Officer has determined to extend the due time for the receipt of proposals. The proposal shall be hand delivered to the contract person at the location listed below:

Joseph E. McAdam, (718) 391-1845
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 mcadams@ddc.nyc.gov

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

- 2. 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

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all potential proposers known to have received the RFP. All inquiries must be directed ONLY to the contact person listed in Paragraph B (1) above.

3. 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. Pre-Proposal Conference: April 21, 2005
- b. Proposals Submission Deadline: May 3, 2005
- c. Identify Consultant: Within four weeks of submission deadline
- d. Complete Contract Registration: Approximately three months from date of consultant selection.
- e. Commence Work: When directed by DDC.

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSAL

A. Background and Objectives of the Project

The New York City Department of Design and Construction (DDC), Division of Architecture and Engineering, is seeking appropriately qualified firms to perform commissioning services for various construction projects on a Task Order basis for all Program Units, Citywide. The scope of services is more fully described in Exhibit B – Specific Requirements of the attached contract.

Commissioning is a systematic process, beginning in the design phase, lasting at least one year after construction, and including the preparation of operating staff, of ensuring, through documented verification, that all building systems perform interactively according to the documented design intent and the owner's operational needs.

B. Contract Options

DDC intends to award two contracts from this RFP, as follows:

- Option #1 – Provide services to DDC client agencies: Department of Juvenile Justice, Department of Environmental Protection, and the Department of Transportation, and the following program units within DDC: Courts, Corrections, Health and Human Services.
- Option #2 – Provide services for the following Program Units within DDC: Cultural, Libraries, Police, and the Fire Program Units.

The Commissioner reserves the right to issue Task Orders for required services for other Program Units.

Proposers may propose for more than one contract option within a single proposal. However, a separate and complete project specific Fee Proposal must be submitted for each contract option proposed, each proposal enclosed in a separate sealed and labeled envelope. In the case that a proposer is eligible for award of both contract options, DDC reserves the right to determine, based on the proposer's demonstrated capability and best interests of the City, respectively, how many and for which option(s) the proposer will be awarded a contract.

C. Joint Ventures and Other Consultant Relationships

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.

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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 a 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 relegated to Exhibit A, which lists the subconsultants.

D. Contract Term/Contract Estimate

The term of the contracts awarded from this RFP shall commence on the date set forth in the Written Notice to Proceed and run for 1,095 consecutive calendar days. The estimated value of each contract is \$1,000,000. At the commissioner's sole option, the term of each contract may be renewed for 730ccds for up to \$500,000 each. The Proposer is advised to carefully review Exhibit A to the attached contract, which sets forth the total anticipated time frame for this project.

E. Insurance

The Consultant and all subconsultants performing services for these contracts must provide the types and amounts of insurance specified in Article 11 of the attached contract. The Proposer is advised to carefully review such insurance requirements.

F. Payment Provisions

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

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Commissioning Services

The Consultant shall provide Commissioning Services for various projects, as specified by the Commissioner on a Task Order basis. Individual Task Order may include a scope of work for single or multiple services. (See Exhibit B of the attached contract).

B. Task Orders Process

Throughout the term of the contract, as the need arises for commissioning services with respect to a specific project, the Commissioner shall issue a Task Order. The Consultant shall provide services in accordance with the Task Order for the project specified therein. Exhibit B of the attached contract sets forth the Task Order Process, including the items which must be specified in each respective Task Order. The Consultant shall not perform services to these contracts until the Commissioner has issued a Task Order in accordance with Exhibit B of the attached contract.

C. Staffing Requirements

Overall staffing requirements for the Consultant's personnel for the Project have been established by the Commissioner and are set forth in Exhibit E of the attached contract. Such staffing requirements specify the titles and the required level of expertise of personnel that may be required for the Project. In accordance with the procedure outlined in Exhibit B of the attached contract, the number and titles of the Consultant's personnel required for the Project, as well as the specified personnel to be assigned to the Project are subject to the prior written approval of the Commissioner. The Consultant agrees, throughout the term of the contract, to provide personnel as directed by the Commissioner.

The consultant shall fulfill the terms in accordance with Exhibit B of the attached contract, which sets forth in detail the requirements with respect to the following: (1) provisions of personnel; (2) staffing requirements for personnel; (3) key personnel; (4) staffing list or plan; (5) sub-consultants, and (6) employees of the consultant.

The Consultant's key personnel will have a successful track record completing projects of comparable scope and complexity to that described in Exhibit B of the contract.

The Key Personnel identified in the contractor's technical proposal shall be assigned to the Project. In accordance with Exhibit B of the attached contract, failure by the Consultant to provide such Key Personnel will be considered a material breach of the contract and grounds for termination for cause. Replacement of such Key Personnel is subject to approval by

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the Commissioner and will only be permitted in the following circumstances: (1) if the designated individual dies or is no longer in the employ of the Consultant; or (2) if the City fails to direct the Consultant to commence work on the Project within nine (9) months of the date the Consultant submitted its technical proposal.

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

A. Proposal Subdivisions: Submit the proposal in separate, clearly labeled, sealed packages as follows:

1. Technical Proposal (1 original and 4 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus forms 254 and 255. (These forms are available at <http://nyc.gov/buildnyc>) The Technical Proposal shall not include the Fee Proposal.
2. Fee Proposal (1 original for each contract option proposed): The Fee Proposal shall consist of the elements requested in Subsection C below. Forms for the submission of the Fee Proposals are included as Attachment 2 and 4 of this RFP.

B. Technical Proposal

Include the following information in the Technical Proposal in the order outlined below. There may be further breakdowns of this format for each item, if the proposer so requires to clarify its proposal.

Introductory Material:

- Cover Letter: Submit a maximum one-page cover letter, indicating the firm's name and address, and the name, address and telephone number of the person authorized to represent the firm. Include the DDC contract name and number.
- Table of Contents: Provide a table of contents of the material contained in the proposal.
- Summary: Submit a brief statement of the salient features of the proposal, including approach, qualifications and nature of the proposal project team. Do not include fee data in the summary.

Support Documentation:

1. Firm's Experience: Describe the specific experience of the proposing firm, including a thorough description of no more than five (5) relevant projects, which demonstrate the firm's ability to carry out the scope of work described in this RFP.

If the proposer is a joint venture, delineate the areas of responsibility and expertise of each joint venture partner.

2. Project Team: Identify the following:
 - (i) Contract Executive: The Contract Executive, as defined in Exhibit B of the attached contract.

- (ii) Key Personnel: Provide all the information requested on the form for each title included on Attachment 2 of this RFP regarding the proposed personnel who will be assigned to the Project. Attach resumes of the proposed Key Personnel, detailing managerial and technical qualifications.
- (iii) Project Staff: Identify those proposed personnel who will be assigned to the Project to fulfill the staffing requirements. Attach resumes of the proposed personnel, detailing technical qualifications and expertise, shall be included.

3. Firm's Capability: Demonstrate the proposer's capability in terms of the quality of the firm's CAD capabilities, library, quality assurance program, staffing, and workload including other DDC projects.

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

C. Fee Proposal

The fee proposal shall consist of two fees outlined below:

- (1) Commissioning fee, which has two parts. Fee curve for HVAC/Mechanical systems and Fee Curve for Electrical Systems. (Attachment 3)
- (2) All-inclusive Hourly Rates. (Attachment 4)

1. Commissioning Fee: The Commissioning Fee shall be an amount which shall cover all costs and expenses incurred by the Consultant and if applicable all subconsultants in the performance of all required services for the Project, as set forth in Exhibit B of the attached contract, including all expenses related to management, overhead and any anticipated profit, exclusive of any expenses and anticipated profit for: (1) Hazmat Services (2) additional professional services, and (3) reimbursable services as set forth in Exhibit B. The amount of the Commissioning Fee shall be calculated as a percent of the total estimated cost of construction for each assigned Project in accordance with the Proposer's Fee Curve. The Proposer shall submit its proposed Commissioning Fee in the form of a Fee Curve by completing Attachment 2 of this RFP. The terms and conditions applicable to the Commissioning Fee are set forth in Exhibit B of the attached Contract.

As indicated on such form, for each dollar increment in estimating the system's construction cost, the proposer shall submit a Commissioning Fee, calculated as a percent of the total estimated cost of the construction of the system to be commissioned for the project.

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For estimation of the system's construction cost between the dollar levels designated, the Commissioning Fee will be interpolated on a straight-line basis. For the purposes of applying the fee curve, the total estimated cost of construction of the system to be commissioned for the project shall be the total estimated cost of construction of the system to be commissioned for the project approved in writing by the Commissioner at the conclusion of the Design Contract Preliminary Design Phase, which estimate shall exclude any costs in connection with the removal of hazardous materials and/or Reimbursable Services.

2. All Inclusive Hourly Rates (RFP 26-29): All Inclusive Hourly Rates submitted by the proposer for specified titles of personnel shall apply to all hours during which such personnel perform services for the Project, including 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, (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.

Please note that the fee provisions of Document CS29D issued by the Office of Management and Budget on September 20, 1988 are not applicable to this contract. Consultants are expected to devise their own fees.

D. Acknowledgement of Addenda

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

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

All proposals accepted by the Agency will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the Agency to be non-responsive will be rejected. The Agency's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. The Agency reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the Agency deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the Agency reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best technical and price terms.

1. Evaluation Criteria

- a. Quality and Quantity of Relevant Successful Experience of the Firm [weight 50%].
- b. Quality and Quantity of Relevant Successful Experience of Individuals Proposed for the Project Team [weight 30%].
- c. Firm's Demonstrated Capability [weight 20%].

2. Basis of Award

In accordance with the NYC Charter, the Department of Design and Construction will award contracts to the responsible proposer(s) whose proposal(s) is/are determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria as are set forth in the Request for Proposals. In the case that a proposer is eligible for award of both contract options, DDC reserves the right to determine, based on the proposer's demonstrated capability and best interests of the City, respectively, how many and for which option(s) the proposer will be awarded a contract.

3. Supply and Service Report

Upon selection, each successful proposer will be required to submit one original copy of the Department of Business Services Supply and Service Report, a copy of which will be provided. Upon written notification, the proposer must submit the Service and Supply Report within ten days of such notification.

4. VENDEX

Upon selection, each successful proposer will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written

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notification, the proposer must submit a Confirmation of Vendex Compliance to DDC within five 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 718-391-1565.

(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.

5. Contract Finalization

Upon selection, each 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. CONDITIONS OF PROPOSAL SUBMISSIONS

- 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;
 7. May 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 Commissioning Services. A sample draft copy of the contract is attached for your information. The requirements for performance of this Project, as well as insurance, payment terms and all other provisions are contained in the contract.
2. Any information which may have been released either orally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither the City nor the Proposer.
3. The City will deal only with the Consultant and the City has no financial obligation to sub-consultants and sub-contractors. However, all sub-consultants and sub-contractors are subject to the City's contracting requirements including Equal Employment Opportunity (Executive Order #50 of 1980 as revised).
4. If this is an Infrastructure contract for engineering design services, the Proposer must negotiate with the agency the adoption of a schedule of payments and deliverables. In the event that a satisfactory decision cannot be reached regarding those schedules, the agency reserves the right to award to another proposer.
5. The prompt Payment provisions set forth in the edition of the Procurement Policy Board Rules in effect at the time of this solicitation shall be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest payments made after the required payment date except as set forth in the Rules.

The contractor (consultant) must submit a proper invoice to receive payment, except where the contract provides that the contractor shall be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

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

6. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007;

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the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

7. 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 contacting the PPB at (212) 788-7820.
8. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the 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/Affidavits of No Charge 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.
9. 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.
10. 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.
11. The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

ACCO Signature

Date

SECTION VII. ATTACHMENTS AND ENCLOSURES

The following items are appended as attachments and enclosures to the RFP. Asterisked (*) items need to be completed and returned as part of the proposal submission package:

A. Attachments

1. Statement of Understanding*
3. Fee Proposal Forms*
2. Identification of Key Personnel Forms*
4. All-Inclusive Hourly Rates Forms*
5. Acknowledgement of Addenda
6. Confirmation of Vendex Compliance and VENDEX Certification of No Change (**Download new 2004 VENDEX Questionnaires from nyc.gov/vendex**)

B. Enclosure:

Standard Form of Commissioning Services Contract Requirements Contract

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 commissioning services requirements 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.

I hereby certify that my firm will carry all insurances specified in the contract.

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

Date

Authorized Signature

Telephone Number

Consultant Firm

Fax Number

Federal Tax I.D.

E-Mail Address

Address

ATTACHMENT 2/CONTRACT OPTION #1

Title	Name	Number of Years of Experience	Professional License or Certification
<u>Commissioning</u>			
Contract Executive	_____	_____	_____
Project Engineer	_____	_____	_____
Project Manager	_____	_____	_____
Electrical Engineer	_____	_____	_____
Plumbing Engineer	_____	_____	_____
HVAC Engineer	_____	_____	_____
Assistant Engineer	_____	_____	_____
<u>Specialist Support</u>			
Architectural System Specialist	_____	_____	_____
Geotechnical Specialist	_____	_____	_____
Energy Analysis Specialist	_____	_____	_____
Acoustician	_____	_____	_____
All Testing and Balancing Technician	_____	_____	_____
Controls Technician	_____	_____	_____

ATTACHMENT 2/CONTRACT OPTION #2

Title	Name	Number of Years of Experience	Professional License or Certification
<u>Commissioning</u>			
Contract Executive	_____	_____	_____
Project Engineer	_____	_____	_____
Project Manager	_____	_____	_____
Electrical Engineer	_____	_____	_____
Plumbing Engineer	_____	_____	_____
HVAC Engineer	_____	_____	_____
Assistant Engineer	_____	_____	_____
<u>Specialist Support</u>			
Architectural System Specialist	_____	_____	_____
Geotechnical Specialist	_____	_____	_____
Energy Analysis Specialist	_____	_____	_____
Acoustician	_____	_____	_____
All Testing and Balancing Technician	_____	_____	_____
Controls Technician	_____	_____	_____

ATTACHMENT 3 Information

FEE PROPOSAL

Fees to be prepared as two smooth curves, one curve will be for commissioning of HVAC/Mechanical Systems. The second curve will be for Electrical Systems.

HVAC/Mechanical Systems to include, but not be limited to:

- Air handling, distribution and ventilation systems
- Heating System
- Cooling System
- Hydronic System
- Building Automation System & controls, direct digital controls, Energy Management Systems
- Fire Protection Systems
- Domestic Hot Water Systems
- Water Pressure Booster System
- Gas Pressure Booster System

Electrical Systems to include, but not be limited to:

- Fire Detection and Alarm Systems
- Electric Main Switchgear & Power Systems
- Lighting Systems
- Motor Control Centers
- Stand-by Power Systems
- UPS Systems
- Security Systems

If the preliminary estimate of construction cost for a given system category falls between the values shown, the fee shall be interpolated on a straight-line basis. (Consultants, please note: fees to be calculated without complexity factors)

Fee curves include basic commissioning services as described in the Specific Requirements. Specialists as listed under Specialist Support shall be paid for separately.

ATTACHMENT 3/CONTRACT OPTION #1

FEE PROPOSAL

(1) FEE CURVE FOR COMMISSIONING FEE FOR HVAC/MECHANICAL SYSTEMS

This fee shall include the following systems: HVAC, plumbing, and fire protection.

Total Estimated Construction Cost of Commissioned Systems	Commissioning Fee Percent of Estimated Construction Cost	Amount of Commissioning Fee
\$ 10,000	_____	_____
\$ 25,000	_____	_____
\$ 50,000	_____	_____
\$ 100,000	_____	_____
\$ 250,000	_____	_____
\$ 500,000	_____	_____
\$ 750,000	_____	_____
\$ 1,000,000	_____	_____
\$ 1,500,000	_____	_____
\$ 2,000,000	_____	_____
\$ 2,500,000	_____	_____
\$ 3,000,000	_____	_____
\$ 3,500,000	_____	_____
\$ 4,000,000	_____	_____
\$ 4,500,000	_____	_____
\$ 5,000,000	_____	_____
\$ 6,000,000	_____	_____
\$ 7,000,000	_____	_____
\$ 8,000,000	_____	_____
\$ 9,000,000	_____	_____
\$ 15,000,000	_____	_____
\$ 20,000,000	_____	_____
\$ 25,000,000	_____	_____
\$ 30,000,000	_____	_____
\$ 35,000,000	_____	_____
\$ 40,000,000	_____	_____
\$ 45,000,000	_____	_____
\$ 50,000,000	_____	_____

NOTE: The Consultant shall not leave any blanks nor qualify the fees in any way.

ATTACHMENT 3/CONTRACT OPTION #1 (CONTINUED)

(2) FEE CURVE FOR COMMISSIONING FEE FOR ELECTRICAL SYSTEMS

This fee shall include the following systems: electrical, fire alarm, security and UPS.

Total Estimated Construction Cost of Commissioned Systems	Commissioning Fee Percent of Estimated Construction Cost	Amount of Commissioning Fee
\$ 10,000	_____	_____
\$ 25,000	_____	_____
\$ 50,000	_____	_____
\$ 100,000	_____	_____
\$ 250,000	_____	_____
\$ 500,000	_____	_____
\$ 750,000	_____	_____
\$ 1,000,000	_____	_____
\$ 1,500,000	_____	_____
\$ 2,000,000	_____	_____
\$ 2,500,000	_____	_____
\$ 3,000,000	_____	_____
\$ 3,500,000	_____	_____
\$ 4,000,000	_____	_____
\$ 4,500,000	_____	_____
\$ 5,000,000	_____	_____
\$ 6,000,000	_____	_____
\$ 7,000,000	_____	_____
\$ 8,000,000	_____	_____
\$ 9,000,000	_____	_____
\$ 15,000,000	_____	_____
\$ 20,000,000	_____	_____
\$ 25,000,000	_____	_____
\$ 30,000,000	_____	_____
\$ 35,000,000	_____	_____
\$ 40,000,000	_____	_____
\$ 45,000,000	_____	_____
\$ 50,000,000	_____	_____

NOTE: The Consultant shall not leave any blanks nor qualify the fees in any way.

ATTACHMENT 3/CONTRACT OPTION #2

FEE PROPOSAL

(1) FEE CURVE FOR COMMISSIONING FEE FOR HVAC/MECHANICAL SYSTEMS

This fee shall include the following systems: HVAC, plumbing, and fire protection.

Total Estimated Construction Cost of Commissioned Systems	Commissioning Fee Percent of Estimated Construction Cost	Amount of Commissioning Fee
\$ 10,000	_____	_____
\$ 25,000	_____	_____
\$ 50,000	_____	_____
\$ 100,000	_____	_____
\$ 250,000	_____	_____
\$ 500,000	_____	_____
\$ 750,000	_____	_____
\$ 1,000,000	_____	_____
\$ 1,500,000	_____	_____
\$ 2,000,000	_____	_____
\$ 2,500,000	_____	_____
\$ 3,000,000	_____	_____
\$ 3,500,000	_____	_____
\$ 4,000,000	_____	_____
\$ 4,500,000	_____	_____
\$ 5,000,000	_____	_____
\$ 6,000,000	_____	_____
\$ 7,000,000	_____	_____
\$ 8,000,000	_____	_____
\$ 9,000,000	_____	_____
\$ 15,000,000	_____	_____
\$ 20,000,000	_____	_____
\$ 25,000,000	_____	_____
\$ 30,000,000	_____	_____
\$ 35,000,000	_____	_____
\$ 40,000,000	_____	_____
\$ 45,000,000	_____	_____
\$ 50,000,000	_____	_____

NOTE: The Consultant shall not leave any blanks nor qualify the fees in any way.

ATTACHMENT 3/CONTRACT OPTION #2 (CONTINUED)

(2) FEE CURVE FOR COMMISSIONING FEE FOR ELECTRICAL SYSTEMS

This fee shall include the following systems: electrical, fire alarm, security and UPS.

Total Estimated Construction Cost of Commissioned Systems	Commissioning Fee Percent of Estimated Construction Cost	Amount of Commissioning Fee
\$ 10,000	_____	_____
\$ 25,000	_____	_____
\$ 50,000	_____	_____
\$ 100,000	_____	_____
\$ 250,000	_____	_____
\$ 500,000	_____	_____
\$ 750,000	_____	_____
\$ 1,000,000	_____	_____
\$ 1,500,000	_____	_____
\$ 2,000,000	_____	_____
\$ 2,500,000	_____	_____
\$ 3,000,000	_____	_____
\$ 3,500,000	_____	_____
\$ 4,000,000	_____	_____
\$ 4,500,000	_____	_____
\$ 5,000,000	_____	_____
\$ 6,000,000	_____	_____
\$ 7,000,000	_____	_____
\$ 8,000,000	_____	_____
\$ 9,000,000	_____	_____
\$ 15,000,000	_____	_____
\$ 20,000,000	_____	_____
\$ 25,000,000	_____	_____
\$ 30,000,000	_____	_____
\$ 35,000,000	_____	_____
\$ 40,000,000	_____	_____
\$ 45,000,000	_____	_____
\$ 50,000,000	_____	_____

NOTE: The Consultant shall not leave any blanks nor qualify the fees in any way.

ATTACHMENT 4/CONTRACT OPTION #1

ALL-INCLUSIVE HOURLY RATES

<u>Title</u>	(a) Estimated Staff Hours	(b) Hourly Rate	(a)x(b) = Estimate amount Per Title
<u>Commissioning</u>			
Project Engineer	300 X	\$_____ X	= \$
Project Manager	300 X	\$_____ X	= \$
Electrical Engineer	400 X	\$_____ X	= \$
Plumbing Engineer	200 X	\$_____ X	= \$
HVAC Engineer	1000 X	\$_____ X	= \$
Assistant Engineer	200 X	\$_____ X	= \$
Contract Executive	100 X	\$ <u>N/A</u> X	= \$

NOTE: The Consultant shall not leave any blanks nor qualify the fees in any way.

ATTACHMENT 4/CONTRACT OPTION #1 (CONTINUED)

Title	(a) Estimated Staff Hours	(b) Hourly Rate	(a)x(b) = Estimate amount Per Title
-------	---------------------------------	-----------------------	---

Specialist Support

Architectural System Specialist	100 X	\$ _____ X	= \$
Geotechnical Specialist	100 X	\$ _____ X	= \$
Energy Analysis Specialist	100 X	\$ _____ X	= \$
Acoustician	100 X	\$ _____ X	= \$
All Testing and Balancing Technician	200 X	\$ _____ X	= \$
Controls Technician	200 X	\$ _____ X	= \$

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

(Add all estimated amounts per title from pages RFP-26 through 27.)

Total Estimated Time Card Fee = \$

Name of Principal (please print)

Signature of Principal

Date

ATTACHMENT 4/CONTRACT OPTION #2

ALL-INCLUSIVE HOURLY RATES

<u>Title</u>	<u>(a) Estimated Staff Hours</u>	<u>(b) Hourly Rate</u>	<u>(a)x(b) = Estimate amount Per Title</u>
<u>Commissioning</u>			
Project Engineer	300 X	\$_____ X	= \$
Project Manager	300 X	\$_____ X	= \$
Electrical Engineer	400 X	\$_____ X	= \$
Plumbing Engineer	200 X	\$_____ X	= \$
HVAC Engineer	1000 X	\$_____ X	= \$
Assistant Engineer	200 X	\$_____ X	= \$
Contract Executive	100 X	\$ <u>N/A</u> X	= \$

NOTE: The Consultant shall not leave any blanks nor qualify the fees in any way.

ATTACHMENT 4/CONTRACT OPTION #2 (CONTINUED)

Title	(a) Estimated Staff Hours	(b) Hourly Rate	(a)x(b) = Estimate amount Per Title
-------	---------------------------------	-----------------------	---

Specialist Support

Architectural System Specialist	100 X	\$ _____ X	= \$
Geotechnical Specialist	100 X	\$ _____ X	= \$
Energy Analysis Specialist	100 X	\$ _____ X	= \$
Acoustician	100 X	\$ _____ X	= \$
All Testing and Balancing Technician	200 X	\$ _____ X	= \$
Controls Technician	200 X	\$ _____ X	= \$

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

(Add all estimated amounts per title from pages RFP-28 through 29.)

Total Estimated Time Card Fee = \$

Name of Principal (please print)

Signature of Principal

Date

ATTACHMENT 5

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 6

CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of Vendex Compliance _____
_____.

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

- (1) **Submission of Questionnaires to MOC:** 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: _____

THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION

DIVISION OF _____

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

**REQUIREMENTS CONTRACT
COMMISSIONING SERVICES FOR
FOR VARIOUS PROJECTS**

FMS NUMBER: _____

**REGISTRATION
NUMBER:** _____

PIN NUMBER: _____

CONSULTANT: _____

Telephone: _____

Facsimile: _____

Date: _____

**Standard Professional Services Requirements Contract
April 2005**

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 the services set forth in Exhibit A performed on a requirements basis for various Projects, as specified by the Commissioner on a Task Order basis, 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 submitted for the Contract; (3) Exhibit A "Contract Information", and (4) other Exhibits set forth in Exhibit A. In the event of any conflict between the RFP and the Consultant's Proposal, the RFP shall prevail.

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 referred to in Paragraph 1.1 of this Article.

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

1.11 "Engineer", as used in the Article entitled "Resolution of Disputes", shall mean the Commissioner's Representative.

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 the services set forth in Exhibit A are required, as specified by the Commissioner on a Task Order basis.

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 "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.

1.19 "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 set forth herein, and the Consultant agrees to so serve. The Consultant agrees to provide, to the satisfaction of the Commissioner, the services set forth in Exhibit A for various Projects, as specified by the Commissioner on a Task Order basis. The services to be provided by the Consultant are set forth in the Specific Requirements (Exhibit B). The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its

obligations under this Contract competently and efficiently.

ARTICLE 4 Task Order Process

4.1 The terms and conditions applicable to the Task Order Process are set forth in Exhibit B, the Specific Requirements. The Consultant shall provide services in accordance with such Task Order Process.

ARTICLE 5 The Consultant's Personnel

5.1 The terms and conditions applicable to the provision of personnel by the Consultant are set forth in Exhibit B, the Specific Requirements. The Consultant shall provide all required personnel for the performance of services in accordance with such requirements.

ARTICLE 6 Scope of Services

6.1 The terms and conditions applicable to the services to be provided by the Consultant are set forth in Exhibit B, the Specific Requirements. The Consultant shall provide all required services in accordance with such requirements.

ARTICLE 7 Payment Terms and Conditions

7.1 The terms and conditions applicable to payment for services provided by the Consultant are set forth in Exhibit B, the Specific Requirements.

7.2 Executory Only: This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Agreement and no liability or account thereof shall be incurred beyond the amount of such monies. 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 monies for the purpose of this Agreement.

7.3 Prompt Payment

7.3.1 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.

7.3.2 The Consultant must submit a proper invoice to receive payment.

7.3.3 Determination of interest due shall be made in accordance with the PPB Rules and General Municipal Law 13-a.

7.3.4 If the Consultant is paid interest, the proportionate share of that interest shall be forwarded by the Consultant to its Subconsultant.

7.4 Acceptance of Final Payment: The acceptance by the Consultant, its successors 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, including final payment in the event of termination, shall constitute and operate as a general release to the City from any and all claims of and liability to the Consultant arising out of the performance of this Contract.

ARTICLE 8 Time Provisions

8.1 Time provisions applicable to the Contract are set forth in Exhibit B, the Specific Requirements.

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, all documents set forth in Exhibit B, all reports, notes, designs, drawings, tracings, specifications, estimates, schedules, charts, graphs, maps, photographs, shall become the property of the City upon their acceptance by the Commissioner or upon termination of services of the Consultant. 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 and shall name the City of New York as 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 Insureds shall be addressed to: the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101.
- (c) Notice of Accident shall be given to the Company by the Insured within one hundred twenty (120) days after notice of such accident has been sent to the Commissioner of the Department of Design and Construction.
- (d) Notice of Claim shall be given to the Company within one hundred twenty (120) days after such notice shall be filed with the Comptroller of the City of New York.
- (e) Notice of Claim to the Company by the Insured of an accident or claim on the site shall constitute notice by the City to the Company.

- (f) Notice of Cancellation of Policy as set forth in Article 11.2.4 below.
- (g) The presence of representatives of the City at the Site shall not invalidate this policy.
- (h) Violation of any of the terms of any other policy issued by the Company to the Insured shall not invalidate this policy or reduce the Insured's liability.

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 following endorsements:

- (a) Notice of Cancellation of Policy as set forth in Article 11.2.4 below.
- (b) Violation of any of the terms of any other policy issued by the Company to the Insured shall not invalidate this policy or reduce the Insured's liability.

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

15.1 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. The procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.

15.1.1 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.

15.1.2 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 (defined in the contract) makes a determination with which the Contractor disagrees.

15.2 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.

15.3 During such time as any dispute is being presented, heard, and considered pursuant to this article, the Contract terms shall remain in force and 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.

15.4 Presentation of Disputes to Commissioner. 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 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 whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

15.4.1 Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor, the ACCO, and the Engineer 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 disputed 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.

15.4.2 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 Engineer, together with a statement concerning how the decision may be appealed.

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

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

15.5.1 Time, Form, and Content of Notice. Within thirty (30) days of its 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 written 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.

15.5.2 Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the 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.

15.5.3 Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in section 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.

15.5.4 Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in Article 15.5.3 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 materials. The Contractor may not present its petition to the Contract Dispute Resolution Board until the period for investigation and compromise delineated in Article 15.5.4 has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.

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

15.6.1 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 article as may be necessary in the execution of the Contract Dispute Resolution Board's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

15.6.2 The Director of the Office of Construction 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

15.6.3 A person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH with appropriate background to act as decision-makers in a dispute. Such individual 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 represents persons, companies, or organizations having disputes with the City.

15.7 Petition to the Contract Dispute Resolution Board. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this article, the Contractor, within thirty (30) days thereafter, may petition the Contract Dispute Resolution Board to review the Commissioner's determination.

15.7.1 Form and Content of Petition by Contractor. The Contractor shall present its dispute to the Contract Dispute Resolution Board 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 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, or written material submitted by the Contractor, to the Comptroller. The Contractor shall concurrently submit four (4) complete sets of the Petition: one set to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division) and three (3) sets to the Contract Dispute Resolution Board at OATH's offices with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the written statement of the substance of the dispute, cited in (i) above, to both the Commissioner and the Comptroller.

15.7.2 Agency Response. Within thirty (30) Days of its receipt of the petition by the Corporation Counsel, the Agency shall respond to the brief written statement of the Contractor and make available to the Contract Dispute Resolution Board all material it submitted to the Commissioner and Comptroller. Three (3) complete copies of the Agency response shall be provided to the Contract Dispute Resolution Board 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 consent of the parties, for an initial period of up to thirty (30) Days.

15.7.3 Further Proceedings. The Contract Dispute Resolution Board shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The Contract Dispute Resolution Board 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 Contract Dispute Resolution Board. The Contract Dispute Resolution Board, 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 Contract Dispute Resolution Board, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

15.7.4 Contract Dispute Resolution Board Determination. Within forty-five (45) Days of the conclusion of all written submissions and oral arguments, the Contract Dispute Resolution Board shall render a written decision resolving the dispute. In an unusually complex case, the Contract Dispute Resolution Board may render its decision in a longer period, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The Contract Dispute Resolution Board's decision must be consistent with the terms of the Contract. Decisions of the Contract Dispute Resolution Board shall only resolve matters before the Contract Dispute Resolution Board and shall not have precedential effect with respect to matters not before the Contract Dispute Resolution Board.

15.7.5 Notification of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the Corporation Counsel, the Director of the Office of Construction, 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 Contract Dispute Resolution Board's decision.

15.7.6 Finality of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board's decision shall be final and binding on all parties. Any party may seek review of the Contract Dispute Resolution Board's decision solely in the form of a challenge, filed within four (4) months of the date of the Contract Dispute Resolution Board'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 Laws and Rules. Such review by the court shall be limited to the question of whether or not the Contract Dispute Resolution Board'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 Contract Dispute Resolution Board in accordance with this article.

15.8 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 Contract Dispute Resolution Board 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.

17.6 Any contract increase which cumulatively exceeds the greater of 10% of the Contract Price or \$100,000 shall be justified in writing by the Agency Chief Contracting Officer and approved in writing by the Office of Construction. Any contract amendment which either amends a unit price, cancels required units, or adds a new type of unit item to the Contract must be approved in writing by the Agency Chief Contracting Officer.

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 Bureau of the 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 42.5 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 – Rider for Public Works Contracts – Local Law 77

In accordance with Local Law 77 of 2003, codified at section 24-163.3 of the New York City Administrative Code:

I. DEFINITIONS: For purposes of this Local Law 77 Rider, 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: The requirements of this Part II are effective June 19, 2004 for Public Works Contracts for Lower Manhattan and December 19, 2004 for all other Public Works Contracts.

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 Local Law 77, 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 Local Law 77, 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. The requirements of this Part III are effective June 19, 2004 for Public Works Contracts for Lower Manhattan; June 19, 2005 for all Public Works Contracts valued at \$2,000,000 or more; and December 19, 2005 for all Public Works Contracts.

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.

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

IV. SECTION 24-163 OF THE NEW YORK CITY 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 rider, 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 rider.

C. No Contractor shall make a false claim with respect to the provisions of this rider 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 Rider, 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 – Rider for Public Works Contracts - Coordinated Construction Act for Lower Manhattan

In accordance with the Coordinated Construction Act for Lower Manhattan, a New York State law, as amended:

I. DEFINITIONS: For purposes of this Coordinated Construction Act for Lower Manhattan Rider, 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.

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

1. Type of Services: Commissioning services for various projects, as specified by the Commissioner on a Task Order basis.
2. Program Units: to be inserted after selection of the Consultant

(The Commissioner reserves the right to issue Task Orders for required services for other Program Units.)
3. Total Not to Exceed Amount: \$1,000,000
4. Guaranteed Minimum (total cumulative amount of Task Orders issued) At least \$5,000
5. Contract Time Frame
 - Contract Term: 1095 consecutive calendar days
 - Extension of Contract Term: 365 consecutive calendar days
 - Renewal of Contract Term: duration: 730 consecutive calendar days
amount: up to \$500,000
6. Contract Executive: to be inserted after selection of the Consultant
7. Subconsultant(s): to be inserted after selection of the Consultant (if applicable)

EXHIBIT B
SPECIFIC REQUIREMENTS

(1) GENERAL

1.1 Summary: The Consultant shall provide comprehensive commissioning services for various projects, as specified by the Commissioner on a Task Order basis. The Consultant's services shall be provided in accordance with all terms and conditions set forth in these Specific Requirements and in accordance with all laws, rules, regulations, and requirements applicable to the work. Projects assigned to the Consultant shall be capital projects of various sizes (small/medium/ large).

1.2 Program Units: The Consultant's services shall be provided for the Program Units set forth in Exhibit A. The Commissioner reserves the right to issue Task Orders for required services for other Program Units.

1.3 Location of Services: The Consultant's services shall be provided in the five Boroughs of the City of New York City (City-Wide). The Consultant may also be directed to perform services at locations outside the City of New York.

1.4 Performance of Services by Consultant's Own Employees: The Consultant agrees to provide all required personnel for the performance of services hereunder through its own employees and/or through its Sub consultants, as set forth in Exhibit A, unless otherwise approved by the Commissioner.

(2) TASK ORDER PROCESS

2.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, comprehensive commissioning services for various projects, in accordance with the Task Order process set forth below. The Consultant's services shall be provided with respect to the Project(s) specified in the Task Order. The services the Consultant shall be required to provide are set forth in this Exhibit. The Consultant shall not perform services hereunder until the Commissioner has issued a Task Order as set forth below.

2.2 Method of Payment: The method of payment for the performance of services by the Consultant shall be as directed in writing by the Commissioner in the Task Order. Such method of payment shall be either: (1) through a Commissioning Fee(s), or (2) based upon staffing hours (Time Card). Such methods are set forth in Article 5.

2.3 Issuance of Task Orders by Commissioner: Throughout the term of the Contract, as the need arises for services, the Commissioner shall issue a Task Order to the Consultant. Each Task Order issued hereunder shall specify the items set forth below. Prior to issuing a Task Order, the Commissioner shall review the Consultant's proposed Staffing Plan for the required services.

- 2.3.1 Project(s) for which services are required
- 2.3.2 Services to be performed by the Consultant
- 2.3.3 Method of payment for the performance of services
- 2.3.4 Documents provided by the Commissioner
- 2.3.5 Time frame for completion of the required services
- 2.3.6 Overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount shall be broken down into various amounts and/or allowances, depending on the required services and the method of payment specified in the Task Order. Such

amounts and/or allowances may include the following: (1) Amount for Commissioning Fee(s), (2) Allowance for Staffing Hours, and (3) Allowance for Reimbursable Services.

2.4 Maximum Price for Services: The overall Not to Exceed amount set forth in the Task Order (less the amount of any Allowance for Reimbursable Services) shall constitute the maximum price to be paid to the Consultant for providing the services specified therein. The Consultant shall not be entitled to payment in excess of the amount set forth in the Task Order, unless the Commissioner, in his 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.

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

2.65 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Task Orders issued hereunder, the Commissioner may, by issuance of a Supplementary Task Order to the Consultant, reallocate such specific allowance amounts.

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

2.8 No Right to Reject a Task Order: The Consultant shall have no right to reject or decline to perform any Work Order issued under the Contract. Accordingly, any rejection of a Task Order by the Consultant, either expressly made or implied by conduct, shall constitute a material breach of this Contract.

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

(3) CONSULTANT'S PERSONNEL

3.1 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide all personnel necessary and required for performance of comprehensive commissioning services for various projects in accordance with the Task Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Sub-consultants, as set forth in Exhibit A, unless otherwise approved by the Commissioner. The Consultant agrees that its employees, agents, and Sub-consultants shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform.

3.2 Contract Executive: The Contract Executive, identified in Exhibit A, shall serve as the Consultant's principal representative with respect to its obligation under the Contract. Such Contract Executive shall be responsible for the following with respect to Task Orders issued hereunder: (1) submitting and signing proposed Staffing Plans; (2) coordinating the activities of personnel performing services; (3) submitting and signing required reports; (4) submitting and signing requisitions for payment, and (5) providing, on an as needed basis, executive or management expertise and oversight.

3.2.1 It is the intent of the City to secure the personal services of the individual identified as the Contract Executive in Exhibit A. Accordingly, the Consultant agrees to provide such individual as Contract Executive for the entire duration of the Contract. Failure by the Consultant to do so will be

considered a material breach of the Contract and grounds for termination for cause. Replacement of such individual will only be permitted in the following circumstances: (1) if the designated individual dies or is no longer in the employ of the Consultant, or (2) if the City fails to direct the Consultant to commence services within nine months of the date the Consultant submitted its technical proposal.

3.3 Staffing Requirements for Personnel: Staffing requirements for personnel for the required services hereunder have been established by the Commissioner and are set forth in Exhibit D. Such staffing requirements specify the titles of personnel which the Consultant may be required to provide, through its own employees and/or through its Sub consultants.

3.3.1 Requirements Per Title: Any personnel provided by the Consultant and/or its Sub-consultants must satisfy the requirements for the specific title in which he/she is performing services. The requirements for any given title shall be the **GREATER** of the following:

- (a) The requirements for the title in question as set forth in Exhibit E. Such requirements shall consist of the specific qualifications of the individual actually identified in Consultant's technical proposal for the title in question i.e., that individual's number of years of experience, as well as his/her technical and professional qualifications.
- (b) The minimum requirements for the title in question, as set forth in Exhibit E.

3.3.2 The Consultant shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the requirements per title. In exceptional circumstances, the Commissioner, at his sole and absolute discretion, may modify the requirements per title.

3.4 Staffing Plan: A Staffing Plan shall be established on a Task Order basis for the Project(s) specified therein. Such Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services pursuant to the Task Order.

3.4.1 Contents of Staffing Plan: The Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those titles and personnel necessary for the provision of the required services. Such Staffing Plan must be numbered and dated.

- (a) For Task Orders where the method of payment is through a Commissioning Fee(s), the Staffing Plan shall include the items set forth below.
 - (1) A list of required titles
 - (2) Specific personnel for each title
- (b) For Task Orders where the method of payment is based on staffing hours (Time Card), the Staffing Plan shall include the items set forth below.
 - (1) A list of required titles
 - (2) Specific personnel for each title
 - (3) All inclusive hourly rates for all specified personnel, as set forth in Exhibit D
 - (4) Total estimated hours for each title
 - (5) Total estimated amounts for each title

3.4.2 Payment Limitation: For Task Orders where the method of payment is based on staffing

hours (Time Card), the specific personnel identified in the approved Staffing Plan shall be considered Assigned Employees or Assigned Personnel for the purpose of the Consultant's entitlement to payment for services performed by such personnel hereunder. The Consultant shall not be entitled to payment for any personnel not assigned to the project and not included in the approved Staffing Plan.

3.4.3 Consultant's Proposed Staffing Plan: Within three (3) business days of a written request from the Commissioner, the Consultant shall submit a proposed Staffing Plan for the Project specified in the Task Order. Such proposed Staffing Plan shall include the information set forth above. With respect to specific 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. For Task Orders where the method of payment is based on staffing hours (Time Card), the Consultant shall submit the following with respect to all specified personnel: (1) total estimated hours; (2) total estimated amount(s), and (3) applicable All Inclusive Hourly Rate(s), in accordance with Exhibit D.

3.4.4 Review and Approval of Staffing Plan: The Commissioner shall review the Consultant's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of his review of the proposed Staffing Plan, the Commissioner shall determine whether each individual proposed by the Consultant to perform services meets the requirements for the title in question, including the requisite number of years of experience, as well as technical and professional qualifications. With respect to the proposed Staffing Plan, the Commissioner shall also determine: (1) whether the personnel proposed by the Consultant are necessary for the provision of the required services, and, if applicable, (2) the All Inclusive Hourly Rates applicable to all specified personnel, in accordance with Exhibit D. The Consultant shall revise the proposed Staffing Plan as directed, until the same is approved in writing by the Commissioner.

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

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

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

3.5.1 Approval: Sub consultants are subject to the prior written approval of the Commissioner; provided, however, no provisions of this Contract shall be construed as constituting an agreement between the Commissioner and the Sub consultant.

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

3.5.3 Payment: Expenses incurred by the Consultant in connection with furnishing Sub-consultants for the performance of required services hereunder are deemed included in the payments by the City to the Consultant, as set forth in this Exhibit. The Consultant shall pay its Sub-consultants 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.

3.5.4 Subcontracts: The Consultant shall inform all Sub-consultants engaged in performing services hereunder 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 Sub-consultants 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 agreements and subcontracts with its Sub-consultants.

3.6 Employees of the Consultant: The Consultant is solely responsible for the work and department of all its personnel and its Sub-consultants. These are employees of the Consultant or its Sub-consultant and not the City.

(4) COMMISSIONING SERVICES

4.1 General: The Consultant shall provide commissioning services for various projects, as specified by the Commissioner on a Task Order basis. Individual Task Orders may include a scope of work for single or multiple projects. Any and all expenses for the performance of services set forth in this Article 4, except for Reimbursable Services, shall be deemed included in payments to the Consultant (Commissioning Fee(s) or All Inclusive Hourly Rates).

- 4.1.1 All services performed by the Consultant shall be in accordance with the ASHRAE Guideline 1-1996, the HVAC Commissioning Process.
- 4.1.2 The term "Project Designer" shall mean the firm engaged by DDC to furnish architectural and/or engineering services for the Project.
- 4.1.3 The term "Mechanical Systems" shall include the following systems: HVAC, plumbing, and fire protection.
- 4.1.4 The term "Electrical Systems" shall include the following systems: electrical, fire alarm, security and UPS.

4.2 Design Phase: The Consultant shall, in consultation with the Project Designer, develop a design intent document for commissioned and related systems. This document shall describe the facility's functional needs, intended levels and quality of environmental control, as well as environmental needs. This document shall be updated to incorporate the final design and construction related modifications, and shall be included in the Owner's Manual.

4.2.1 The Consultant shall develop an initial commissioning plan. This plan shall define the commissioning process at various stages of project development and shall be communicated to all team members. The Consultant shall revise the plan to incorporate more detail as the project progresses.

4.2.2 The Consultant shall review preliminary and final designs and identify potential system performance problems in the areas of energy efficiency, operation, maintenance and reliability. The Consultant shall also review the documents to ensure that any special equipment, pressure gauges, and measuring ports that will be needed to commission the project are specified, and to ensure that the services required of the contractors are coordinated with the services to be provided by the Consultant.

4.2.3 The Consultant shall prepare commissioning specifications for incorporation into the bid and contract documents. These specifications shall define the design intent of each system and shall include commissioning requirements for the contractor(s) during construction, acceptance, and post acceptance phases.

4.2.4 The Consultant shall attend and participate in design team meetings as required.

4.3 Construction Phase: The Consultant shall prepare a detailed commissioning plan for DDC review and approval. The commissioning plan must identify the members of the commissioning team, state in detail the scope of the commissioning process, the commissioning objectives, the responsibilities and requirements of each party involved in the process, a schedule or timeline of events, documentation requirements, monitoring requirements, and the scope of testing and O & M training. The tasks and procedures required to develop the commissioning plan shall include without limitation, the services set forth below.

4.3.1 The Consultant shall hold commissioning scoping meeting for the purpose of defining the roles and responsibilities of the team members, as well as reviewing the proposed commissioning schedule and outline. The Consultant shall utilize information from this meeting to convert the commissioning plan outline into a completed commissioning plan for the project.

4.3.2 The Consultant shall review construction phase documentation and site conditions to ensure that the system provided will meet specifications and DDC requirements, particular in regard to environmental quality and energy efficiency. Such documentation will include the bid documents, project schedule, contractor submittals, O & M manuals, training programs, warranties, and other documentation related to the commissioned systems. The Consultant shall submit findings to the commissioning team at regularly scheduled meetings.

4.3.3 The Consultant shall prepare a detailed commissioning test plan, including detailed plans for pre-functional testing and functional testing for each system and each piece of equipment involved in the commissioning process. The Consultant shall define the schedule and identify the parties who must be in attendance.

4.3.4 The Consultant shall implement pre-functional testing in accordance with the commissioning test plan. The Consultant shall make site visits to observe construction and note details that might affect equipment and system performance or operation. The Consultant shall coordinate with the various contractors to perform the pre-functional performance tests. The Consultant shall witness the air and water testing and balance procedures, all pressure tests of pipe and duct systems before insulation is applied, calibration procedures, and all testing as part of prefunctional testing as outlined in the commissioning plan. The Consultant shall participate in all start-up tests and ensure that pre-functional performance tests and checklists are completed and all deficiencies are resolved. All of the tests and

checks done during this phase are in preparation for the functional performance test that will be performed during the acceptance phase.

4.3.5 The Consultant shall prepare progress reports as directed by DDC. These shall be submitted with updated schedules, completed test results, deficiencies, and recommendations for rectification to DDC. Attendance at the request of DDC will be required at project meetings related to commissioning services.

4.4 Acceptance Phase

4.4.1 The Consultant shall implement functional testing in accordance with the commissioning test plan. The objective of the functional performance tests is to demonstrate that the systems and equipment are operating efficiently and according to design intent. The functional performance tests shall indicate whether the systems and equipment are operating properly under a variety of conditions such as full load, part load, and design conditions and in different modes such as heating, cooling, intermediate seasons, deadband, and emergency. The Consultant shall witness all functional performance tests.

4.4.2 The Consultant shall prepare the final commissioning report for DDC review and approval not more than three weeks after the testing is completed. Such report shall be a detailed and comprehensive document that includes all of the documentation generated during the commissioning process.

4.4.3 The Consultant shall implement training for building operating staff. The training shall be done by the installing contractors, designers, and manufacturer's representatives. The operations and maintenance manuals shall be complete and available for use during the training sessions. Training shall be customized to the level of expertise and needs of the operations staff and shall cover the entire operating sequence of all equipment. The Consultant shall record all training sessions onto videotape.

4.4.4 The Consultant shall prepare progress reports every week in this phase. These reports shall be submitted with completed test results, deficiencies, and recommendations for rectification to DDC. Attendance at the request of DDC will be required at project meetings related to this work scope.

4.4.5 The Consultant shall review the record "as-built" drawings to ensure that any deficiencies in such drawings are corrected by the contractor(s). The Consultant shall include the record "as-built drawings in the Manuel.

4.5 Post Acceptance Phase

4.5.1 The Consultant shall prepare a comprehensive operations and maintenance manual (the "Manual"). The Manual shall organize manuals for all equipment and systems, and shall contain recommended methods for the following: (a) maintaining and servicing equipment and/or systems, (b) keeping records of the maintenance, (c) recommissioning systems periodically to assure continued peak performance, (d) maintaining a standard method of recording complaints, and (e) documenting and analyzing predicted performance versus actual performance.

4.5.2 The Manual shall ensure that the project is maintained in accordance with the design intent. The Manual is critical to successful building operation and maintenance over the life of the structure. The Manual is the primary tool for transmitting to the operators the proper maintenance and servicing of mechanical and electrical systems, as conceived by the designers and as built by the contractors. In compiling the Manual, the Consultant shall, based on project specifications, identify the contribution required of each member of the project team. Contributors may include the Consultant, the Project

Designer, the Construction Manager, and the trade contractors. The Consultant shall ensure that the required material from each contributor is incorporated into a Manual that is well organized, and easily accessible to building operators.

4.5.3 The Manual shall be organized into sections according to building systems. A narrative description of the design intent and performance criteria of each building system shall be provided by the Project Designer. The following information shall be included in the Manual:

- (a) Project statistics: The following shall be provided:
 - (1) List of the building's vital statistics, including names, addresses and telephone numbers of all firms having a role in the design and construction of the project.
 - (2) Copy of the building's Certificate of Occupancy.
- (b) Mechanical/Electrical Systems Instruction Manuals: Specifications prepared by the Project Designer require the trade contractors to provide Instruction Manuals for major systems including, but not limited to the following:
 - (1) Heating Ventilating and Air Conditioning system
 - (2) Hydronic distribution system
 - (3) Air handling/distribution system
 - (4) Glazing maintenance/cleaning
 - (5) Fire Protection system
 - (6) Electrical Systems, Fire Alarm, Security and UPS systems
- (c) Copy of Commissioning Report and videotape of training program.
- (d) Operations and Maintenance: The Consultant shall collect the following material from the appropriate parties:
 - (1) Lighting fixtures and lamp specifications and maintenance protocols
 - (2) Schedule of required inspections of building systems including agency and/or vendor responsible for inspection.
 - (3) Cleaning product specifications and literature.
- (e) Record drawings: Record "as-built" drawings shall be included as part of the Manual. Drawings shall be reduced in size (if required) to fit in the Manual.
- (f) General Requirements: Each building system shall be described, including its major components, interconnections, operation and controls, unusual features, and safety precautions. The following data shall be included for each system:
 - (1) Detailed description (including diagrams) of each system showing piping, valves, and controls
 - (2) Wiring and control diagrams
 - (3) Control sequences describing start-up, all modes of operation, and shutdown.
 - (4) Approved shop drawings
 - (5) Approved product data, including performance curves and rating data.
 - (6) Copies of certifications and test reports.
 - (7) Copies of warranties and guarantees.

- (g) **Manufacturer Information:** The manufacturer of each component of a building system shall be identified as follows:
 - (1) Manufacturer, Model Number, and Serial Number
 - (2) Manufacturer's literature, drawings, illustrations, certified performance charts, technical data
 - (3) Names, addresses and telephone numbers of local repair and service companies
- (h) Each component of a building system shall have maintenance instructions that include the following:
 - (1) Lubrication schedule
 - (2) Maintenance and overhaul instructions
 - (3) Recommended spare parts list including source of supply
 - (4) Name, address and 24-hour telephone number of each subcontractor that installed the equipment.
- (i) **Checklist:** The Consultant shall provide a Checklist to the trade contractors for their use in compiling the required documentation for each system that must be included in the Manual. The Checklist shall include items furnished to each contractor by the manufacturer(s) of the system(s), such as operating and maintenance manuals, warranties and guarantees, which the contractor will be required to submit.

4.5.4 **Seasonal Performance Tests:** The Consultant shall implement seasonal performance tests. Such tests are performed to ensure that the equipment and systems will operate as intended during the heating season, cooling season, swing season, and design day conditions. It is recommended that the heating and cooling seasonal tests be performed during actual design day conditions.

4.5.5 **Review near end of guarantee period or post occupancy:** The Consultant shall return to the site 8 months into the one-year guarantee period. The Consultant shall review current building operation with facility staff and address the condition of outstanding issues related to the original and seasonal commissioning. The Consultant shall recommend actions to address problems or concerns they have in operating the building as originally intended. The Consultant shall provide suggestions for improvements and record these in the Manual and Recommissioning Management Manuals. The Consultant shall identify problems that are covered under warranty or under the original construction contract. The Consultant shall assist staff in developing reports, documents and requests for services to remedy outstanding problems.

4.5.6 **Recommissioning Management Manual:** The Consultant shall prepare a Recommissioning Management Manual. This shall contain the following, although some parts may also be in the Manual:

- (a) Final version of the owner's requirements and design basis narratives, including brief description of each system.
- (b) As built sequences of operation for all equipment; control drawings.
- (c) List of time of day schedules and a schedule frequency to review them for relevance and efficiency.
- (d) Description and rationale for all energy and water saving features and strategies with operating instructions and caveats about their function and maintenance relative to energy use.
- (e) Guidelines for establishing and tracking benchmarks for whole building energy use and equipment efficiencies of cooling, heating and service hot water equipment.

- (f) Seasonal startup and shutdown, manual and restart operation procedures, recommendations regarding seasonal operational issues that effect energy use.
- (g) Recommendations for recalibration frequency of sensors and actuators by type and use.
- (h) List of all user adjustable setpoints and reset schedules with a brief discussion of the purpose of each and the range of reasonable adjustments with energy implications.
- (i) Plans for continuous commissioning or recommended frequency for recommissioning, by equipment type with reference to tests conducted during initial commissioning.
- (j) Schedule frequency to review the various setpoints and reset schedules to ensure they are at current relevant and efficient values.
- (k) Guidelines for energy accounting including assurance that future renovations and equipment upgrades will not result in decreased energy efficiency and maintaining the owner's requirements.
- (l) List of diagnostic tools with use descriptions to assist facility staff.
- (m) Copy of the commissioning report.

4.5.7 If requested by the Commissioner, the Consultant shall provide whatever submittals are required as part of U.S. Green Building Council's LEED certification process.

4.6 Deliverables: The Consultant shall prepare and submit Deliverables in accordance with the requirements set forth above. For all final submissions, the Consultant shall submit six (6) copies of the Deliverable. All costs for printing the number of copies specified herein are deemed included in payments to the Consultant (Commissioning Fee(s) or All Inclusive Hourly Rates).

4.6.1 Review and Acceptance Procedures: All Deliverables are subject to review and written acceptance by the Commissioner. The Commissioner shall review the Consultant's submission and shall make one of the determinations set forth below. The Consultant shall not be entitled to payment for time spent revising and/or correcting Deliverables, unless the Commissioner determines that such revisions and/or corrections were not foreseeable by the Consultant.

- (a) Accepted: If the Commissioner determines that the Deliverable is acceptable, such written acceptance shall be provided to the Consultant.
- (b) Corrections Required: If the Commissioner determines that the Deliverable requires certain corrections to be acceptable, an itemized list of the required corrections shall be provided to the Consultant. Upon receipt thereof, the Consultant shall revise the Deliverable to incorporate all required corrections. Such revised Deliverable shall be submitted to the Commissioner for review.
- (c) Rejected: If the Commissioner determines that the Deliverable is not acceptable and must be rejected, such written rejection shall be provided to the Consultant. A determination of rejection shall be made in those cases where a complete review of the Deliverable is not performed due to the number and type of errors encountered in a more limited review. Upon receipt of the rejection, the Consultant shall correct the Deliverable. Such corrected Deliverable shall be submitted to the Commissioner for review.

4.7 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project, as set forth below. The Consultant shall provide such Reimbursable Services, if so directed in writing by the Commissioner. The Consultant shall provide such Reimbursable Services through entities approved by the Commissioner, and shall utilize the method of procurement and form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with the terms and conditions of payment set forth in this Exhibit. 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.

- 4.7.1 Long distance travel, i.e., travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) Consultant's home office
- 4.7.2 Printing Deliverables beyond the requirements set forth in this Exhibit
- 4.7.3 specialty consultants and/or testing services
- 4.7.4 any other services, determined by the Commissioner to be necessary for the Project

4.8 Non-Reimbursable Services: Throughout the Contract and regardless of whether specified in any Task Order issued hereunder, the Consultant shall be responsible for providing the non-reimbursable services set forth below. All costs for such services are deemed included in payments to the Consultant (Commissioning Fee(s) or All Inclusive Hourly Rates).

- 4.8.1 The Consultant shall, when requested by the Commissioner, provide overnight delivery of Project documents.
- 4.8.2 The Consultant shall provide transportation, including parking and tolls, for all personnel performing services for the Project.
- 4.8.3 The Consultant shall provide communications equipment, including without limitation cellular telephones and beepers, for all personnel assigned to the Project. The telephone and beeper numbers of all personnel assigned to the Project shall be submitted to the Commissioner.
- 4.8.4 The Consultant shall provide the items and equipment set forth in Article 5.4.3 of this Exhibit.

(5) PAYMENT TERMS AND CONDITIONS

5.1 General

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

5.1.2 Guaranteed Minimum: The City guarantees that for the entire period of time the Contract is in effect (i.e., throughout the term of the Contract, plus any extension and/or renewal thereof) it will issue Task Orders to the Consultant, the cumulative total of which shall be at least the amount set forth in Exhibit A. The City has no obligation to order services in excess of the guaranteed minimum amount specified therein, and no action for damages or for loss of profits shall accrue to the Consultant by reason thereof.

5.1.3 Method of Payment: The method of payment for the performance of services by the Consultant shall be as directed in writing by the Commissioner in the Task Order. Such method of payment shall be either: (1) through a Commissioning Fee(s), or (2) based upon staffing hours (Time Card).

5.1.4 Contract Executive: The Consultant shall not be entitled to payment for the services of the Contract Executive. Compensation for the Contract Executive is deemed included in the method of payment directed in writing by the Commissioner in the Task Order (Commissioning Fee(s) or Time Card).

5.2 Task Orders: Task Orders issued hereunder shall specify an overall Not to Exceed amount for the services to be performed.

5.2.1 Not to Exceed Amount: The overall Not to Exceed Amount shall be broken down into various amounts and/or allowances, depending on the required services and the method of payment specified in the Task Order. Such amounts and/or allowances may include the following: (1) Amount for Commissioning Fee(s), (2) Allowance for Staffing Hours, and (3) Allowance for Reimbursable Services.

5.2.2 Maximum Price for Services: The overall Not to Exceed amount set forth in the Task Order (less the amount of any Allowance for Reimbursable Services) shall constitute the maximum price to be paid to the Consultant for providing the services specified therein. The Consultant shall not be entitled to payment in excess of the amount set forth in the Task Order, unless the Commissioner, in his 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.

5.2.3 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Task Orders issued hereunder, the Commissioner may, by issuance of a Supplemental Task Order to the Consultant, reallocate such specific allowance amounts.

5.3 Payment for Commissioning Services Through a Commissioning Fee(s)

5.3.1 Application: In the event the Commissioner directs that the method of payment for the performance of services by the Consultant shall be through a Commissioning Fee(s), the provisions set forth below shall apply. In such case, the Task Order shall specify an Amount for the Commissioning Fee(s).

5.3.2 Commissioning Fee(s): For the performance of all required commissioning services for the Project, as set forth in this Exhibit, the City agrees to pay and the Consultant agrees to accept a total Commissioning Fee(s), the amount of which shall be calculated in accordance with the terms and conditions set forth below (the "Commissioning Fee(s)"). The Commissioning Fee(s) shall be deemed to include the items set forth below, exclusive of any expenses for Reimbursable Services.

- (a) All expenses incurred by the Consultant and/or its Sub consultants in the performance of all required services for the Project
- (b) all expenses related to management and oversight, including, without limitation, any time spent by the Contract Executive and/or principals performing such duties
- (c) all expenses related to overhead and any anticipated profit
- (d) all expenses in connection with transportation and travel, as set forth below
 - (1) expenses for ordinary transportation, i.e., other than long distance travel.
 - (2) expenses for long distance travel in excess of the reimbursement provided for herein.
 - (3) expenses for time personnel spend commuting or traveling, including long distance travel.
- (e) all expenses in connection with providing any tools and/or equipment required for the performance of services.

5.3.3 Payment of the Commissioning Fee(s): The Commissioning Fee(s) shall be paid to the Consultant in accordance with the breakdown per phase set forth below. The services to be provided for each phase are specified in Article 4. For the purpose of payment, the delineation of phases shall be as determined by the Commissioner.

(a) Payment Per Phase:

Design Phase: 15% of the Commissioning Fee(s)
Construction Phase: 25% of the Commissioning Fee(s)
Acceptance Phase: 35% of the Commissioning Fee(s)
Post-acceptance Phase: 25% of the Commissioning Fee(s)

- (b) Limitation on Partial Payments Per Phase: Partial payments of the Commissioning Fee(s) for each phase may be made to the Consultant on a monthly basis, based upon the Commissioner's determination that the Consultant is progressing the required work for that phase in a satisfactory fashion; provided, however, partial payments for any phase may not exceed 50% of the Commissioning Fee(s) for that phase, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work.

5.3.4 Calculation of Commissioning Fee(s): The amount of the Commissioning Fee(s) shall be calculated as a percent of the total estimated construction cost for the system(s) to be commissioned, in accordance with the Fee Curve(s) for the Commissioning Fee(s) set forth in Exhibit C. The terms and conditions set forth below shall apply to such calculation. For the purpose of applying the Fee Curve(s), the total estimated construction cost for the system(s) to be commissioned shall be the total estimated construction cost for such system(s) approved in writing by the Commissioner at the conclusion of the Final Design Phase. Such estimate shall exclude any costs in connection with Reimbursable Services. If the total estimated construction cost for the system(s) to be commissioned falls between the dollar levels designated in the Fee Curve(s), the Commissioning Fee(s) shall be interpolated on a straight line basis. The Commissioning Fee(s) calculated in accordance with the Fee Curve(s) is based upon the cost of new construction. The Commissioning Fee(s) shall not be subject to adjustment for services performed during overtime hours.

- (a) Partial Payment of Commissioning Fee(s): For partial payment purposes, the amount of the Commissioning Fee(s) shall be calculated as a percent of the total estimated construction cost of the system(s) to be commissioned approved in writing by the Commissioner at the conclusion of the schematic design phase (the "Estimated Commissioning Fee(s)").
- (b) Adjustment of Estimated Commissioning Fee(s): In the event the total of all partial payments of Estimated Commissioning Fee(s) is more than the total Commissioning Fee(s) 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 Commissioning Fee(s), 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 Commissioning Fee(s) is less than the total Commissioning Fee(s) determined hereunder, the City shall pay such difference to the Consultant.

5.3.5 Separate Commissioning Fees: The Consultant shall be paid a separate Commissioning Fee for commissioning services with respect to each of the following systems: (a) Commissioning Fee for Mechanical Systems, and (2) Commissioning Fee for Electrical Systems. Separate Fee Curves for calculating the Commissioning Fee for each of these systems are set forth in Exhibit C.

5.4 Payment for Services Based upon Staffing Hours (Time Card)

5.4.1 Application: In the event the Commissioner directs that the method of payment for the performance of services by the Consultant shall be based upon staffing hours (Time Card), the provisions set forth in this Article 5.4 shall apply. In such case, the Task Order shall specify an Allowance for Staffing Hours. The Consultant shall be entitled to payment for personnel who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner. The Consultant shall not be entitled to payment for the services of: (1) any Project Executive(s), (2) any personnel not assigned to the Project and not included in the approved Staffing Plan, or (3) any principal(s), unless such principal meets the criteria set forth below.

5.4.2 Information from Staffing Plan: If the Task Order specifies that payment shall be based upon staffing hours (time card), a Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services. Such Staffing Plan must specify the specific personnel for the performance of services and All Inclusive Hourly Rates for such personnel. The specific personnel set forth in the Staffing Plan shall be considered Assigned Employees for the purpose of payment hereunder.

5.4.3 All Inclusive Hourly Rates: The All Inclusive Hourly Rates for specific personnel set forth in the Staffing Plan shall be in accordance with Exhibit D. Such All Inclusive Hourly Rates shall apply to all hours during which an Assigned Employee performs services for the Project, 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 all items listed in Article 5.3.2 of this Exhibit B.

5.4.4 Amount of Payment: For any given week during which an Assigned Employee performs services, 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 in question during which the Assigned Employee actually performed services hereunder. This total number of hours may include overtime hours if the Commissioner directed the Consultant in advance in writing to have the Assigned Employee perform services during overtime hours. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spends traveling or commuting; (2) any overtime hours, unless authorized in advance in writing; (3) any non-billable hours, as defined below, and (4) any hours during which the Assigned Employee performs services for any other project.
- (c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed hereunder. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of indirect administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

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

5.4.6 Overtime: The Commissioner may authorize the Consultant in advance in writing to have

an Assigned Employee(s) perform services during overtime hours. Overtime hours shall be defined as any hours in excess of eight (8) hours per day, Monday through Friday. Payment for services performed during overtime hours shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit D. The Consultant shall not be entitled to any increase in such rates for services performed during overtime hours.

5.4.7 Requisitions: For payment for services performed by an Assigned Employee, the Consultant shall submit the documentation set forth in this Exhibit.

5.4.8 Increases in All Inclusive Hourly Rates: The All Inclusive Hourly Rates set forth in Exhibit D shall be subject to increases as provided for herein. The first such increase shall be made at the beginning of the calendar year which is at least three years after the commencement of the Contract, i.e., in the month of January of the year which is at least three full years after the date of the advice of award. Subsequent increases shall be made on a yearly basis at the beginning of each calendar year for the remainder of the contract term or any extension or renewal thereof. Such increases shall be based upon any increase in the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). If the Index declines or shows no increase, rates shall not be increased. Any increases in the All Inclusive Hourly Rates shall be applied on a prospective basis only.

5.5 Payment for Reimbursable Services

5.5.1 In the event the Commissioner directs the Consultant to provide Reimbursable Services, the provisions set forth below shall apply. In such case, the Task Order shall specify an Allowance for Reimbursable Services. Reimbursable Services shall be as defined in this Exhibit. 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.

5.5.2 With respect to Reimbursable Services, the Consultant shall utilize the method of procurement and form of payment directed by the Commissioner.

5.5.3 Payment for Reimbursable Services, except for long distance travel as set forth below, shall be the actual and reasonable cost incurred by the Consultant for such services.

5.5.4 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 long distance travel.

5.5.5 Payment for long distance travel, as set forth below, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses." The Consultant shall **NOT** be entitled to any mark-up with respect to long distance travel expenses.

- (a) Long distance travel is 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, or (3) the home of Assigned Employee.
- (b) The Consultant shall not be reimbursed for any time the Assigned Employee spends commuting or traveling in connection with services, including long distance travel.
- (c) Expenses for long distance travel in excess of the reimbursement provided for herein shall be deemed included in the All Inclusive Hourly Rates.

5.5.6 Requisitions: For payment for Reimbursable Services, the Consultant shall submit the documentation set forth in this Exhibit.

5.6 Requisitions for Payment

5.6.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the Consultant and the total amount of payment requested. The total amount of payment requested shall be broken down into various categories, depending on the required services and the method of payment specified in the Task Order. Such payment categories may include the following: (1) Payment for Services through a Commissioning Fee(s); (2) Payment for Services Based upon Staffing Hours (Time Card), and (3) Payment for Reimbursable Services. The Consultant shall submit one original and three (3) copies of each requisition for payment.

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

- (a) Project Progress Report: The Consultant shall submit a statement indicating the percentage of completion of all required services for the Project.
- (b) Payment for Services Through a Commissioning Fee(s): For payment requisitions for any portion of the Commissioning Fee(s), the Consultant shall state that the Commissioner's written approval of the required deliverable(s) has been obtained, or the payment is otherwise authorized.
- (c) Payment for Services Based upon Staffing Hours (Time Card): For any given period for which the Consultant is requesting payment for services based upon staffing hours, the Consultant shall submit the documentation set forth below:
 - (1) Name and title of the Assigned Employee
 - (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
 - (4) Number of hours worked each day by the Assigned Employee for the week(s) in question
 - (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 the Project; (2) actual hours during which the employee performed services for other projects, and (3) non-billable hours, as set forth above.
 - (6) Commissioner authorization for services during overtime hours, if applicable
- (d) Payment for Reimbursable Services: For payment for Reimbursable Services, the Consultant shall submit the documentation set forth below.
 - (1) Copy of the Commissioner's directive authorizing the Reimbursable Service(s)
 - (2) Receipted bills or any other data required by the Commissioner

5.6.3 Payment Contingent Upon Satisfactory Performance: All payments are contingent upon the Consultant's satisfactory performance of the required services. The Commissioner is authorized to make deductions for any services performed hereunder, which he/she determines to be unsatisfactory.

5.6.4 Voucher: 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.

(6) TIME PROVISIONS

6.1 Term of Contract: This Contract shall commence as of the date of the advice of award and shall remain in effect for the period of time set forth in Exhibit A.

6.2 Extension of Contract: The Commissioner may, for good and sufficient cause, extend the term of this Contract for a cumulative period not to exceed one year from the date of expiration.

6.3 Renewal of Contract: At the Commissioner's sole option, the term of this contract may be renewed for the period and for the increased amount set forth in Exhibit A.

6.4 Continuation of Contract for Payment Purposes Only: In the event (1) the Consultant's services are required with respect to a Project, (2) a Task Order for such Project is issued by the Commissioner during the term of the Contract, including the last day thereof, and (3) the time frame for completion of such Project extends beyond the term of the Contract, the Contract shall remain in effect FOR PAYMENT PURPOSES ONLY through the time frame for completion of such Project, as set forth in the Task Order or any Supplementary Task Order required to complete the Project.

6.4.1 For the purpose of this section, the term of the Contract shall mean whichever of the following is the latest and actual final period of the Contract: (1) the term of the Contract set forth in Paragraph 6.1; (2) the extended term of the Contract set forth in Paragraph 6.2, or (3) the renewal term of the Contract set forth in Paragraph 6.3.

6.5 Impact on Fees / Rates:

6.5.1 During any extension and/or renewal of the term of the Contract, the Fee Curves set forth in Exhibit C shall remain in full force and effect.

6.5.2 During any extension and/or renewal of the term of the Contract, the All Inclusive Hourly Rates set forth in Exhibit D shall be subject to increases, as set forth in Article 5.

EXHIBIT C

(1) FEE CURVE FOR COMMISSIONING FEE FOR MECHANICAL SYSTEMS

Mechanical Systems shall include the following systems: HVAC, plumbing, and fire protection.

TOTAL ESTIMATED CONSTRUCTION COST OF COMMISSIONED SYSTEMS	COMMISSIONING FEE AS A PERCENT OF ESTIMATED CONSTRUCTION COST	AMOUNT OF COMMISSIONING FEE
\$10,000	_____	_____
\$25,000	_____	_____
\$50,000	_____	_____
\$100,000	_____	_____
\$250,000	_____	_____
\$500,000	_____	_____
\$750,000	_____	_____
\$1,000,000	_____	_____
\$1,500,000	_____	_____
\$2,000,000	_____	_____
\$2,500,000	_____	_____
\$3,000,000	_____	_____
\$3,500,000	_____	_____
\$4,000,000	_____	_____
\$4,500,000	_____	_____
\$5,000,000	_____	_____
\$6,000,000	_____	_____
\$7,000,000	_____	_____
\$8,000,000	_____	_____
\$9,000,000	_____	_____
\$10,000,000	_____	_____
\$15,000,000	_____	_____
\$20,000,000	_____	_____
\$25,000,000	_____	_____
\$30,000,000	_____	_____
\$35,000,000	_____	_____
\$40,000,000	_____	_____
\$45,000,000	_____	_____
\$50,000,000	_____	_____

EXHIBIT C

(2) FEE CURVE FOR COMMISSIONING FEE FOR ELECTRICAL SYSTEMS

Electrical Systems shall include the following systems: electrical, fire alarm, security and UPS.

TOTAL ESTIMATED CONSTRUCTION COST OF COMMISSIONED SYSTEMS	COMMISSIONING FEE AS A PERCENT OF ESTIMATED CONSTRUCTION COST	AMOUNT OF COMMISSIONING FEE
\$10,000	_____	_____
\$25,000	_____	_____
\$50,000	_____	_____
\$100,000	_____	_____
\$250,000	_____	_____
\$500,000	_____	_____
\$750,000	_____	_____
\$1,000,000	_____	_____
\$1,500,000	_____	_____
\$2,000,000	_____	_____
\$2,500,000	_____	_____
\$3,000,000	_____	_____
\$3,500,000	_____	_____
\$4,000,000	_____	_____
\$4,500,000	_____	_____
\$5,000,000	_____	_____
\$6,000,000	_____	_____
\$7,000,000	_____	_____
\$8,000,000	_____	_____
\$9,000,000	_____	_____
\$10,000,000	_____	_____
\$15,000,000	_____	_____
\$20,000,000	_____	_____
\$25,000,000	_____	_____
\$30,000,000	_____	_____
\$35,000,000	_____	_____
\$40,000,000	_____	_____
\$45,000,000	_____	_____
\$50,000,000	_____	_____

EXHIBIT D

REQUIRED TITLES AND ALL INCLUSIVE HOURLY RATES

ALL INCLUSIVE HOURLY RATES: All Inclusive Hourly Rates **ONLY** apply if the Method of Payment for the Task Order is based on Staffing Hours (Time Card). All Inclusive Hourly Rates **DO NOT APPLY** if the Method of Payment for the Task Order is through a Commissioning Fee. All Inclusive Hourly Rates are deemed to include all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project. The expenses deemed included in such All Inclusive Hourly Rates are set forth in the Specific Requirements. The Consultant shall not be entitled to any increase in such rates for services performed during overtime hours.

COMMISSIONING PERSONNEL

TITLE	ALL INCLUSIVE HOURLY RATE
Contract Executive*	
Project Engineer.....	_____
Project Manager.....	_____
Electrical Engineer.....	_____
Plumbing Engineer.....	_____
HVAC Engineer.....	_____
Assistant Engineer.....	_____

* The Consultant is not entitled to payment for the services of the Contract Executive. Compensation for the Contract Executive is deemed included in the method of payment directed in writing by the Commissioner in the Task Order (Commissioning Fee or Time Card).

PERSONNEL FOR VARIOUS SPECIALTIES

TITLE	ALL INCLUSIVE HOURLY RATE
Architectural System Specialist.....	_____
Geotechnical Specialist.....	_____
Energy Analysis Specialist.....	_____
Acoustician.....	_____
Air Testing & Balancing Technician.....	_____
Controls Technician.....	_____

EXHIBIT E

REQUIREMENTS PER TITLE

Applicable Requirements: Any personnel provided by the Consultant and/or its Subconsultant must satisfy the requirements for the specific title in which he/she is performing services. The requirements for any given title shall be the **GREATER** of the following:

- (A) Requirements Per Title set forth in Section (A) below, or
- (B) Minimum Requirements Per Title set forth in Section (B) below.

SECTION A – REQUIREMENTS PER TITLE

REQUIREMENTS PER TITLE The Requirements Per Title set forth below are based upon the qualifications of specific personnel identified by the Consultant in its Proposal.

COMMISSIONING PERSONNEL

TITLE	REQUIREMENTS PER TITLE	
	Number of Years of Experience	Professional License or Certification
Project Engineer.....	_____	_____
Project Manager.....	_____	_____
Electrical Engineer.....	_____	_____
Plumbing Engineer.....	_____	_____
HVAC Engineer.....	_____	_____
Assistant Engineer.....	_____	_____

PERSONNEL FOR VARIOUS SPECIALTIES

	Number of Years of Experience	Professional License or Certification
Architectural System Specialist.....	_____	_____
Geotechnical Specialist.....	_____	_____
Energy Analysis Specialist.....	_____	_____
Acoustician.....	_____	_____
Air Testing & Balancing Technician.....	_____	_____
Controls Technician.....	_____	_____

EXHIBIT E

SECTION B - MINIMUM REQUIREMENTS PER TITLE

COMMISSIONING PERSONNEL

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Project Engineer.....	15	Professional License
Project Manager.....	15	
Electrical Engineer	15	
Plumbing Engineer.....	15	
HVAC Engineer.....	15	
Assistant Engineer.....	10	

PERSONNEL FOR VARIOUS SPECIALTIES

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Architectural System Specialist.....	10	
Geotechnical Specialist.....	10	
Energy Analysis Specialist.....	10	
Acoustician.....	10	
Air Testing & Balancing Technician.....	10	
Controls Technician.....	10	