NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION

REQUEST
FOR
PROPOSALS

RFP

8

Submission Deadline
December 1, 2006

Pre-Proposal Conference
November 13, 2006

Project
Architectural and Engineering
Design Requirements
Contract for Eight
Large Projects

PIN
8502007VP0106-113P

MICHAEL R. BLOOMBERG
Mayor

DAVID J. BURNEY, AIA
Commissioner

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Deputy Commissioner
Structure Division

DEPARTMENT OF DESIGN AND CONSTRUCTION

PROJECT: RQ-A&E, Architectural & Engineering Design Requirements Contract for Eight Large Projects

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PREFACE

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

SECTION I. TIMETABLE

A. RFP Issuance

Pre-Proposal Conference

A pre-proposal conference will be held at 1:00 p.m. on Monday, November 13, 2006 at DDC headquarters, 30-30 Thomson Avenue, Long Island City, NY 11101, in the TSD Training Room on the 3rd Floor. Attendance is recommended but not mandatory to propose on the contract described in this RFP, it is strongly encouraged.

Submission Deadline

The proposer shall deliver, on or before 4:00PM on December 1, 2006, the Proposal in a clearly marked envelope or package. The Proposal shall consist of a clearly marked, sealed package with the Technical Proposal (1 original and 6 copies).

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

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

B. Inquiries

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing or by e-mail, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers and posted at the DDC website http://ddcftp.nyc.gov/rfpweb/. All inquiries must be directed ONLY to the contact person listed above.

C. Addenda

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the addendum to the Technical Proposal. All addenda shall become a part of the requirements for this RFP.

D. RFP Schedule

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

1. Proposals Submission Deadline: Friday, December 1, 2006

2. Identify Consultant: Within four weeks of submission deadline

3. Complete Contract Registration: Approximately three months from date of consultant selection.

4. Commence Work: When directed by DDC.

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. General

The New York City Department of Design and Construction is seeking up to eight appropriately qualified architectural firms to perform architectural, engineering and construction-related services for various construction projects with construction estimates greater than $10,000,000. The projects for which services are required shall be specified by the Commissioner on a Task Order basis. Such projects may involve any division of DDC and may be located in any of the five Boroughs.

B. Background and Objectives

In order to have architectural and engineering services performed in a timely manner for various construction projects, DDC intends to have available up to eight requirements contracts. When there is a need for services for a specific project, each firm awarded a contract as a result of this RFP will be invited to submit a Proposal for the Project. An evaluation committee will review, evaluate and score all Proposals, based upon technical evaluation criteria set forth in the RFP for the Project. This evaluation and scoring will determine the Consultant's Technical Rating. The Consultant with the highest Technical Rating will be selected for the Project. The Commissioner shall issue a Task Order for the Project to the selected Consultant. The Task Order process is described in Article 4 of the attached 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.

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 B, which lists the subconsultants.

D. Contract Term/Contract Estimate

The term of the contract awarded from this RFP shall commence on the date set forth in the Advice of Award letter and run for 730 consecutive calendar days. **The estimated value of all task orders to be awarded for the contract is $8,000,000.** At the commissioner's sole option, the term of the contract may be renewed for 365 ccds for up to $3,000,000.

E. Insurance

The Consultant and all subconsultants performing services for this contract 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. Architectural and Engineering Design Services

Throughout the term of the Contract, as the need for services arise, the Commissioner shall issue a Request for Proposals ("RFP") for the Project to the Consultants to whom contracts have been awarded. The RFP for the Project shall include the following: (1) information concerning the Project for which services are required, (2) areas of design services for which subconsultants will be required, and (3) a description of the Project to be submitted by the Consultant. The Consultant shall not be entitled to compensation for costs incurred in connection with the preparation of Proposals for specific Projects. An evaluation committee will review, evaluate and score all Proposals for the Project, based upon these criteria; the project team's demonstrated ability to successfully execute the project, educational background and experience of the individuals proposed and the firm's technical approach and methodology. This evaluation and scoring will determine the Consultant's Technical Rating. The Consultant with the highest Technical Rating will be selected for the Project**.**

B. Task Order Process

The Commissioner will issue a Task Order to the firm with the highest Technical Rating. The Task Order process is set forth in Article 4 of the attached contract. The Consultant shall not perform services under the Contract until the Commissioner has issued a Task Order in accordance with Article 4.

C. Consultant's Services

The architectural, engineering and construction-related services the Consultant may be required to provide for the Project specified in the Task order shall include, without limitation, the services set forth in Article 6 of the attached contract.

1. Consultant's Personnel

The terms and conditions regarding the Consultant's obligation to provide personnel for the performance of services for the Project specified in the Task Order are set forth in Article 5 of the attached Contract. The Consultant agrees, throughout the term of this Contract, to provide personnel for the performance of all required architectural, engineering and construction-related services for the Project, as directed by the Commissioner. The Consultant shall provide such personnel through its own employees and/or through its Subconsultants.

2. Payment for Services

The terms and conditions regarding payment to the Consultant are set forth in Article 7 of the attached Contract. As indicated in Article 7, the Design Fee shall be calculated as a percent of the total estimated cost of construction for the Project in accordance with the stipulated Fee Curve set forth in Exhibit C. For the purpose of applying the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development. The Design Fee calculated in accordance with the Fee Curve may be subject to adjustment in accordance with the complexity and/or simplicity factors set forth in Article 7. The Design Fee shall not be subject to adjustment for services performed during overtime hours.

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

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

1. Technical Proposal (1 original and 6 copies): The Technical Proposal should contain all the information requested in Subsection B below, plus completed forms 254 and 255. (These forms are available at http://www.nyc.gov/html/ddc/html/otherfrm.html)

B. Technical Proposal

Include the following information in the Proposal presented 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. DDC reserves the right to reject any proposal that does not conform to this general format.

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. The DDC project name and number must be included.

- Table of Contents:

  Provide a table of contents of the material contained in the proposal.

- Summary:

  Submit a brief summary of the salient features of the proposal, including an explanation/description of the proposer's design approach, demonstration of the proposer's ability to provide personnel with relevant experience.

Support Documentation:

1. Experience of Proposer and Subconsultants: The proposer and each subconsultant identified in Attachment 2 shall submit visual materials of their past work relevant to the work described in Section II of this RFP. These may take the form of a printed brochure, photographs, drawings, or similar images. Items under this subparagraph are returnable upon request.

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

2. Project Team: The Propser shall submit Attachment 3, identifying by name the proposed personnel who will be assigned to the Project. For all proposed personnel, the proposer shall submit resumes, detailing the individual's managerial and technical qualifications.

3. Capability: The prime firm's capability will be evaluated in terms of their CAD capabilities, library, quality assurance program, staffing, and workload. These will be examined and a visit to the Consultant's office may be made to assist the evaluation team in making an educated judgment.

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. Acknowledgement of Addenda

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

D. Proposal Package Contents (Checklist)

The Proposal Package should contain the following Materials:

1. Separate sealed, labeled envelope clearly marked "Technical Proposal" **(1 original and 6 copies)**
    - Statement of Understanding (Attachment 1)
    - Form for Identification of Subconsultants (Attachment 2)
    - Form for Identification of Project Team (Attachment 3)
    - Acknowledgement of Addenda (Attachment 4)
    - Confirmation of Vendex Compliance and VENDEX Certification of No Change (Attachment 5) (Download VENDEX Questionnaires from www.nyc.gov/vendex)

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

1. Selection Process

A DDC evaluation committee, including an independent design professional, will review, evaluate and score all Proposals pursuant to the criteria described below. This evaluation will determine each proposer's score. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their Proposals, after which their initial scores may be re-evaluated. Proposers will be ranked in accordance with their scores, and up to eight firms with the highest scores will be awarded contracts.

2. Proposal Evaluation Criteria

   a. Experience of the Firm and Subconsultants [weight 50%].

   b. Educational & Experiential Background for the Proposed Team [weight 30%].

   c. Capability [weight 20%].

3. 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 factors or criteria as are set forth in the Request for Proposals.

4. 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 can be downloaded from http://www.nyc.gov/html/ddc/html/otherfrm.html. Upon written notification, the proposer must submit the Service and Supply Report within ten days of such notification.

5. VENDEX

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

6. 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. GENERAL INFORMATION TO PROPOSERS

A. Non-Binding Acceptance of Proposals: This RFP does not commit the City to award a contract for any services.

B. Incurring Proposal Costs: The City of New York is not liable for any costs incurred in the preparation of a response to this RFP.

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. A 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. 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.

5. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, 10th Floor, New York, NY 10007; the telephone number is (212) 669-2323. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

6. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provision of New York State Law, the New York City Administrative Code,

New York City Charter and New York City Procurement policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by accessing the City's website at www.nyc.gov/ppb.

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7. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City 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/Certificates 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.

8. Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal agency non-responsiveness determinations and agency non-responsibility determinations and to protest an agency's determination regarding the solicitation or award of a contract.

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

10 The Agency has determined that the contract(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

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 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

FORM FOR IDENTIFICATION OF SUBCONSULTANTS

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

Structural Engineering Design: _____

Heating, Ventilating and Air-Conditioning (HVAC) and Fire Protection Design: _____

Electrical Design: _____

Plumbing Design: _____

Cost Estimating Services: _____

ATTACHMENT 3

IDENTIFICATION OF PROJECT TEAM

Title	Name	Number of Years of Experience	Professional License or Certification
ARCHITECTURAL PERSONNEL			
Principal	_____	_____	_____
Project Architect	_____	_____	_____
Project Manager (Architecture)	_____	_____	_____
Senior Architectural Designer	_____	_____	_____
ENGINEERING PERSONNEL			
Principal	_____	_____	_____
Project Engineer	_____	_____	_____
Project Manager (Engineering)	_____	_____	_____
Senior Structural Designer	_____	_____	_____
Senior Electrical Designer	_____	_____	_____
Senior Plumbing Designer	_____	_____	_____
Senior HVAC Designer	_____	_____	_____
PERSONNEL FOR ESTIMATING			
Principal	_____	_____	_____
Senior Estimator	_____	_____	_____

ATTACHMENT 4

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS:	PIN #:

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

___Part I

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

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

___Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT 5

CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of Vendex Compliance _____

_____.

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

(1) **Submission of Questionnaires to 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
30-30 THOMSON AVENUE
LONG ISLAND CITY, NEW YORK NEW YORK 11101

REQUIREMENTS CONTRACT FOR ARCHITECTURAL, ENGINEERING AND CONSTRUCTION RELATED SERVICES

FMS NUMBER: **V.C.P.**

REGISTRATION NUMBER: _____

PIN NUMBER: _____

CONSULTANT: _____
_____
_____

Telephone: _____
Facsimile: _____
EIN: _____

Date: _____

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

WITNESSETH:

WHEREAS, the City desires to have architectural, engineering and construction related services performed on a requirements basis for various construction projects, as set forth in Exhibit A, 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, (2) the Consultant's Proposal for the Contract, (3) the Request for Proposals for the Project, (4) the Consultant's Proposal for the Project, (5) the Project Objectives, and (6) the Exhibits set forth below. In the event of any conflict between the Request for Proposals and the Consultant's Proposal, the Request for Proposals shall prevail.

Exhibit A	Contract Information and Amendments
Exhibit B	Subconsultants
Exhibit C	Fee Curve for Design Fee
Exhibit D	Staffing Requirements: Titles and All Inclusive Hourly Rates
Exhibit E	Requirements Per Title
Exhibit F	Design Consultant Guide dated August 2003

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, her successors, or duly authorized representatives.

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

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

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

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

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

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

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

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

1.16 “Project” shall mean the Project for which architectural, engineering and construction related services are required, as specified by the Commissioner on a Task Order basis. The services the Consultant may be required to provide for the Project are set forth in Article 6.

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

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

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

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

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

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

1.23 “Vendor”, as used in the Article entitled “Resolution of Disputes”, shall mean the Consultant.

ARTICLE 2 Compliance with Laws

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

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

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

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

ARTICLE 3 Agreement to Serve

3.1 The City hereby retains the Consultant to perform the services hereinafter described, on the terms and conditions specified herein, and the Consultant agrees to so serve. The Consultant agrees to provide, to the satisfaction of the Commissioner, all architectural, engineering and construction related services necessary and required, as specified in Task Orders issued hereunder. The services to be provided by the Consultant are set forth in Article 6. The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its obligations under this Contract competently and efficiently.

ARTICLE 4 Task Order Process

4.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, architectural, engineering and construction related services in accordance with the Task Order process outlined below. The Consultant's services shall be provided with respect to the Project specified in the Task Order. The services the Consultant may be required to provide shall be as set forth in Article 6, or as otherwise specified in the Task Order. The Consultant shall not perform services hereunder until the Commissioner has issued a Task Order.

4.2 Selection Procedure: The selection of the Consultant to perform services for a Project pursuant to this Contract shall be in accordance with the procedure set forth below. This selection procedure shall be conducted prior to issuance of a Task Order.

4.2.1 Request for Proposals for the Project: As the need for services arises, the Commissioner shall issue a Request for Proposals ("RFP") for the Project to the Consultant. The RFP for the Project shall include the following: (1) information concerning the Project for which services are required, (2) areas of design services for which subconsultants will be required, and (3) a description of the Proposal for the Project to be submitted by the Consultant.

4.2.2 Consultant's Proposal: The Consultant shall not be entitled to compensation for costs incurred in connection with the preparation of Proposals for specific Projects.

4.2.3 Evaluation: An evaluation committee will review, evaluate and score all Proposals for the Project, based upon the technical evaluation criteria set forth in the RFP for the Project. This evaluation and scoring will determine the Consultant's Technical Rating. The Consultant with the highest Technical Rating will be selected for the Project.

4.2.4 Non-Issuance: The Commissioner reserves the right not to issue a RFP for the Project to the Consultant, if the Commissioner, in his sole opinion, determines that the Consultant may be unable to provide the required services in a satisfactory and timely fashion.

4.3 Method of Payment: The method(s) of payment for the performance of services by the Consultant shall be specified in the Task Order. For most Projects, payment for Design Services shall be through a Design Fee. The methods of payment for the performance of various services by the Consultant are set forth below. The types of services listed below are described in Article 6.

	Type of Service	Form of Payment	Article Reference
(a)	Design Services	Design Fee or Time Card	Article 7.2 Article 7.3

(b)	Pre-preliminary Services	Time Card	Article 7.3
(c)	Additional Professional Services	Time Card, or	Article 7.3
		Recalculation of Design Fee	Article 7.2.8
(d)	Artwork	Fee for Artwork	Article 7.4
(e)	Reimbursable Services	Reimbursement / 5% mark-up	Article 7.5

In addition to the above, the Task Order may specify a combination of methods of payment for Design Services (i.e., components of the Project for which payment is through a Design Fee and components of the Project for which payment is on a Time Card basis).

4.4 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. The Commissioner may issue separate and/or supplementary Task Orders to the Consultant for the performance of services for different phases or portions of the Project. Each Task Order issued hereunder shall specify the items set forth below:

(a) description of the Project for which services are required
(b) services to be performed by the Consultant
(c) method(s) of payment for the performance of services
(d) requirements for scheduling and/or phasing of the services
(e) time frame for the completion of services
(f) 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(s) of payment specified in the Task Order. Such amounts and/or allowances may include the following: (1) Estimated Design Fee, (2) Allowance for Staffing Hours (Time Card), (3) Allowance for Artwork, and (4) Allowance for Reimbursable Services.

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

4.6 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.

4.7 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 Article 6 of this Contract.

4.8 No Right to Reject a Task Order: The Consultant shall have no right to reject or decline to perform any Task 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.

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

ARTICLE 5 The Consultant's Personnel

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

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

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

5.3 Staffing Requirements for Personnel: Staffing requirements for personnel 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 Subconsultants. If any additional titles of personnel are required for the Project, the Task Order shall specify such additional titles.

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

5.3.2 All Inclusive Hourly Rates: All Inclusive Hourly Rates for titles of personnel are set forth in Exhibit D. If any additional titles of personnel are required for the Project, the Task Order shall specify All Inclusive Hourly Rates for such additional titles. Such All Inclusive Hourly Rates apply only if the Task Order specifies that the method of payment for the performance of services by the Consultant shall be based upon staffing hours (Time Card). The All Inclusive Hourly Rates shall have no application if the Task Order specifies that the method of payment for the performance of services by the Consultant shall be through a Design Fee.

5.4 Staffing Plan for Services Based upon Staffing Hours (Time Card): In the event the Task Order specifies that the method of payment for the performance of services, or any portion thereof, shall be based upon staffing hours (time card), a Staffing Plan must be approved by the Commissioner prior to the commencement of services.

5.4.1 Contents: Such Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those personnel necessary for performance of the required services. Such personnel shall be provided by the Consultant through its own employees and/or through its Subconsultants.

(a) required titles of Key Personnel and specific personnel for each title
(b) required titles of personnel (other than Key Personnel) and specific personnel for each title
(c) All Inclusive Hourly Rates for all required personnel approved by the Commissioner
(d) total estimated hours for all required personnel
(e) total estimated amount for all required personnel

5.4.2 Payment Limitation: In accordance with Article 7.3, payment to the Consultant for the performance of services based upon staffing hours (time card) shall be limited to those personnel set forth in the approved Staffing Plan. The Consultant shall not be entitled to payment for a principal's time performing oversight and/or management duties with respect to the Project. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) the Consultant has been directed to perform services on a time card basis, (2) the principal is qualified to perform services for the Project in accordance with one of the titles set forth in Exhibit E (other than the title "Principal"), and (3) the principal is included in the approved Staffing Plan for such title.

5.4.3 Consultant's Proposed Staffing Plan: Within five (5) business days of a written request from the Commissioner, the Consultant shall submit a proposed Staffing Plan for services based upon staffing hours (time card). Such proposed Staffing Plan shall include the items set forth above. With respect to 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. In addition, the Consultant shall submit the following for all required personnel: (1) total estimated hours, (2) total estimated amount(s), and (3) applicable All Inclusive Hourly Rate(s), in accordance with Exhibit D, or as specified in the Task Order.

5.4.4 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 meets the requirements for the title in question, including the requisite number of years of experience, as well as technical and professional qualifications. The Commissioner shall also determine: (1) whether the personnel proposed by the Consultant are necessary for the provision of the required services, and (2) the All Inclusive Hourly Rates applicable to all specified personnel, in accordance with Exhibit D, or as specified in the Task Order. The Consultant shall revise the proposed Staffing Plan as directed, until the same is approved in writing by the Commissioner.

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

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

5.5.1 Exhibit B: If the services set forth in Exhibit B are required for the Project, as indicated in the RFP for the Project, the Consultant specifically agrees to provide the Subconsultant(s) listed in Exhibit B. Such Subconsultants were identified by the Consultant in its Proposal for the Contract.

5.5.2 Additional Required Subconsultants: On a Project specific basis, the Consultant shall be required to provide subconsultants for areas of design services in addition to or other than areas set forth in Exhibit B. The RFP for the Project shall identify the areas of design services for which subconsultants will be required. The areas of design services for which the Consultant may be required to provide subconsultants shall include without limitation the areas of design services set forth in Article 7.2.2.

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

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

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

5.5.6 Subcontracts: The Consultant shall inform all Subconsultants engaged for this Project fully and completely of all terms and conditions of this Contract relating either directly or indirectly to the services to be

performed. The Consultant shall stipulate in all subcontracts with its Subconsultants that all services performed and materials furnished thereunder shall strictly comply with the requirements of this Contract. If requested by the Commissioner, the Consultant shall furnish copies of subcontracts with its Subconsultants.

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

ARTICLE 6 Scope of Services

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

6.2 Pre-preliminary Services: The Consultant shall provide Pre-preliminary Services as set forth in the Task Order and/or the Project Objectives. Pre-preliminary services are described in the Design Consultant Guide.

6.2.1 Pre-preliminary Services shall only include services expressly designated as Pre-preliminary Services in the Task Order and/or the Project Objectives. Any services not so expressly designated, including services for the investigation of site conditions and/or development of the scope of work, shall be considered Design Services.

6.3 Design Services: The Consultant shall provide Design Services as set forth in the Task Order. Design services shall include all necessary and usual components and/or services in connection with the design.

6.3.1 Areas of Design Services: The areas of design services that may be required for the Project shall include without limitation the areas of design services set forth in Article 7.2.2.

6.3.2 Project Specific Design Services: Design Services for the Project shall be in accordance with the Project Objectives. Design Services shall be provided during the phases described below.

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

6.3.3 Design Criteria: All required Design Services shall be in accordance with the following: (1) the scope of work for the Project approved by the Commissioner; (2) the Client Agency Design Standards; (3) the Design Consultant Guide, and (4) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code, Local Law 86 and the Americans With Disabilities Act.

6.3.4 Separate Design Documents: For the types of Project set forth below, the Consultant shall, as directed by the Commissioner, prepare and organize the design documents to permit the separate bidding and award of contracts. All costs for the preparation of separate design documents are deemed included in payments to the Consultant as set forth in Article 7 hereof, including any payment amounts attributable to complexity factor(s) applicable to the Design Fee, as set forth therein.

(a) Projects for which the Commissioner determines that separate design documents for general construction, plumbing, electrical and HVAC work are require
(b) Projects which involve specialty construction which is separable from other construction work
(c) Projects which are proceeding on a “fast track” basis, i.e., where certain components of the construction work are to be performed prior to completion of final design documents for the entire Project.

6.3.5 Submission of Design Documents: The Consultant shall submit design documents in accordance with the time frames specified in the Task Order.

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

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

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

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

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

6.3.11 Artwork: The Consultant shall, if directed by the Commissioner, provide for the inclusion of artwork in the Project in accordance with Chapter 9, Section 224, of the New York City Charter and the rules and regulations promulgated thereunder. All costs for such artwork shall be paid from the Allowance for Artwork, as set forth in the Task Order. For services in connection with the artwork, the Consultant shall be entitled to a fee, as set forth in Article 7. To comply with Section 224 of the Charter, the Consultant shall be responsible for the items set forth below, as directed by the Commissioner.

(a) Consult with and cooperate with a panel established by the Commissioner of the Department of Cultural Affairs. The Consultant shall also prepare all data, documentation, drawings and plans to be presented to and considered by such panel.
(b) Engage an artist and administer and/or manage the services of such artist. For engagement of the artist, the Consultant shall use the standard form of contract approved by the Commissioner. The services of the artist shall be in accordance with the terms and conditions of such contract, including without limitation, requirements for fabrication, models, shipping, insurance, storage, scaffolding, structural work and anchorage.

6.4 Additional Professional Services: The Consultant may be directed by the Commissioner to provide Additional Professional Services for the Project. The Consultant shall provide such Additional Professional Services through its own professional employees or through its Subconsultants, as directed in writing by the Commissioner.

6.4.1 Additional Professional Services shall be professional services which the Commissioner determines are required for the Project and are in addition to or beyond the necessary and usual services in connection with Design Services, as set forth in Article 6.3. Additional Professional Services shall include, without limitation, the services set forth below.

(a) Services set forth in the Design Consultant Guide, Section VII (B)
(b) Changes to the design documents, as set forth in Articles 6.8.1(b) and 6.8.2
(c) Revisions to the drawings to reflect as-built conditions
(d) Participation in value engineering studies, as set forth in the Design Consultant Guide
(e) any other professional services, determined by the Commissioner to be necessary for the Project.

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

6.4.3 Payment for Additional Professional Services shall be based upon staffing hours (time card) in accordance with Article 7.3, except as otherwise provided below.

6.4.4 Increase in Project Scope: In lieu of the method of payment for Additional Professional Services set forth above, in the event of an increase in the scope of the Project, the Commissioner may, at his option, issue a Supplementary Task Order to the Consultant, in which (1) the Consultant is directed to perform the required Design Services for the Project, including the increased scope, for a Design Fee, and (2) the Design Fee payable to the Consultant is recalculated based upon the revised estimate of the cost of construction of the Project.

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

6.5 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project. The Consultant shall provide such Reimbursable Services, if so directed in writing by the Commissioner. The Consultant shall provide such Reimbursable Services through entities approved by the Commissioner, and shall utilize the method of procurement and form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with Article 7. Reimbursable Services shall be such services determined by the Commissioner to be necessary for the Project, and may include, without limitation, the services set forth below.

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

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

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

6.6.2 The Consultant shall provide transportation, including parking and tolls, for all personnel performing services hereunder.

6.6.3 The Consultant shall provide communications equipment and service, including without limitation cellular telephones and beepers, for all its field and senior personnel assigned to the Project. The telephone and beeper numbers of all field and senior personnel assigned to the Project shall be submitted to the Commissioner.

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

6.7 Assistance to Commissioner: Should any claim be made or any action brought against the Commissioner or

the City of New York relating to the design of the Project, the Consultant shall diligently render to the City without additional compensation any and all assistance which may be requested by the Commissioner.

6.8 Provisions Regarding Changes to the Design Documents

6.8.1 Changes Not Involving Scope:

(a) The Consultant shall revise and correct, without additional compensation therefore, any and all design documents until the same shall be accepted by the Commissioner and by all other agencies whose approval is required by law.

(b) Should any substantial change, other than a change in Project scope, make it necessary for the Consultant to change design documents after approval of the preliminary or final design documents, the Commissioner shall direct such change in writing. Such change shall constitute an additional professional service.

6.8.2 Decrease in Scope: The Commissioner shall have the right to reduce the scope of the services of the Consultant hereunder, at any time and for any reason, upon written notice to the Consultant, specifying the nature and extent of such reduction. In such event, the Consultant shall be paid, in accordance with the payment terms set forth in Article 7, for services already performed prior to receipt of written notification of such reduction in scope, as determined by the Commissioner. Any services performed by the Consultant to revise the design documents as a result of the reduction in the scope of the Project shall constitute Additional Professional Services in accordance with Article 6.4 above.

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

ARTICLE 7 Payment Terms and Conditions

7.1 General

7.1.1 Total Payments: Total payments for all services performed and all expenses incurred pursuant to this Agreement shall not exceed the amount set forth in Exhibit A.

7.1.2 Task Orders: Task Orders issued hereunder shall specify an overall Not to Exceed amount for the services to be performed thereunder. Such overall Not to Exceed amount shall be further broken down into various amounts and/or allowances, depending on the required services and the method(s) of payment specified in the Task Order. Such amounts and/or allowances may include the following: (1) Estimated Design Fee, (2) Allowance for Staffing Hours (Time Card), (3) Allowance for Artwork, and (4) Allowance for Reimbursable Services. In the event the allowance amounts set forth in the Task Order are not sufficient, as determined by the Commissioner, to cover the cost of required services for which allowance amounts are specified, the Commissioner will increase the amounts of such allowances.

7.1.3 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 Supplementary Task Order to the Contractor, reallocate such specific allowance amounts.

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

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

employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Agreement.

7.2 Payment for Design Services Through a Design Fee

7.2.1 Application: In the event the Commissioner directs that the method of payment for the performance of Design Services by the Consultant shall be through a Design Fee, the provisions set forth below shall apply. In such case, the Task Order shall specify an Estimated Design Fee.

7.2.2 Design Fee: For the performance of all required Design Services for the Project, as set forth below, the City agrees to pay and the Consultant agrees to accept a total Design Fee, the amount of which shall be calculated in accordance with Article 7.2.4 below (the "Design Fee"). The Design Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultants in the performance of all required Design Services for the Project, including all expenses related to management, overhead and any anticipated profit.

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

(1) Architectural Design Services
(2) Structural Engineering Design Services
(3) Electrical Design Services
(4) Heating, Ventilating and Air-Conditioning (HVAC) and Fire Protection Design Services
(5) Plumbing Design Services
(6) Interior Design and Furniture Layout Services
(7) Landscaping Design Services
(8) Lighting Design Services
(9) Vertical Transportation Design Services
(10) Cost Estimating Services

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

(1) any services which (i) are not listed in paragraph (a) above, and (ii) are expressly excluded from the Design Fee, as specified in the Task Order.
(2) the services set forth below.

Service	Form of Payment	Article Reference
Historic Preservation Design	Complexity Factor	Article 7.2.6
High Performance Design	Complexity Factor	Article 7.2.6
Pre-preliminary Services	Time Card	Article 7.3
Additional Professional Services	Time Card, or	Article 7.3
	Recalculation of Design Fee	Article 7.2.8
Artwork	Fee for Artwork	Article 7.4
Reimbursable Services	Reimbursement / 5% mark-up	Article 7.5

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

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

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

Final Design Documents 45% of the Design Fee

(b) Partial Payments During Design Phase: Partial payments of the lump sum fee per deliverable set forth above may be made to the Consultant on a monthly basis, based upon the Commissioner's determination that the Consultant is progressing the required work for the deliverable in a satisfactory fashion and in accordance with the project schedule; provided, however, partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work. Total payment of the lump sum fee per deliverable shall not be made until written acceptance by the Commissioner of the deliverable.

(c) Construction Phase: For the performance of all required services during construction for the Project, the Consultant shall be paid twenty-five (25%) percent of the Design Fee. Partial payment of this amount shall be in accordance with the percentage of completion of all required services during construction, as determined by the Commissioner.

7.2.4 Calculation of Design Fee: The Design Fee shall be calculated as a percent of the total estimated cost of construction for the Project in accordance with the Fee Curve set forth in Exhibit C. For the purpose of applying the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development. If the total estimate of the cost of construction falls between the dollar levels designated in the Fee Curve, the Design Fee shall be interpolated on a straight line basis. The Design Fee calculated in accordance with the Fee Curve may be subject to adjustment in accordance with the complexity and/or simplicity factors set forth below. The Design Fee shall not be subject to adjustment for services performed during overtime hours.

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

(a) New furniture and/or new equipment, unless the Task Order expressly provides otherwise.
(b) Components of the Project involving food services, unless the Task Order expressly provides otherwise.
(c) Existing equipment the Consultant is directed by the Commissioner to use for the Project. In such case, the estimate shall include only the cost of relocating such existing equipment.
(d) Components of the Project for which design services were paid for on a time card basis.
(e) Components of the Project for which design services were provided by the City.
(f) Reimbursable Services, as set forth in Article 6.5.
(g) Artwork, as set forth in Article 6.3.11.

7.2.5 Estimated Design Fee: For partial payment purposes, the Design Fee shall be calculated as a percent of the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the commencement of the Preliminary Design Phase (the "Estimated Design Fee"). In the event the total of all partial payments of Estimated Design Fee is more than the total Design Fee determined hereunder, the Commissioner shall deduct and retain such excess out of any amount due and owing to the Consultant. In the event the amount due and owing to the Consultant is less than the amount of such excess payment of the Design Fee, the Consultant shall be liable to pay the difference upon demand by the Commissioner. In the event the total of all partial payments of Estimated Design Fee is less than the total Design Fee determined hereunder, the City shall pay such difference to the Consultant.

7.2.6 Complexity / Simplicity Factors: The Design Fee calculated in accordance with the Fee Curve may be subject to adjustment in accordance with the complexity and/or simplicity factors set forth below. The application of such factors, as well as the percentage increase or decrease in the Design Fee resulting from such application, shall be determined solely by the Commissioner.

(a) Complexity Factors: In the event the Commissioner determines that any of the complexity factors set forth below applies to the Project, the Design Fee calculated in accordance with the Fee Curve shall be increased by an amount determined solely by the Commissioner. For each complexity factor that applies to the Project, the percentage increase shall not exceed the maximum percentage increase set

forth below. The total percentage increase in the Design Fee shall be the addition of the percentage increase for each applicable factor.

		Maximum Percentage Increase
(1)	Renovations / Additions	15%
(2)	Completeness of Existing Plans	10%
(3)	Landmark Quality Historic Preservation	15%
(4)	Complex Phasing	10%
(5)	Special Building Type Requiring Expertise	15%
(6)	High Performance Design	20%
	Total Percentage Increase Possible	85%

For the purpose of applying the above listed complexity factors, "High Performance Design Project" shall mean a project requiring services which are above and beyond the usual services in connection with the design. High Performance Design Projects shall include without limitation the following: (1) High Performance Pilot Projects, (2) Projects requiring a High Performance Plan, (3) Projects requiring sustainable lighting design, and (4) Projects requiring sustainable landscaping design.

(b) Simplicity Factors: In the event the Commissioner determines that any of the simplicity factors set forth herein applies to the Project, the Design Fee calculated in accordance with the Fee Curve shall be decreased by an amount determined solely by the Commissioner. For each simplicity factor that applies to the Project, the percentage decrease shall not exceed ten (10%) percent. The total percentage decrease in the Design Fee shall be the addition of the percentage decrease for each applicable factor. Simplicity factors shall include, without limitation, the following: (1) site development work, (2) maintenance work in areas not being altered, (3) non-complex, repetitive work, and (4) work involving only one trade.

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

7.2.8 Increase in Project Scope: In lieu of the method of payment for Additional Professional Services set forth above, in the event of an increase in the scope of the Project, the Commissioner may, at his option, issue a Supplementary Task Order to the Consultant, in which (1) the Consultant is directed to perform the required Design Services for the Project, including the increased scope, for a Design Fee, and (2) the Design Fee payable to the Consultant is recalculated based upon the revised estimate of the cost of construction of the Project.

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

7.3.1 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 below shall apply. In such case, the Task Order shall specify an Allowance for Staffing Hours.

7.3.2 Information from Staffing Plan: In the event the method of payment for required services, or any portion thereof, is 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 items set forth below.

(a) Required Personnel: The personnel specified in the Staffing Plan shall be considered Assigned Employees for the purpose of payment in accordance with this Article 7.3.

(b) All Inclusive Hourly Rates: The All Inclusive Hourly Rates for the personnel specified in the Staffing Plan shall be in accordance with Exhibit D, or as specified in the Task Order. Such All Inclusive Hourly Rates shall apply to all hours during which an Assigned Employee, as described in Paragraph (a) above, performed services for the Project based upon staffing hours (time card), including

overtime hours. No increase in such rates shall be provided for services performed during overtime hours. Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project based upon staffing hours, (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.

7.3.3 Amount of Payment: For any given week during which an Assigned Employee performed services for the Project, 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, as set forth above.

(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services for the Project based upon staffing hours. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined in subparagraph (c) below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for this Project, as set forth in Articles 6.8.1(a) and 6.8.3 hereof, for which the Consultant is not entitled to compensation, and (5) any hours set forth in Article 7.3.4 below.

(c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed for this Project. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of indirect administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

7.3.4 Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight and/or management duties with respect to the Project. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) the Consultant has been directed to perform services on a time card basis, (2) the principal is qualified to perform services for the Project in accordance with one of the titles set forth in Exhibit E (other than the title "Principal"), and (3) the principal is included in the approved Staffing Plan for such title.

7.3.5 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, or as specified in the Task Order. The Consultant shall not be entitled to any increase in such rates for services performed during overtime hours.

7.3.6 Requisitions: For any given week(s) for which the Consultant is requesting payment for services performed by an Assigned Employee based upon staffing hours (time card), the Consultant shall submit the documentation set forth below.

7.3.7 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 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

7.4 Payment for Artwork

7.4.1 Allowance: In the event the Commissioner directs the Consultant to provide services in connection with Artwork, the provisions set forth below shall apply. In such case, the Task Order shall specify an Allowance for Artwork. Such Allowance is established for payment for services the Consultant is directed to provide, as set forth in Article 6.3.11, for the inclusion of artwork in the Project in accordance with Chapter 9, Section 224, of the New York City Charter. No such services shall be provided by the Consultant, or paid from this allowance, unless expressly authorized in advance in a written directive from the Commissioner.

7.4.2 Amount of Payment: The amount of payment for the services of the artist engaged by the Consultant shall be calculated in accordance with the terms and conditions of the contract between the Consultant and the artist. Such contract is subject to prior written approval by the Commissioner.

7.4.3 Consultant's Fee: For services in connection with the artwork, the Consultant shall be entitled to a fee, as set forth below. Payment of such fee shall be based upon the percentage of completion of all required services in connection with the artwork.

(a) For Projects where the total actual cost of the artwork is $50,000 or less, the fee shall be fifteen (15%) percent of the total actual cost of the artwork.

(b) For Projects where the total actual cost of the artwork is more than $50,000, the fee shall be $7,500, plus ten (10%) percent of the amount by which the total actual cost of the artwork exceeds $50,000.

7.5 Payment for Reimbursable Services

7.5.1 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 Article 6.5. No Reimbursable Services shall be provided by the Consultant, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of $150, such written authorization must be provided in advance of the expenditure.

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

7.5.3 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.

7.5.4 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 (1) long distance travel, and (2) filing fees.

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

7.5.6 Requests for payment for Reimbursable Services shall be accompanied by receipted bills or any other data required by the Commissioner.

7.6 Requisitions for Payment

7.6.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the Consultant and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into 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 Design Services through a Design Fee, (2) Payment for Services Based upon Staffing Hours (Time Card), (3) Payment for Artwork, and (4) Payment for Reimbursable Services. The Consultant shall submit one original and three (3) copies of each requisition for payment.

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

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

(b) Payment for Design Services Through Design Fee:

(1) In the event the Consultant is requesting payment of any portion of the Design Fee for the preparation of design documents, the Consultant shall state that the Commissioner's written approval of the required deliverable(s) has been obtained.

(2) For any given period for which the Consultant is requesting payment of any portion of the Design Fee for services during construction, the Consultant shall submit a statement indicating the percentage of completion of such services.

(c) Payment for Services 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, as defined in Article 7.3.2 (a).
(2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.
(3) All Inclusive Hourly Rate applicable to the Assigned Employee, as set forth in Article 7.3.2 (b) above.
(4) number of hours worked each day by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for the Project based upon staffing hours.
(5) detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for this Project based upon staffing hours; (2) actual hours during which the employee performed services for this Project covered under the Design Fee; (3) actual hours during which the employee performed services for other projects; (4) non-billable hours, as defined in Article 7.3.3 (c) above; (5) actual hours, if any, during which the Assigned Employee spent performing services for this Project, as set forth in Articles 6.8.1(a) and 6.8.3, for which the Consultant is not entitled to compensation, and (5) any hours set forth in Article 7.3.4.

(d) Payment for Artwork: For any given period for which the Consultant is requesting payment for artwork, the Consultant shall submit a statement indicating the percentage of completion of all required services by the artist, as well as the total actual cost of the artwork to date.

(e) Payment for Reimbursable Services: For any given period for which the Consultant is requesting payment for expenses incurred for Reimbursable Services, the Consultant shall submit the documentation set forth below:

(1) a report describing the Reimbursable Service the Consultant was directed to provide
(2) receipted bills or any other data required by the Commissioner.

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

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

Comptroller, with a copy thereof available to the Consultant if requested.

7.7 Prompt Payment

7.7.1 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.

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

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

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

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

8.2 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.

8.3 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.

8.4 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 and registered by the Comptroller 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.

8.4.1 For the purpose of Article 8.4, 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 Article 8.1; (2) the extended term of the Contract set forth in Article 8.2, or (3) the renewal term of the Contract set forth in Article 8.3.

8.5 Impact on Fees / Rates:

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

8.5.2 During any extension and/or renewal of the term of the Contract, the All Inclusive Hourly Rates set forth in Exhibit C shall be subject to increases, as set forth in Article 7.

ARTICLE 9 Ownership of Documents

9.1 Any and all material, records or documents prepared by or for the Consultant pursuant to this Contract, including, but not limited to, notes, designs, drawings, tracings, specifications, estimates, reports, schedules, charts,

graphs, maps, and/or photographs, shall be the property of the City. During the term of this Contract and at any time within seven years thereafter, the Consultant shall, upon demand, promptly deliver such material, records or documents to the Commissioner, or make such records available to the Commissioner or his authorized representative for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such material, records or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the Consultant.

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

ARTICLE 10 Patented and Proprietary Items

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

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

ARTICLE 11 Insurance

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

11.1.1 Comprehensive General Liability Insurance: The Consultant shall provide a policy of comprehensive general liability insurance in the minimum amount of $1,000,000 per occurrence (combined single limit for bodily injury and property damage), $2,000,000 aggregate. Such policy shall be in the Consultant's name, shall name the City of New York and any Client Agency set forth in Exhibit A as additional insureds thereunder. Such policy shall protect the Consultant, the City of New York and any Client Agency set forth in Exhibit A 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 and any Client Agency set forth in Exhibit A, together with their respective officials and employees, are Additional Insureds under this policy.
(b) Notice under the Policy to the Additional Insureds shall be addressed to: (1) the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101, and (2) any Client Agency set forth in Exhibit A at the address specified therein.
(c) Notice of Accident shall be given to the Company by the Insured within one hundred twenty (120) days after notice of such accident has been sent to the Commissioner of the Department of Design and Construction.
(d) Notice of Claim shall be given to the Company within one hundred twenty (120) days after such notice shall be filed with the Comptroller of the City of New York.
(e) Notice of Claim to the Company by the Insured of an accident or claim on the site shall constitute notice by the City to the Company.
(f) Notice of Cancellation of Policy as set forth in Article 11.2.4 below.
(g) The presence of representatives of the City at the Site shall not invalidate this policy.

11.1.2 Professional Liability Insurance: The Consultant shall provide Professional Liability Insurance covering as insured the Consultant in the minimum amount of $1,000,000 per claim, $3,000,000 aggregate. Subconsultants performing professional services shall also provide such coverage in the minimum amount of

$1,000,000 per claim, $3,000,000 aggregate. The professional liability insurance policy(s) provided shall include the endorsement set forth in Article 11.2.4 below.

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

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

11.2 General Requirements for Insurance Policies

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

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

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

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

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

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

11.3 Proof of Insurance

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

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

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

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

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

ARTICLE 12 Indemnification

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

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

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

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

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

ARTICLE 13 Consultant Independent Contractor

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

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

ARTICLE 14 Suspension or Termination of Performance

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

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

14.3 Termination for Cause: In the event that: (1) the Consultant shall not for any reason or through any cause, have completed performance within the time fixed for performance hereunder; or (2) Any representation or warranty made hereunder shall prove to be untrue in any material respect; or (3) grounds for cancellation of the contract shall arise; or (4) the Consultant shall otherwise be in default hereunder; or (5) the Commissioner shall give the Consultant written notice that in his opinion the conduct of the Consultant is such that the interests of the City are likely to be impaired or prejudiced, stating the facts upon which such opinion is based; then the Commissioner may, upon written notice to the Consultant, immediately terminate this contract for cause. Upon such termination, the Consultant shall be entitled to payment of such amount, to be determined by the Commissioner and subject to audit by the Comptroller, as

shall fairly compensate him for the work satisfactorily performed to the termination date, provided, however, that (1) no allowance shall be included for termination expenses; and (2) the Commissioner shall deduct from such amount and from any amount due and payable to the Consultant to the termination date, but withheld or not paid, the total amount of additional expenses incurred by the City in order to satisfactorily complete the work required to be performed by the Consultant under this contract including the expense of engaging another architect or engineer for this purpose. If such additional expense shall exceed the amounts otherwise due and payable to the Consultant hereunder, the Consultant shall pay the City the full amount of such excess expense incurred by the City. No amount shall be paid to the Consultant under this Article until the work required to be performed under this contract has been satisfactorily completed by others.

ARTICLE 15 Resolution of Disputes

1. Except as provided in 1(a) and 1(b) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). This procedure shall be the exclusive means of resolving any such disputes.

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

(b) For construction and construction-related services this section 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 vendor's work to the contract, and the acceptability and quality of the vendor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor disagrees.

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

3. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.

4. Presentation of Dispute to Agency Head.

(a) Notice of Dispute and Agency Response. The vendor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any

requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

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

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

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

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

(a) Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

(b) Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

(c) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.

(d) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller,

to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

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

(a) the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

(b) the City Chief Procurement Officer ("CCPO") or his/her designee, or in the case of disputes involving construction, 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

(c) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

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

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

(b) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH's offices and one to the vendor. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.

(c) Further Proceedings. The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor 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 vendor nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on it own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

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

(e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.

(f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

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

ARTICLE 16 Consultant's Report Information

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

ARTICLE 17 Contract Changes

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

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

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

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

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

ARTICLE 18 Accounting Records

18.1 The Consultant shall maintain complete, detailed and accurate cost and accounting records, in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred under this Contract. During the term of this Contract and at any time within seven years thereafter, the Consultant shall make such records available to the City or its authorized representatives for review and audit at such place or places as may be designated by the Commissioner. In the event the Commissioner authorizes the Consultant to retain the services of Subconsultants for which the Consultant will be entitled to payment 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 not withstanding any other provision of this agreement the Commissioner or Agency Head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event consultant fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the consultant, or affecting the performance of this contract.

ARTICLE 27 Unlawful Provisions

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

ARTICLE 28 Modification

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

ARTICLE 29 Errors

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

ARTICLE 30 Representations, Warranties and Affirmations

30.1 Procurement of Agreement: The Consultant represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission,

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

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

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

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

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

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

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

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

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

ARTICLE 31 No Discrimination

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

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

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

race, creed, color or national origin;

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

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

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

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

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

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

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

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

ARTICLE 32 Equal Employment Opportunity

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

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

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

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

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

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

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

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

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

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

ARTICLE 33 All Prior Written or Oral Agreements Excluded

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

ARTICLE 34 Head Notes and Marginal Notations

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

ARTICLE 35 Dust Hazards

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

ARTICLE 36 Participation in an International Boycott

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

36.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Consultant or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations

promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.

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

ARTICLE 37 Effective and Binding

37.1 This contract shall neither be binding nor effective unless:

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

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

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

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

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

ARTICLE 38 Choice of Law, Consent to Jurisdiction and Venue

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

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

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

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

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

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

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

ARTICLE 39 Waiver

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

ARTICLE 40 All Defenses Reserved

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

ARTICLE 41 MacBride Principles Provisions

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

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

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

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

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

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

41.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

41.6.2 take steps to promote adequate security for the protection of employees from under represented religious groups both at the work place and while traveling to and from work;

41.6.3 ban provocative religious or political emblems from the work place;

41.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;

41.6.5 establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

41.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

41.6.7 develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

41.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

41.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

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

ARTICLE 42 Vendex Questionnaires

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

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

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

ARTICLE 43 – Ultra Low Sulfur Diesel Fuel – 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).

<u>ARTICLE 44 – Ultra Low Sulfur Diesel Fuel – Rider for Public Works Contracts - Coordinated Construction Act for Lower Manhattan</u>

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.

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

NOTICE TO ALL PROSPECTIVE CONTRACTORS

ARTICLE 1. MWBE PROGRAM

Local Law 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services (DSBS) promulgated thereunder.

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The target subcontracting percentage applicable to this contract is set forth on Schedule A if this is a solicitation for a construction contract, and in Exhibit A if this is a solicitation for professional services.

The "target subcontracting percentage" is the percentage of the total contract which Agency anticipates that the prime contractor for this contract would in the normal course of business award to one or more subcontractors for amounts under $1 million. A prospective contractor may seek a full or partial pre-award waiver of the target subcontracting percentage in accordance with Local Law 129 and Part A, Section 9 below.

2. The participation goals established for this contract are set forth on Schedule A if this is solicitation for a construction contract, and in Exhibit A if this is a solicitation for professional services.

Participation goal percentages are percentages of the total dollar value of all subcontracts under this Agreement for amounts under $1 million.

3. If participation goals have been established for this contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under $1 million, Contractor shall be subject to the participation goals, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 10 below.

4. If participation goals have been established for this contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a utilization plan indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under $1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under $1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end. In the event that this utilization plan indicates that the bidder or proposer, as applicable, does not intend to award the target subcontracting percentage, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the target subcontracting percentage in accordance with Local Law 129 and Part A, Section 9 below.

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

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

7. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's utilization plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its utilization plan in accordance with Local Law 129 and Part A, Section 10 below.

8. Where a contractor utilization plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

9. Pre-award waiver of target subcontracting percentage. Agency may grant a full or partial waiver of the target subcontracting percentage to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or

proposer, as applicable, has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the target subcontracting percentage. In making such determination, Agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the contract that it intends to subcontract.

10. Modification of utilization plans. The Contractor may request modification of its utilization plan after the award of this contract. Agency may grant such request if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by Agency for the contract. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

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

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

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

PART B: MISCELLANEOUS

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

2. Directories of certified MBEs and WBEs are available on DSBS's website at www.nyc.gov/html/sbs and at DSBS's office located at 110 William Street, 3rd floor, New York, NY 10038.

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

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

ARTICLE II. ENFORCEMENT

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

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

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

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

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

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

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

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

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

CONSULTANT:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

_____
Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY CORPORATION

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

_____

Notary Public or Commissioner of Deeds

EXHIBIT A

CONTRACT INFORMATION AND AMENDMENTS

I. CONTRACT SPECIFIC INFORMATION

- Division(s): All Divisions of DDC
- Type of Projects: New Construction or Renovation Projects
  Estimated Construction Cost more than $10,000,000
- Borough(s): City Wide – All Five Boroughs
- Total Amount: Not to Exceed: $8,000,000
- Contract Time Frame
  - Contract Term: 730 consecutive calendar days ("ccds")
  - Extension of Contract Term: 365 consecutive calendar days
  - Renewal of Contract Term: 365 consecutive calendar days
  - Renewal Amount: Not to Exceed $3,000,000
- Additional Insured: to be specified on a Task Order basis
- Participation by MWBEs Article 45 of the Contract
  - Target Subcontracting Percentage: 0%
  - Participation Goal for MBEs: 0%
  - Participation Goal for WBEs: 0%

II. AMENDMENTS TO THE CONTRACT:

The Design Consultant Guide is amended to include the language set forth below.

In the case of a complex construction project, DDC may direct the Consultant, through its geotechnical engineer, to provide a geotechnical report. Such geotechnical report shall include the following: (1) an analysis of the existing boring data and the proposed building loads, and (2) recommendations for an appropriate foundation system. Such geotechnical report shall be considered an Additional Professional Service.

EXHIBIT B

LIST OF SUBCONSULTANTS

Required Subconsultants: The subconsultants listed below were identified by Consultant in its Proposal for the Contract. The Consultant specifically agrees to engage such subconsultants as required for the Project.

Additional Required Subconsultants: On a Project specific basis, the Consultant shall be required to provide subconsultants for areas of design services in addition to or other than areas set forth below. The RFP for the Project shall identify the areas of design services for which subconsultants will be required. The areas of design services for which the Consultant may be required to provide subconsultants shall include without limitation the areas of design services set forth in Article 7.2.2.

Design Fee: The areas of design services included in the Design Fee are specified in Article 7.2.2 of the Contract. For the convenience of the Consultant, Article 7.2.2 is set forth on the next page.

Structural Engineering Design Services: _____

Electrical Design Services: _____

Heating, Ventilating and Air-Conditioning
(HVAC) and Fire Protection Design Services: _____

Plumbing Design Services: _____

Cost Estimating Services: _____

EXHIBIT B

ARTICLE 7.2.2

7.2.2 Design Fee: For the performance of all required Design Services for the Project, as set forth below, the City agrees to pay and the Consultant agrees to accept a total Design Fee, the amount of which shall be calculated in accordance with Article 7.2.4 below (the "Design Fee"). The Design Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultants in the performance of all required Design Services for the Project, including all expenses related to management, overhead and any anticipated profit.

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

(1) Architectural Design Services
(2) Structural Engineering Design Services
(3) Electrical Design Services
(4) Heating, Ventilating and Air-Conditioning (HVAC) and Fire Protection Design Services
(5) Plumbing Design Services
(6) Interior Design and Furniture Layout Services
(7) Landscaping Design Services
(8) Lighting Design Services
(9) Vertical Transportation Design Services
(10) Cost Estimating Services

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

(1) any services which (i) are not listed in paragraph (a) above, and (ii) are expressly excluded from the Design Fee, as specified in the Task Order.
(2) the services set forth below.

Service	Form of Payment	Article Reference
Historic Preservation Design	Complexity Factor	Article 7.2.6
High Performance Design	Complexity Factor	Article 7.2.6
Pre-preliminary Services	Time Card	Article 7.3
Additional Professional Services	Time Card, or	Article 7.3
	Recalculation of Design Fee	Article 7.2.8
Artwork	Fee for Artwork	Article 7.4
Reimbursable Services	Reimbursement / 5% mark-up	Article 7.5

EXHIBIT C

FEE CURVE FOR DESIGN FEE

The Fee Curve set forth below is based upon the cost of **NEW CONSTRUCTION WORK**. For the purpose of applying the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by the Commissioner at the conclusion of Design Development.

TOTAL ESTIMATED CONSTRUCTION COST	DESIGN FEE AS A PERCENT OF ESTIMATED CONSTRUCTION COST	AMOUNT OF DESIGN FEE
$50,000,000	5.91%	$2,954,200
$45,000,000	5.94%	$2,671,763
$40,000,000	5.97%	$2,386,440
$35,000,000	5.99%	$1,098,233
$30,000,000	6.02%	$1,807,140
$25,000,000	6.08%	$1,520,375
$20,000,000	6.37%	$1,274,000
$15,000,000	6.51%	$976,725
$14,000,000	6.55%	$917,280
$13,000,000	6.59%	$857,220
$12,000,000	6.64%	$796,860
$11,000,000	6.69%	$736,065
$10,000,000	6.75%	$675,000
$9,000,000	6.85%	$616,500
$8,000,000	6.99%	$559,200
$7,500,000	7.09%	$531,375
$7,000,000	7.18%	$502,600
$6,000,000	7.24%	$434,400
$5,000,000	7.42%	$371,000
$4,500,000	7.72%	$347,243
$4,000,000	8.01%	$320,520
$3,500,000	8.31%	$290,833
$3,000,000	8.61%	$258,180
$2,750,000	8.75%	$240,742
$2,500,000	8.90%	$222,563
$2,250,000	9.05%	$203,642
$2,000,000	9.20%	$183,980
$1,750,000	9.35%	$163,577
$1,500,000	9.50%	$142,433
$1,250,000	9.64%	$120,547
$1,000,000	9.79%	$97,920
$875,000	10.53%	$92,166
$750,000	11.27%	$84,559
$600,000	12.16%	$72,984
$500,000	12.76%	$63,785
$400,000	13.35%	$53,400
$300,000	13.94%	$41,829
$250,000	14.24%	$35,599
$200,000	14.54%	$29,072
$150,000	14.83%	$22,249
$100,000	15.13%	$15,129

EXHIBIT D

STAFFING REQUIREMENTS: TITLES AND ALL INCLUSIVE HOURLY RATES

Application: The All Inclusive Hourly Rates set forth below apply only if the Task Order specifies that the method of payment for the performance of services by the Consultant shall be based upon staffing hours (Time Card). The All Inclusive Hourly Rates shall have no application if the Task Order specifies that the method of payment for the performance of services by the Consultant shall be through a Design Fee.

No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight and/or management duties with respect to the Project. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) the Consultant has been directed to perform services on a time card basis, (2) the principal is qualified to perform services for the Project in accordance with one of the titles set forth in Exhibit E (other than the title "Principal"), and (3) the principal is included in the approved Staffing Plan for such title.

ARCHITECTURAL PERSONNEL

TITLE	ALL INCLUSIVE HOURLY RATE
Project Architect.....	$116
Project Manager (Architecture).....	$90
Senior Architectural Designer.....	$90
Junior Architectural Designer.....	$71
Architectural Technician.....	$71
Senior Interior Designer.....	$90
Junior Interior Designer.....	$71
Interiors Technician.....	$71
Programming Specialist.....	$81
Senior Landscape Architect.....	$102
Junior Landscape Architect.....	$85
Senior Landscape Architectural Designer.....…	$90
Junior Landscape Architectural Designer.....	$75
Landscape Architectural Technician.....	$75
Senior Draftsperson/CAD.....	$69
Junior Draftsperson/CAD.....	$59

ENGINEERING PERSONNEL

TITLE	ALL INCLUSIVE HOURLY RATE
Project Engineer.....	$137
Project Manager (Engineering).....	$117
Senior Electrical Designer.....	$117
Senior Plumbing Designer.....	$117
Senior HVAC Designer.....	$117
Senior Structural Designer.....	$117
Junior Electrical Designer.....	$92
Junior Plumbing Designer.....	$92
Junior HVAC Designer.....	$92
Junior Structural Designer.....	$92
Engineering Technician.....	$72
Senior Engineering Draftsperson/CAD.....	$73
Junior Engineering Draftsperson/CAD.....	$59

PERSONNEL FOR ESTIMATING

TITLE	ALL INCLUSIVE HOURLY RATE
Senior Estimator.....	$111
Junior Estimator.....	$80

PERSONNEL FOR VARIOUS SPECIALTIES

TITLE	ALL INCLUSIVE HOURLY RATE
Acoustical Specialist.…….....……	$135
Fire Alarm Specialist....……...….....…	$110
Vertical Transportation Specialist.....….....	$110
LEED Specialist…….....….....	$135
Historic Preservation Specialist.....….....	$98
Masonry Conservation Specialist.....….....….	$98
Fire Protection Specialist.....…...….	$98
Geotechnical Specialist.....…....….	$108
Lighting Specialist.....…….....	$98

EXHIBIT E

REQUIREMENTS PER TITLE

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

ARCHITECTURAL PERSONNEL

TITLE	MINIMUM REQUIREMENTS Number of Years of Experience	Professional License or Certification
Principal	10	Professional License
Project Architect	7	Professional License
Project Manager (Architecture)	7	
Senior Architectural Designer	5	
Junior Architectural Designer	3	
Architectural Technician	1	
Senior Interior Designer	5	
Junior Interior Designer	3	
Interiors Technician	1	
Programming Specialist	3	
Senior Landscape Architect	5	Professional License
Junior Landscape Architect	3	
Senior Landscape Architectural Designer	5	
Junior Landscape Architectural Designer	3	
Landscape Technician	1	
Senior Draftsperson/CAD	5	
Junior Draftsperson/CAD	1	

ENGINEERING PERSONNEL

TITLE	MINIMUM REQUIREMENTS Number of Years of Experience	Professional License or Certification
Principal	10	Professional License
Project Engineer	7	Professional License
Project Manager (Engineer)	7	
Senior Structural Engineering Designer	5	
Senior Electrical Designer	5	
Senior Plumbing Designer	5	
Senior HVAC Designer	5	
Junior Structural Engineering Designer	3	
Junior Electrical Designer	3	
Junior Plumbing Designer	3	
Junior HVAC Designer	1	
Engineering Technician	1	
Senior Engineering Draftsperson/CAD	5	
Junior Engineering Draftsperson/CAD	1	

PERSONNEL FOR ESTIMATING

TITLE	MINIMUM REQUIREMENTS Number of Years of Experience	Professional License or Certification
Principal.....	7	Professional Certification
Senior Estimator.....	7	
Junior Estimator.....	3	

PERSONNEL FOR VARIOUS SPECIALTIES

TITLE	MINIMUM REQUIREMENTS Number of Years of Experience	Professional License or Certification
Principal.....….	7	Professional Certification
Acoustical Specialist.…….....….	5	
Fire Alarm Specialist....…….....…..	5	
Vertical Transportation Specialist.....…	5	
LEED Specialist…….....…	5	LEED Accredited Professional
Historic Preservation Specialist.....….	5	
Masonry Conservation Specialist.....….....	5	
Fire Protection Specialist.....…..……	5	
Geotechnical Specialist.....….….....	5	
Senior Lighting Specialist.....….....	3	
Junior Lighting Specialist.....….....	1	
Senior Specialist.....….....	3	
Junior Specialist….....…..	1	
Senior Draftsperson/CAD.....….....	5	
Junior Draftsperson/CAD.....…..	1	