NEW YORK CITY DEPARTMENT OF
DESIGN + CONSTRUCTION

REQUEST
FOR
PROPOSALS

# RFP

## Submission Deadline

December 4, 2006

## PIN

8502007HW0006P

## Project

HWMWTCA6E, Resident Engineering Inspection Services for the Reconstruction of Beekman Street, Borough of Manhattan

MICHAEL R. BLOOMBERG
**Mayor**

DAVID J. BURNEY, AIA
**Commissioner**

ERIC MACFARLANE, P.E.
**Deputy Commissioner**

**DEPARTMENT OF DESIGN AND CONSTRUCTION**

**REQUEST FOR PROPOSALS**
**TO PERFORM RESIDENT ENGINEERING INSPECTION SERVICES**
**AND RELATED SERVICES FOR:**

**PROJECT: Resident Engineering Inspection Services for the Reconstruction of Beekman Street, Borough of Manhattan**

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## SECTION I. TIMETABLE

A. RFP Issuance

1. Submission Deadline: The proposer shall deliver, on or before 4:00 PM on Monday, December 4, 2006, the Proposal in a clearly marked envelope or package. The Proposal shall consist of two separate, clearly marked, sealed packages: (1) the Technical Proposal (1 original and 4 copies), and (2) the Fee Proposal (1 original).

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

   Carlo Di Fava (718) 391-1541
   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: difavac@ddc.nyc.gov

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

2. Inquiries: In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website. All inquiries must be directed ONLY to the contact person listed in Paragraph A (1) above.

3. 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.

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

   a. Identify Consultant: Within four weeks of submission deadline

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

   c. Commence Work: When directed by DDC.

## SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. Background and Objectives of the Project

The New York City Department of Design and Construction (DDC), Division of Infrastructure, is seeking an engineering firm to perform inspection and other related services under negotiated "Cost Plus Fixed Fee" basis for the reconstruction of Beekman Street, a federally funded project, located in lower Manhattan, New York City. The project is more fully described in Exhibit A of the contract. The standard contract for resident engineering inspection services is attached hereto and incorporated herein as part of this RFP.

B. Key Personnel

Contract award shall be subject to demonstration by the selected contractor that the proposed key personnel, including the Resident Engineer, will be the staff that will perform on the subject contract.

The proposer is advised that it is the intent of the City to secure the personal services of the Resident Engineer identified in its technical proposal. Accordingly, such Resident Engineer must be assigned to the Project. In accordance with Article 4 of the contract, failure by the Engineer to provide the Resident Engineer identified in its proposal will be considered a material breach of the contract and grounds for termination for cause. Replacement of such Resident Engineer is subject to approval by the Commissioner and will only be permitted in the following circumstances: (1) if the designated individual dies or is no longer in the employ of the Engineer, or (2) if the City fails to direct the Engineer to commence work on the Project within nine (9) months of the date on which the Engineer submitted its technical proposal.

The proposed Alternate Resident Engineer shall automatically become the proposed Resident Engineer if the following circumstances occur: (1) the proposer submits one or more proposals on other DDC projects, the procurements for which are simultaneous with this procurement, (2) the proposer identifies the same individual as the proposed Resident Engineer in this proposal, as well as in such other proposal(s), and (3) the proposer is selected for a project based on such other proposal. Simultaneous procurements shall mean procurements where DDC has not yet identified a tentative winner as a result of its technical review process.

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 joint venture or prime consultant/subconsultant. In the event that a proposal is received wherein two or more firms are described as being "in association with" each other, DDC will treat the relationship as one of prime consultant/subconsultant(s). The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms will be relegated to Exhibit A, which lists any subconsultants.

Disadvantaged Business Enterprises (DBE) are encouraged to participate in this solicitation. Other proposers should submit DBE subconsultants. All proposers are required to indicate their DBE participation as part of their submission. The DBE goal is 18% calculated by the direct technical labor of each DBE firm divided by the total direct technical labor of the entire REI contract. All proposers are required to complete Attachment 6- DBE Participation.

D. Contract Term/Cost Estimate

The term of the contract shall commence on the date set forth in the Written Notice to Proceed and shall continue until final acceptance of all required construction work for the Project, plus a period of 90 consecutive calendar days thereafter for required close out activities. The Proposer is advised to carefully review Exhibit A to the contract, which sets forth the total anticipated time frame for the Engineer’s performance of required services, broken down as follows: (1) time frame for pre-construction services; (2) time frame for construction services; and (3) time frame for post-construction services. The estimated cost of the construction contract for the Project is $13,856,244.

E. Insurance

The Engineer and all subcontractors performing services on the Project must provide the types and amounts of insurance specified in Article 10 of the contract. As further described in Article 10 of the contract, the cost of all insurance determined by the Engineer to be necessary for the Project must be included in the FIXED FEE. The Engineer is advised to carefully review such insurance requirements.

F. Payment Provisions

Payments for all required services for the Project shall be in accordance with paragraphs (1) through (3) below. The Proposer is advised to carefully review Article 7 of the contract, which specifies the terms and conditions of payment. Information regarding the elements to be included in the Proposer’s Fee Proposal is set forth in Section IV of this RFP.

1. Fixed Fee: The Proposer shall submit a percent to be used in calculating the Fixed Fee for the contract. The Fixed Fee covers all costs and expenses

incurred by the Engineer in the performance of all required services for the Project, including all expenses related to management, overhead and any anticipated profit, exclusive of the allowance amounts specified below. Article 7 of the contract describes the elements of cost which must be included in the Fixed Fee, as well as payment and retainage provisions applicable to the Fixed Fee.

2. Allowance for Staffing Expenses for the Engineer's Personnel:
An allowance as set forth in Exhibit A to the attached contract will be established for reimbursement of the Engineer's staffing expenses for those personnel described in Exhibit B to the attached contract, who are approved by the Commissioner pursuant to Article 5 of the contract (the "Assigned Personnel"). The Engineer shall not be entitled to payment for staffing expenses for any Project Executive(s), as defined in Article 1 of the contract, or for any other personnel not assigned to the Project. Reimbursement for such staffing expenses shall be in accordance with Article 7 of the contract.

3. Allowance for Reimbursable Services: An allowance in the amount set forth in Exhibit A to the attached contract is included in the contract for payment for reimbursable services required for the Project.

## SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. Scope of Services

The Engineer shall provide, to the satisfaction of the Commissioner, all services necessary and required for the inspection, management and administration of the Project, so that the required construction work is properly executed, completed in a timely fashion and conforms to the plans, specifications and requirements of the construction contract(s) and to good construction practice. The project involves the replacement of sewer mains and reconstruction of roadway, curbs, and sidewalks including street lighting and traffic signal work within the project limits. In addition, this project includes utilities relocation and capital work. Construction Inspection will include, but not be limited to, providing on-site construction inspection and oversight to ensure the quality of construction and conformity with the final plans and specification and preparation of as-built plans. The Proposer is advised to carefully review Article 6 of the attached contract, which set forth in detail the scope of required services.

B. Contract Provisions

The services to be provided by the Engineer and all standards of performance applicable to the required work are set forth in the form of contract, attached hereto and incorporated herein as part of this RFP. Any firm awarded a contract as a result of this RFP will be required to sign this form of contract. The Proposer is advised to carefully review the contract, with particular attention to the following articles: Article 4 - The Project Executive and Resident Engineer; Article 5 - The Engineer's Personnel; Article 6 - Engineering Services and Article 7 - Terms and Conditions of Payment.

C. Staffing Requirements

Overall staffing requirements for the Engineer's personnel for the Project have been established by the Commissioner and are set forth in Exhibit B to the contract. Such staffing requirements specify the titles and the required level of expertise of personnel that may be required for the Project, as well as the estimated time frame and the estimated direct salary rate per hour for each title. In accordance with the procedure outlined in Article 5 of the contract, the number and titles of the Engineer's personnel required for the Project, as well as the specified personnel to be assigned to the Project are subject to the prior written approval of the Commissioner. The Engineer agrees, throughout the term of the contract, to provide personnel as directed by the Commissioner.

The proposer is advised to carefully review Articles 5 of the attached contract, which set forth in detail the requirements with respect to the following: (1) staffing requirements for the Engineer's personnel; (2) the Engineer's Staffing Plan; (3) Commissioner's review and approval of the Engineer's Staffing Plan; (4) revisions to

the Staffing Plan; (5) revisions to staffing plan due to delay or suspension (6) replacement personnel; and (7) overtime policy.

## SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

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

1. Technical Proposal (1 original and 4 copies): The Technical Proposal shall contain all the information requested in Subsection B below, plus forms 254 and 255. (These forms are available at http://www.nyc.gov/html/ddc/html/otherfrm.html) The Technical Proposal shall not include the Fee Proposal.

2. Fee Proposal (1 original): **To be submitted ONLY upon request.** The Fee Proposal shall consist of the elements requested in Subsection C below. A form for the submission of the Fee Proposal is included as Attachment 2 of this RFP.

B. Technical Proposal

Include the following information in the Technical Proposal in the order outlined below. There may be further breakdowns of this format for each item, if the proposer so requires to clarify its proposal. 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 statement of the salient features of the proposal, including approach, qualifications and nature of the proposal project team. Do not include fee data in the summary.

Support Documentation:

1. Firm's Experience: Identify no more than five (5) previous projects the Proposer has performed which are similar in scope and type to the Project described in this RFP. Specifically include the following: (1) the Proposer's familiarity with Lower Manhattan projects, and (2) the Proposer's knowledge and/or experience with Federal Regulations. Limit the experience information provided to a brief description of those projects that are similar to the Project described in this RFP. DO NOT include other types of projects – they will not be considered.

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

2. Proposed Project Team: Identify the following:

   (a) Project Executive: Identify the Project Executive, as defined in Article 1 of the contract.

   (b) Resident Engineer:

   - Identify the Resident Engineer who will be assigned to the Project. Include the resume of the proposed Resident Engineer, detailing managerial and technical qualifications, in particular the track record of the proposed Resident Engineer in successfully completing projects of comparable scope and complexity to that described in this RFP.

   - Complete and attach the form that is included as Attachment 3 to this RFP. Attachment 3 requests the proposer to identify and provide information concerning the proposed Resident Engineer for the Project, as well as the proposed Alternate Resident Engineer.

   (c) Project Staff: DDC has established staffing requirements for the Engineer's personnel for the Project, as set forth in Exhibit B to the contract. Identify those proposed personnel who will be assigned to the Project to fulfill the staffing requirements. Include resumes of the proposed personnel, detailing technical qualifications and expertise.

3. Technical Approach: Describe the Proposer's technical approach to the Project. Specifically include the following: (1) the Proposer's understanding of the specifics of the Project, (2) the Proposer's ability to provide DBE participation, (3) the Proposer's methodology for the Project, i.e., its methodology for identifying and resolving technical and programmatic issues, and (4) the Proposer's understanding of the construction schedule for the Project.

4. Firm's Capability: Demonstrate the organizational capability of the Proposer's firm. Complete and attach an SF-254 form which provides information concerning (1) the number of full-time persons currently on staff, and (2) the projects on which the firm is currently working, the projects the firm has completed, and the future projects to which the firm is committed. All project information shall include the dollar value of the contract, as well as the schedule.

5. Statement of Understanding: Enclose this signed document (Attachment 1) with the Technical Proposal.

C. Fee Proposal

The Fee Proposal consists of the following two components: (1) Fixed Fee, and (2) Staffing Expenses, Direct Salary Rate times a Multiplier, as described below. A form for the submission of the Fee Proposal is included as Attachment 2 to this RFP. The Proposer shall submit Fee Proposal **ONLY UPON REQUEST**. Submit one original Fee Proposal in a separate, sealed envelope.

1. Fixed Fee: The Fixed Fee shall include all costs and expenses incurred by the Engineer in the performance of all required services for the Project, including all expenses related to management, overhead and any anticipated profit exclusive of the following: (1) reimbursable staffing expenses for the Engineer's personnel, as described below, and (2) the allowance for additional services. The Fixed Fee is calculated by multiplying a percent (submitted by the proposer) times the total actual dollar of all requires staffing expenses. Calculation of the Fixed Fee is set forth in Article 7 of the Contract. The Proposer's shall submit a percent to be used in calculating the Fixed Fee.

2. Staffing Expenses: Under the Contract, staffing expenses for all required personnel are calculated by multiplying Direct Salary Rates times a Multiplier. As part of its Fee Proposal, the Proposer shall submit Directs Salary Rates for specified titles of personnel, plus a Multiplier to be applied to such Direct Salary Rates. The Multiplier shall include all costs with respect to the Assigned Employee, plus all costs specified in Article 7 of the Contract.

3. Contract Provisions: Article 7 of the contract describes the elements of cost which must be included in the Fixed Fee, as well as the payment and retainage provisions applicable to the Fixed Fee. The Proposer is advised to carefully review this Article.

D. 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.

E. Proposal Package Contents (Checklist)

The Proposal Package should contain the following Materials:

1. Separate sealed, labeled envelope clearly marked "Technical Proposal" (1 original and 4 copies)
   - Statement of Understanding (Attachment 1)
   - Information Regarding Proposed Resident Engineer (Attachment 3)
   - Acknowledgement of Addenda (Attachment 4)

- Confirmation of Vendex Compliance and VENDEX Certification of No Change (Attachment 5) (Download 2004 VENDEX Questionnaires from nyc.gov/vendex)

- DBE Participation Form (Attachment 6)

## SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

### A. PROPOSAL EVALUATION

1. Selection Process:

   a. A DDC evaluation committee will review, evaluate and score all Technical Proposals in accordance with qualitative and quantitative criteria set forth in the RFP (see Evaluation Criteria Subsection 2 below). This evaluation and scoring will determine the proposer's Technical Rating. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their Technical Proposals, after which their Technical Ratings may be re-evaluated. Proposers will be ranked in accordance with the Technical Evaluation Score.

   b. The Committee will evaluate technical qualifications only and enter into fee/cost negotiations only with the highest ranked technical firm.

2. Evaluation Criteria: Each of the evaluation criteria listed below is weighted by a factor of importance ranging from 0 to 100 points. A DDC evaluation committee will review, evaluate and score all Technical Proposals in accordance with these criteria to determine the proposer's Technical Rating.

   a. Experience of Firm and Subconsultants (if any): [weight 30%]

   b. Individuals Proposed for the Project Team: [weight 25%]

   c. Technical Approach: [weight 15%]

   d. Firm's Capability: [weight 30%]

3. Basis of Award: In accordance with the NYC Charter, DDC will award the contract to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria as are set forth in the Request for Proposals. Contract award shall be subject to the timely completion of contract negotiations between the Agency and the selected proposer(s).

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

5. VENDEX: Upon selection, the successful proposer will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of VENDEX Compliance and VENDEX Certificate of No Change 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, the successful proposer will be asked to finalize a contract with DDC subject to the conditions specified in the RFP and to the agency's standard contract provisions. The contents of the selected proposal, together with this RFP and any addendum(s) provided during the proposal process, may be incorporated into the final contract to be developed by the agency.

## SECTION VI. GENERAL INFORMATION TO PROPOSERS

A. Non-Binding Acceptance of Proposals: This RFP does not commit the City to award a contract for any services. Further, the City may award one or several Engineering Inspection Services contracts for this Project.

B. Incurring Proposal Costs: The City of New York is not liable for any costs incurred in the preparation of a response to this RFP. If Proposers choose to participate in negotiations, they may be asked to submit such price, technical data, or other revisions to their proposals as may be required by the City.

C. Confidentiality: The contents of a Proposer's RFP response are not deemed confidential unless the Proposer identifies those portions of its response which it deems confidential, or containing proprietary information, or trade secrets. The Proposer must provide justification as to why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal.

D. Reserved Rights: All proposal material submitted becomes the property of the City and the City reserves the right, at its sole discretion, to:

1. Reject any and all proposals received in response to this RFP;

2. Award a contract to other than the lowest-fee Proposer;

3. Waive, modify or correct any irregularities in proposals received, after prior notification to the Proposer;

4. Use without limitation any or all of the ideas from submitted proposals;

5. Contract for all or selected parts of the Proposer's proposal, selecting from the services offered without affecting the itemized pricing;

6. Extend the time for submission of all proposals after notification to all prospective Proposers;

7. May conduct discussions with offerers submitting acceptable proposals, award may be made without any discussion;

8. Terminate negotiations with a selected Proposer and select the next most responsive Proposer, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable time of the commencement of negotiations as determined by the Commissioner;

9. Postpone or cancel this RFP, in whole or in part, and to reject all proposals.

E. Contractual Requirements

1. Any firm awarded a contract as a result of this RFP will be required to sign the City's standard contract for Engineering Inspection Services. 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 Engineer and the City has no financial obligation to sub-consultants and sub-contractors of the Engineer. However, all sub-consultants and sub-contractors are subject to the City's contracting requirements including Equal Employment Opportunity (Executive Order #50 of 1980 as revised).

4. If this is an Infrastructure contract for engineering design services, the Proposer must negotiate with the agency the adoption of a schedule of payments and deliverables. In the event that a satisfactory decision cannot be reached regarding those schedules, the agency reserves the right to award to another proposer.

5. The prompt Payment provisions set forth in the edition of the Procurement Policy Board Rules in effect at the time of this solicitation shall be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest payments made after the required payment date except as set forth in the Rules.

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

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

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

7. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provision of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by accessing the City's website at nyc.gov/ppb.

8. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires 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.

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

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

11. The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

_____ _____

ACCO Signature Date

## 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 resident engineering inspection services 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 types of insurance specified in the contract.

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

| | |
|---|---|
| _____ | _____ |
| Date | Authorized Signature |
| _____ | _____ |
| Telephone Number | Consultant Firm |
| _____ | _____ |
| Fax Number | Federal Tax I.D. |

_____

E-Mail Address

_____

Address

## ATTACHMENT 2

## FEE SHEET

## REQUEST FOR PROPOSALS

## ENGINEERING INSPECTION SERVICES FOR THE CONSTRUCTION CONTRACT OF PROJECT: Reconstruction of Beekman Street, Borough of Manhattan

The Fixed Fee is calculated by multiplying a percent (submitted by the proposer) times the total actual dollar of all required staffing expenses. Calculation of the Fixed Fee is set forth in Article 7 of Contract. The Proposer's shall submit a percent to be used in calculating the Fixed Fee:

Fixed Fee: _____%

The proposer must submit Direct Salary Rates per hour for titles of personnel listed below. The proposer shall submit a Multiplier to be applied to Direct Salary Rates. The Multiplier shall include all costs with respect to the Assigned Employee, as well as the costs specified in Article 7 of Contract. The proposer should provide only **ONE** Multiplier for all personnel listed.

**(ALL FEES ARE TO BE SUBMITTED UPON REQUEST)**

Est. Construction Cost: $13,856,244
**Project ID: HWMWTCA6E** REI Duration: 28 months
**Description: Reconstruction of Beekman St., etc.** Construction Duration: 24 months

| TITLE | QUALIFICATIONS | STAFF NO. | **DIRECT SALARY RATE/HOUR** | HOURS/ MONTH | # OF MONTHS | **MULTIPLIER** | **ESTIMATED AMOUNT PER TITLE** |
|---|---|---|---|---|---|---|---|
| Project Executive | | 1 | N/A | | | | |
| Resident Engineer | ASCE-V | 1 | | 176 | 28 | | |
| Office Engineer | ASCE-III / NICET IV | 1 | | 176 | 28 | | |
| Senior Inspector | ASCE-III / NICET IV | 1 | | 176 | 24 | | |
| Inspector (s) | ASCE-II / NICET III | 2 | | 176 | 24 | | |
| Community Liaison | ASCE-III / NICET IV | 1 | | 176 | 25 | | |
| CADD Oper / Draftsperson (10%) | NICET II / NICET III | 1 | | 176 | 3 | | |
| TOTAL ESTIMATED AMOUNT FOR STAFFING | | | | | | | |

_____ _____
Name of Proposer (firm) EIN#

By:_____
Signature of Partner or Corporate Officer

_____ _____
Title Date

_____ _____
Address Telephone Number

_____
Fax Number

## ATTACHMENT 3

## IDENTIFICATION OF RESIDENT ENGINEER

**FMS ID No.:** **HWMWTCA6E**
**Description:** **Resident Engineering Inspection Services for the Reconstruction of Beekman Street, Borough of Manhattan**

### (1) Resident Engineer:

Name of Proposed Resident Engineer: _____
The resume of the Proposed Resident Engineer must be included in the Technical Proposal.

Is the above individual currently employed by proposer? _____ Yes _____ No
If the answer is No, the proposer must provide the certification set forth below. Such certification is provided by checking the box below and signing this Attachment 3.

☐ The proposer certifies that (1) it has entered into an agreement (written ___ or verbal__) with the individual identified above as the proposed Resident Engineer, and (2) in accordance with such agreement, the individual has agreed to be employed by the proposer and assigned to the Project if the contract is awarded to the proposer.

Is the above individual performing services on a current project? _____ Yes _____ No
If the answer is Yes, the proposer must provide the information set forth below.

Name of Entity or Agency: _____
Project Description: _____
Title: _____
Anticipated Completion Date: _____

Does the above individual have any projected assignments, including projects which have not yet been commenced, but for which a final selection has been made by the Entity/Agency:
___ Yes ____ No. If the answer is Yes, the proposer must provide the information set forth below. If the individual has more than one projected assignment, the proposer must include an attachment listing all such assignments.

Name of Entity or Agency: _____
Project Description: _____
Title: _____
Anticipated Completion Date: _____

Has the above individual been included on any other proposals submitted by the proposer for which a final selection has not yet been made by the Entity/Agency? ___Yes ___ No. If the answer is Yes, the proposer must provide an attachment listing all such proposals.

**(2) Alternate Resident Engineer:**

Name of Proposed Alternate Resident Engineer: _____.
The resume of the Proposed Alternate Resident Engineer must be included in the Technical Proposal.

Is the above individual currently employed by proposer? _____ Yes _____ No
If the answer is No, the proposer must provide the certification set forth below. Such certification is provided by checking the box below and signing this Attachment 3.

☐ The proposer certifies that (1) it has entered into an agreement (written ___ or verbal__) with the individual identified above as the proposed Alternate Resident Engineer, and (2) in accordance with such agreement, the individual has agreed to be employed by the proposer and assigned to the Project if the contract is awarded to the proposer.

Is the above individual performing services on a current project? _____ Yes _____ No
If the answer is Yes, the proposer must provide the information set forth below.

Name of Entity or Agency: _____
Project Description: _____
Title: _____
Anticipated Completion Date: _____

Does the above individual have any projected assignments, including projects which have not yet been commenced, but for which a final selection has been made by the Entity/Agency:
___ Yes ____ No. If the answer is Yes, the proposer must provide the information set forth below. If the individual has more than one projected assignment, the proposer must include an attachment listing all such assignments.

Name of Entity or Agency: _____
Project Description: _____
Title: _____
Anticipated Completion Date: _____

Has the above individual been included on any other proposals submitted by the proposer for which a final selection has not yet been made by the Entity/Agency? ___Yes ___ No. If the answer is Yes, the proposer must provide an attachment listing all such proposals.

**(3) Signature and Affirmation:** Sign Attachment 3 in the space provided below. By signing below, the proposer affirms that (1) the information provided in this Attachment 3 is, to the best of its knowledge, true and accurate, and (2) if awarded the contract, the proposer shall provide the services of the individual identified herein as the proposed Resident Engineer. The proposer acknowledges that failure to provide the services of such individual may result in termination for cause in accordance with Article 4 of the standard contract for resident engineering inspection services, attached hereto.

_____
Name of Proposer

By: _____
Signature of Partner or Corporate Officer

Title:_____

Firm:_____

EIN:_____

## ATTACHMENT 4

## ACKNOWLEDGEMENT OF ADDENDA

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

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

___Part I

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

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

___Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

## ATTACHMENT 5

## CONFIRMATION OF VENDEX COMPLIANCE

The Proposer shall submit this Confirmation of Vendex Compliance

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

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

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

## ATTACHMENT 6

## DBE PARTICIPATION

**PIN:** 8502007HW0006P **PROJECT NAME**: REI for Reconstruction of Beekman Street

**PROJECT NO.:**_____ **CONSULTANT:**_____

Participation by DBE Sub-consultants: ☐ Is being proposed

Participation by DBE Sub-consultants: ☐ Is not being proposed

If being proposed, attach the following:

1. Name(s) and Address(es) of proposed DBE firms.
2. Percentage(s) of assigned participation.
3. NYS DBE Certification(s)*.

*** An approved letter from the New York State Department of Transportation Office of Equal Opportunity Development and Compliance is required as proof of DBE certification for any DBE prime or sub consultant. The certification must be in effect on the RFP response date.**

**For further information go to: WWW.dot.state.ny.us/ go to site index under "D"=Disadvantage Business Enterprise (DBE) registry**

**THE CITY OF NEW YORK**

**DEPARTMENT OF DESIGN AND CONSTRUCTION**

**DIVISION OF INFRASTRUCTURE**

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

# CONTRACT FOR RESIDENT ENGINEERING INSPECTION SERVICES

| | |
|---|---|
| **PROJECT:** | **Reconstruction of Beekman Street** |
| **BOROUGH:** | **Manhattan** |
| **FMS NUMBER:** | **HWMWTCA6E** |
| **REGISTRATION NUMBER:** | _____ |
| **PIN NUMBER:** | **8502007HW0006P** |
| **ENGINEER:** | _____<br>_____<br>_____ |
| **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 "Engineer"), located at _____.

WITNESSETH:

WHEREAS, the City desires to have resident engineering inspection services performed for the construction project described in Exhibit A (the "Project"), and

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

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

ARTICLE 1 - Definitions

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

| | |
|---|---|
| Exhibit A | Contract Information |
| Exhibit B | Staffing Requirements |
| Exhibit C | Fixed Fee |
| Exhibit D | Requirements for As-Built Drawings |
| Exhibit E | Requirements for Federally Funded Contracts |

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 delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO.

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

1.5 "City Chief Procurement Officer" ("CCPO") shall mean a person delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCO and any offices which have oversight responsibility for the procurement of construction.

1.6 "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).

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

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

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 “Engineer” 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.

1.13 "Final Acceptance" shall mean the final written acceptance of all required work for the construction Project, as determined by the Commissioner.

1.14 "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.

1.15 "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 Final Acceptance of the construction work, applicable to or affecting the Project, the Site(s), the construction work, and all employees engaged hereunder.

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

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

1.18 “Procurement Policy Board” (PPB) shall mean the Agency of the City of New York whose function is to establish comprehensive and consistent procurement policies and rules which shall have broad application throughout the City.

1.19 “Project” shall mean the infrastructure construction Project set forth in Exhibit A.

1.20 “Project Executive” shall mean the person designated by the Engineer to serve as its principal representative with respect to its obligations under the Contract. Such Project Executive shall be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project. The Project Executive is identified in Exhibit A. Compensation for services provided by any Project Executive(s) is deemed included in the Fixed Fee.

1.21 "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).

1.22 "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.

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

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

1.25 "Subcontractor" shall mean any person, firm, or corporation, other than employees of the Engineer, who or which contracts with the Engineer or his subcontractors to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All subcontractors are subject to the prior written approval of the

Commissioner.

1.26 "Substantial Completion" shall mean the written determination by the Commissioner that all required work for the construction Project is substantially complete.

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

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

ARTICLE 2 - Compliance with Laws

2.1 PPB 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 Engineer shall comply with all local, State and Federal laws, rules and regulations applicable to this Agreement and to the work to be performed hereunder, including without limitation the New York State Labor Law. The Engineer shall secure all licenses, obtain or cause to be obtained all permits, and pay or cause to be paid all fees required in connection with the performance of services under this Contract.

2.3 The Engineer shall comply with and shall make sure that all contractors working on the Project 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 Engineer to perform the services hereinafter described, on the terms and conditions specified herein, and the Engineer agrees to so serve. The Engineer agrees to provide, to the satisfaction of the Commissioner, all necessary resident engineering inspection and construction management services as may be required in connection with the construction of the Project so that the completed work conforms to the requirements of the construction contract and to good construction practice. The resident engineering inspection and construction management services to be provided by the Engineer are set forth in detail in Article 6 hereof. The Engineer hereby certifies that it has the necessary experience, expertise, manpower and resources to fulfill its obligations under this Contract competently and efficiently. The Engineer agrees to use its best efforts to complete the Project as soon as possible and at the lowest possible cost to the City.

ARTICLE 4 – Project Executive and Resident Engineer

4.1 Project Executive: The Project Executive, set forth in Exhibit A, shall serve as the Engineer’s principal representative with respect to its obligations under the Contract. The Project Executive shall be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project. The Project Executive shall be included in the Staffing Plan. The Engineer shall not be entitled to payment for services provided by any Project Executive(s). Compensation for services provided by any Project Executive(s) is deemed included in the Fixed Fee.

4.2 Resident Engineer: The Resident Engineer for the Project is set forth in Exhibit A. In its Proposal for the Project, the Engineer identified such Resident Engineer and agreed to provide such Resident Engineer in accordance with the terms and conditions set forth herein. Accordingly, the Engineer specifically agrees to assign such Resident Engineer to the Project for its entire duration. Failure by the Engineer to provide such Resident Engineer will be

considered a material breach of the Contract and grounds for termination for cause. Replacement of such Resident Engineer must comply with the conditions set forth in this Article 5 and will only be permitted in the following circumstances: (1) if the designated individual dies or is no longer in the employ of the Engineer, or (2) if the City fails to direct the Engineer to commence work on the Project within nine (9) months of the date the Engineer submitted its technical proposal.

ARTICLE 5 - The Engineer's Personnel

5.1 Overall Staffing Requirements for the Engineer's Personnel: Overall staffing requirements for the Engineer's personnel for the Project have been established by the Commissioner and are set forth in Exhibit B. Such staffing requirements specify the titles of personnel and required level of expertise that may be required for the Project, as well as the direct salary rate per hour for each title. The Engineer agrees, throughout the term of the Contract, to provide personnel as directed by the Commissioner. The Engineer specifically agrees that its employees, agents and consultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. The Resident Engineer shall be a Professional Engineer, licensed in the state of New York. Other personnel shall also be Professional Engineers licensed in the state of New York in accordance with the requirements of their ASCE/NICET grades, as set forth in Exhibit B.

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

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

(a) Project Executive, identified in Exhibit A
(b) List of required titles per Phase (Pre-Construction, Construction, and Post Construction)
(c) specific personnel for each title
(d) Direct salary rates per hour for all specified personnel in accordance with Exhibit B
(e) Total estimated hours per title per Phase (Pre-Construction, Construction, and Post Construction)
(f) Total estimated amounts per title per Phase (Pre-Construction, Construction, and Post Construction)

5.2.2 Payment Limitations: Payment for personnel is subject to the limitations set forth below.

(a) Inclusion in Staffing Plan: The Engineer shall not be entitled to payment for any personnel not assigned to the Project and not included in the approved Staffing Plan. The specific personnel identified in the approved Staffing Plan shall be considered Assigned Personnel or Assigned Employees for the purpose of the Engineer's entitlement to payment for services performed by such personnel.

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

(c) Project Executive: The Engineer shall not be entitled to payment for the services of the Project Executive. Compensation for the Project Executive is deemed included in the Fixed Fee.

5.2.3 Engineer's Proposed Staffing Plan: Within five (5) business days of a written request from the Commissioner, the Engineer shall submit a proposed Staffing Plan for the Project, based upon the overall staffing requirements set forth in Exhibit B. Such proposed Staffing Plan shall include only those titles of personnel necessary for the provision of the required services. Such Staffing Plan shall include the Project Executive and shall provide a list of proposed titles of personnel, specific personnel proposed for each title, and total estimated hours and amounts for each title. With respect to each specific proposed employee, the Engineer shall provide the following: (1) resumes and any other information detailing technical qualifications and expertise, and (2) the Direct Salary Rate per hour to

be paid for the proposed employee, in accordance with Exhibit B.

5.2.4 Review and Approval of Staffing Plan: The Commissioner shall review the Engineer'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 (1) whether the titles of personnel proposed by the Engineer are necessary for the provision of the required services; (2) whether each specific employee proposed by the Engineer has the requisite qualifications, and (3) the Direct Salary Rate per hour to be paid for each specific proposed employee, in accordance with Exhibit B. The Engineer shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.2.5 Revisions to Staffing Plan: The Engineer shall, on a monthly basis, or as otherwise directed by the Commissioner, submit any revisions to the Staffing Plan it deems necessary. Any revisions to the Staffing Plan are subject to the prior written approval of the Commissioner. The Commissioner may, at any time throughout the term of this Contract, direct revisions to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Project and increasing or decreasing the personnel assigned to the Project, based upon the scope of the required work. The Engineer shall increase or decrease the personnel assigned to the Project, as directed by the Commissioner.

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

5.2.7 Replacement Personnel: No substitutions for assigned personnel shall be permitted until the proposed replacement has been approved. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced and are subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the Engineer shall remove any personnel and substitute another employee of the Engineer reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his sole discretion.

5.2.8 Overtime Policy: At the time the Engineer submits its Staffing Plan, it shall provide a statement setting forth its company policy with respect to payment to its employees for services performed during overtime hours. Overtime hours shall be defined as any hours in excess of eight (8) hours per day, Monday through Friday. The Engineer's statement regarding its overtime policy shall indicate the following: (1) whether its policy is consistently applied to all clients; (2) the designated classes of employees to whom such policy applies, and (3) the rate of increase to be paid to such employees for services performed during overtime hours.

5.3 Services by Engineer's Own Employees: The services to be performed hereunder shall be performed by the Engineer's own employees or its Subconsultant(s), as set forth in Article 5.4 below, unless otherwise authorized by the Commissioner. The employment of, contract with, or use of the services of any other person or firm by the Engineer, as independent consultant or otherwise, shall be subject to prior written approval of the Commissioner. However, no provision of this Contract shall be construed as constituting an agreement between the Commissioner and any such person or firm.

5.4 Subconsultants: The Engineer shall engage the Subconsultant(s) identified in its Proposal for the Project and set forth in Exhibit A, unless otherwise approved by the Commissioner. Failure by the Engineer to provide the Subconsultant(s) set forth in Exhibit A shall be grounds for termination for cause in accordance with Article 14. The Engineer shall be responsible for the performance of services by its Subconsultant(s), including maintenance of schedules, correlation of their work and resolution of all differences between them.

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

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

5.4.3 Payment: Expenses incurred by the Engineer 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 Engineer shall pay its Subconsultant(s) the full amount due them from their proportionate share of the requisition, as paid by the City. The Engineer shall make such payment not later than seven (7) calendar days after receipt of payment by the City.

5.4.4 Subcontracts: The Engineer shall inform its Subconsultant(s) fully and completely of all terms and conditions of this Contract relating either directly or indirectly to the services to be performed. The Engineer shall stipulate in subcontracts with its Subconsultant(s) that all services performed shall strictly comply with the requirements of this Contract. If requested by the Commissioner, the Engineer shall furnish copies of the subcontract with its Subconsultant(s).

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

ARTICLE 6 - Engineering Services

6.1 General: The Engineer shall provide, to the satisfaction of the Commissioner, the services set forth below.

6.1.1 Resident Inspection Engineering (REI) Services: The Engineer shall provide all services necessary and required for the inspection, management, coordination and administration of the Project, so that the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the construction contract and to good construction practice. The REI services to be provided by the Engineer shall include without limitation the services set forth in this Article 6, as well as additional REI services required for the Project.

(a) The Engineer’s services shall be provided from the date the construction contractor(s) is directed to commence work until the completion of all construction operations and the final acceptance of the completed work by the Commissioner.
(b) In general, the Engineer shall serve as the representative of the Department at the site and, subject to review by the Commissioner, shall be responsible for the inspection, management and administration of the performance of the work, as delineated in the article of the construction contract(s) entitled “The Resident Engineer”.
(c) The Engineer shall ascertain the standard practices of the City prior to the performance of services required by this Contract, and all such services shall be performed in accordance with these standard practices. In addition, the Engineer shall be familiar with the construction contract documents, as well as the Federal Process.
(d) The Commissioner or his duly authorized representative(s) shall have the right at all times to inspect the work of the Engineer and contractors.
(e) The Commissioner shall advise the Engineer in writing of any special or particular requirements applicable to the performance of services hereunder and/or the construction work.
(f) The Engineer’s services shall include the management, supervision and coordination of any Reimbursable Services required for the Project.

6.1.2 Reimbursable Services: The Engineer may be directed in writing by the Commissioner to provide Reimbursable Services. Reimbursable Services are described in Article 6.6.

6.1.3 Non-reimbursable Services: Throughout the Project, the Engineer shall be responsible for providing

the non-reimbursable services set forth below. All costs for such services are deemed included in the Basic Fee.

(a) The Engineer shall 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.

(b) The Engineer shall provide the items set forth below for all personnel performing services for the Project, including any Project Executive(s).

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

(c) If the Engineer is located outside New York City, it shall obtain a New York City telephone number and submit such number to the Commissioner.

6.2 REI Services During Pre-Construction Phase: The services to be provided by the Engineer during the Pre-Construction Phase shall include without limitation the services set forth below.

6.2.1 Undertake the following responsibilities with respect to shop drawings:

(a) Implement procedures to be followed by the construction contractor(s) for the expeditious processing of submittals, including without limitation shop drawings, material samples and catalogue cuts. Such procedures shall be in accordance with DDC guidelines.
(b) Review and approve all shop drawings for the Project, including without limitation shop drawings for temporary sheeting, bracing, shoring, underpinning, temporary vehicular and pedestrian bridges, retaining walls, decks and all permanent structures in the Project.
(c) Review and approve all rebar drawings/shop drawings and placement of all steel reinforcement and structural steel for structures.
(d) Ensure that no construction work commences until the shop drawing is approved.
(e) Upon approval, transmit to the Commissioner the original stamped, signed and dated approved shop drawing. All shop drawings must be stamped and signed by a licensed Professional Engineer.

6.2.2 Prepare correspondence or other communications in order to advance the Project.

6.2.3 Perform minor design services for the Project. Minor design services shall be those services which, in the determination of the Commissioner, involve relatively small adjustments, enhancements or changes to the design for the Project. Minor design services may include, without limitation, the services set forth below.

(a) Raising or lowering the curb profile along the majority of the blockface.
(b) Temporary support of defective retaining wall
(c) Adjustment to or addition of catch basins
(d) Removal of minor encroachments (chain link or wood fence, hedges, pavement block, etc.) and restoration in connection with such removal, if required
(e) Modification of sidewalk grades to match existing adjacent properties. Such adjustments shall comply with the Americans with Disabilities Act (ADA), as well as tree requirements of the Department of Parks and Recreation.
(f) Re-design of original curb profiles to lessen the impact upon existing field conditions, including any associated infrastructure changes necessitated by these re-designs.

(g) Addition, subtraction or movement of multiple "break" points within a blockface.

6.3 REI Services During Construction Phase: The services to be provided by the Engineer during the Construction Phase shall include without limitation the services set forth below.

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

6.3.2 Make recommendations to the Commissioner regarding the approval of proposed subcontractors and material vendors.

6.3.3 Undertake the following responsibilities with respect to the inspection of the work:

(a) Provide technical inspection, management and administration of the work on the Project until final completion and acceptance of the Work by the Commissioner, verifying that the materials furnished and work performed are in accordance with the requirements of the construction contract(s) and that work on the Project is progressing on schedule.
(b) Provide offsite plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Commissioner, to insure conformance with the material specifications of the construction contract(s).
(c) Take appropriate action to prevent the installation of work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the requirements of the construction contract(s), and inform the Commissioner promptly of such action and the reasons for and outcome of such action.
(d) Supervise the performance of all detailed inspection and field-testing of materials and items of work, quality control tests, or any other tests required by the construction contract(s), to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include without limitation slump test, air-entrainment test, material temperature test and density tests. If directed by the Commissioner in writing as an additional service, the Engineer shall retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory services will be provided to the Engineer pursuant to the Allowance for Reimbursable Services.
(e) Inspect the Project in conjunction with the Commissioner's Representative on a periodic basis and prior to Substantial Completion or Final Acceptance, as described below. The Engineer shall furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished work.
(f) Inspect the Project and provide a report prior to the expiration of the guarantee period set forth in the construction contract(s), as described in Article 6.3.20 below.

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

(a) Review proposed Progress Schedule, and any updates thereto, submitted by the contractor(s) and direct revisions to the Progress Schedule as required by the Commissioner.
(b) Make recommendations to the Commissioner regarding approval or disapproval of the Progress Schedule.
(c) If necessary, prepare a Progress Schedule for the Project in the form of a bar chart.
(d) Monitor compliance with the Progress Schedule by the contractor(s).
(e) Review the adequacy of the personnel and equipment of the contractor(s) and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule.
(f) Notify the Commissioner of any anticipated delays in fabrication, erection or construction.
(g) If performance of the work by the contractor(s) falls behind the Progress Schedule, advise the Commissioner of the same and make recommendations as to what methods should be adopted to make up for lost time.
(h) Render assistance when required to minimize delays to the Project caused by labor disputes during construction.

6.3.5 Review and evaluate the means and methods of construction proposed by the contractor(s) and advise the Commissioner in the event the Engineer reasonably believes that such proposed means and methods of construction will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the construction contract(s).

6.3.6 Undertake the following responsibilities with respect to the safety of the site:

(a) Monitor the activities of the contractor(s) to see that a clean and safe environment is maintained at the site. The Engineer shall perform a daily inspection of the Project site(s) at the beginning and end of each day ("Dawn and Dusk Patrol") and shall issue directives to the contractor(s) to correct any deficiencies which may be identified.

(b) Monitor conditions at the site for conformance with the construction contract(s), and coordinate with city agencies and public and private utilities, so that the contractor(s) provides a safe environment for both workers and the general public.

(c) Review the safety program developed by the contractor(s) and monitor the adherence of the contractor(s) to such program. The Engineer shall not be responsible for prescribing, instituting or maintaining a safety program, nor for providing safety engineers.

(d) Promptly notify the Commissioner and the contractor(s) if the Engineer observes any hazardous conditions at the site or non-compliance by the contractor(s) with an applicable safety regulation or contract requirement.

(e) Inspect the maintenance and protection of pedestrian and vehicular traffic operations on a daily basis and record observations in the Engineer's diary. Review and evaluate contractor proposals regarding pedestrian and vehicular traffic operations and make recommendations to the Commissioner. The Engineer's personnel assigned this responsibility shall be trained in this area, and approved by the Commissioner for this work. This employee shall be designated the "safety officer" for the Project.

(f) In the event of an emergency, provide such labor, materials, equipment and supervision necessary to cure such emergency condition. The Engineer shall immediately notify the Commissioner of any such emergency condition.

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

(a) Keep accurate and detailed written records of the progress of the Project during all stages of planning and construction.

(b) Maintain daily detailed time and material records regarding the use of labor, equipment and material for the Project. The Engineer shall use such records to prepare the Contract Cost Summary/Close Out Report set forth in Article 6.4.

(c) Maintain a daily job diary or log book describing all activities which occurred on the Project on a daily basis, including without limitation, all work accomplished, the number of workers, identified by trade, employed at the site by the contractor(s), the number of hours worked, material shortages, labor difficulties, weather conditions, visits by officials, decisions reached, specific problems encountered, general and specific observations, and all other pertinent data relative to the performance of the construction contract(s).

(d) Maintain accurate, orderly and detailed files and written records and documents regarding the Project, including without limitation, correspondence, minutes and/or reports of job conferences, progress reports, shop drawings and other submissions, construction contract documents, including all addenda, change orders, supplemental drawings and all other Project-related documents. The Engineer shall provide any records, documents or information concerning the Project to the Commissioner as directed.

(e) With respect to work to be performed on a time-and-materials, unit cost, or similar basis, requiring the keeping of records and computation therefrom, maintain cost accounting records in accordance with the City's procedures.

(f) Prepare record ("as built") drawings as described in Article 6.4.3 below.

(g) Prepare and maintain fixed asset inventory forms for all required contract components.

(h) Maintain all Project records in accordance with the following: (1) DDC requirements, as set forth in

the DDC manual entitled "DDC Standard Records", a copy of which will be provided to the Engineer, and (2) Federal requirements.

(i) All Project records, including without limitation those specified above, shall be available to the Commissioner and State and Federal authorized representatives at all times immediately upon request. The Commissioner shall have the right to remove such Project records and make copies thereof.

6.3.8 Monitor compliance by the contractor(s) with the following requirements applicable to the construction work: (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA); (3) requirements for the participation of DBEs; (3) requirements for the participation of LBEs, and (4) Federal Contract Requirements.

6.3.9 Prepare correspondence or other communications to the contractor(s) as required in order to advance the Project, including without limitation letters for the signature of the Commissioner or the Commissioner's Representative.

6.3.10 Undertake the following responsibilities with respect to contractor payments:

(a) Review all requisitions for payments submitted by the contractor(s), including without limitation partial payments, payments for extra work, substantial completion and final payments.

(b) Make recommendations to the Commissioner for approval or disapproval of all contractor requisitions for payment in accordance with City and Federal procedures.

(c) Verify all estimates for payments of work performed, computations, as well as field measurements and sketches necessary for payment purposes.

(d) With respect to each requisition for payments submitted by the contractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.

(e) Submit to the Commissioner the requisition for final payment within one (1) month after the date of final inspection of the Project.

(f) Maintain all accounts and records with respect to payments in accordance with the State Comptroller's Manual and good accounting practices.

6.3.11 Review applications for extensions of time submitted by the contractor(s). Make recommendations to the Commissioner for approval or disapproval thereof in accordance with the City's procedures.

6.3.12 Undertake the responsibilities set forth below with respect to questions raised and/or disputes submitted by the contractor(s).

(a) Interpret the Drawings and Specifications and add explanatory information consistent with the construction contract(s). In the event the contractor(s) disagrees with the Engineer's interpretation of the meaning and intent of the Drawings and Specifications, the Engineer shall prepare a report to the Commissioner setting forth the contractor's interpretation and that by the Engineer. Such report shall be in sufficient detail so that the Commissioner may, from it, make a determination as described in the article of the construction contract entitled "Resolution of Disputes".

(b) Review, evaluate and prepare a recommended determination with respect to disputes submitted by the contractor(s) in accordance with the article of the construction contract entitled "Resolution of Disputes". The Engineer's recommendation shall be in writing, and shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the contractor, as well as the requirements of the Drawings, the Specifications and the construction contract.

(c) Keep DDC advised of potential disputes, with analysis and recommendations regarding actions to be taken.

6.3.13 Review all requests for change orders from the contractor(s) and obtain cost proposals from the contractor(s). Prepare a report to the Commissioner recommending approval or disapproval thereof in accordance with City procedures. Such report shall include the Engineer's review and evaluation of the change order request and the cost proposal submitted by the contractor(s), as well as any recommendations the Engineer may have concerning the quantities of labor, equipment and materials relative to the proposed change order. The Engineer must be prepared

to substantiate the information contained in its report to the Commissioner, the Engineering Audit Officer, the Comptroller and any other agency having jurisdiction in this area. The Commissioner will make all final determinations regarding change orders, modifications and additions to the construction contract(s). If directed by the Commissioner, the Engineer shall negotiate a price, i.e., lump sum or unit price, for the performance of the proposed change order work and submit the same to the Commissioner for his approval. If directed by the Commissioner, the Engineer shall provide cost estimates for the proposed change order.

6.3.14 Schedule and conduct job meetings with the contractor(s), representatives of the Commissioner, interested city agencies, regulatory agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, scheduling and related issues. If required, the Engineer shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees.

6.3.15 Undertake the following responsibilities with respect to Project reports:

(a) Submit written progress reports to the Commissioner on a monthly basis, unless otherwise directed, including without limitation (1) information concerning the work of the contractor(s); (2) the percentage of completion of the work; (3) the number and amount of change orders, and (4) an update of the budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete.
(b) Prepare reports regarding the work as may be directed by the Commissioner, incorporating such information, interpretation, detail or back-up material as may be required by the Commissioner.
(c) Prepare reports in a form suitable for transmission to the Comptroller and the Law Department on claims made during the course of the work and within one year after completion and final acceptance of the work.

6.3.16 Determine the need for and recommend to the Commissioner the institution of default proceeding against the contractor(s) or the assessment of liquidated damages. Assist the Commissioner in selecting an alternate contractor(s) to perform the work and assist in evaluating back charges or other deductions to be assessed.

6.3.17 Undertake the following responsibilities with respect to Substantial Completion of the Project:

(a) Inspect the Project in conjunction with the Commissioner's Representative at the time of Substantial Completion.
(b) Furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished work.
(c) Make recommendations to the Commissioner regarding a determination of Substantial Completion.
(d) Prepare and finalize all necessary punch lists, including completion dates for all items and expedite execution of the same by the contractor(s).
(e) Prepare and deliver to the Commissioner record ("as built") drawings as described in Article 6.4.3.
(f) Perform the above duties in the event the City is to take over, use, operate or occupy any part or all of the Project.

6.3.18 Undertake the following responsibilities with respect to Final Acceptance of the Project:

(a) Inspect the Project in conjunction with the Commissioner's Representative at the time of Final Acceptance.
(b) Furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished work.
(c) Make recommendations to the Commissioner regarding a determination of Final Acceptance.

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

6.3.20 Prior to the expiration of the guarantee period set forth in the construction contract(s), inspect the

Project and furnish a report to the Commissioner describing in detail any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

6.3.21 Provide progress photographs on a regular basis as directed by the Commissioner.

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

6.3.23 Prepare and submit DDC's construction contractor(s) performance evaluation form. Such performance evaluation shall be completed when fifty (50%) of the contract amount has been vouchered and at substantial completion of the Project. The form shall be submitted to DDC no later that fifteen (15) calendar days after each of these events has occurred.

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

6.3.25 Check the erection of structures necessary to protect the public during the construction operations.

6.3.26 Spot check, for accuracy, Survey and Stake-out performed by the contractor(s).

6.3.27 Check the construction contractor's layout and concrete form work for correctness, including line and grade. Check the placement of concrete, structural concrete and asphalt pavements.

6.3.28 Check the removal, installation and reinstallation of all signs, including the fastening of chains from sign structures.

6.3.29 Check layout of conduits, pipes, gas mains, water mains, electrical conduit and lighting equipment, and other miscellaneous structures.

6.3.30 Check all electrical wiring, permanent or temporary, for compliance with the plans and specifications.

6.3.31 Check the performance of excavation, and compliance with safety standards for sheeting, and prepare necessary trench certifications and backfill certifications.

6.3.32 Substantiate the quality and check the placement of all pre-cast pre-stressed structural elements when they are to be used on the Project.

6.3.33 Check and approve if applicable the contractor's pile layout, condition of piles, treatment of piles, pile driving equipment and method of pile driving; certify pile records, locations and lengths.

6.3.34 Coordinate with and direct the activities of a professional Consultant for Arboricultural Services in all matters pertaining to tree pruning and/or tree removal. The Consultant for Arboricultural Services is a Reimbursable Service. Arboricultural services shall be in accordance with standards and requirements of the New York City Department of Parks and Recreation ("DPR") for tree planting, protection and preservation.

6.3.35 If applicable, prepare and certify, on a monthly basis, Sidewalk Assessment data for all sidewalks constructed. Sidewalk Assessment data may be transmitted by lists or other methods as specified by the Commissioner. Assessment data must be prepared in accordance with Design Directive 33, a copy of which will be provided to the Engineer upon request.

6.3.36 If the Project involves the installation of Traffic Signals and Street Lighting, check all components

of the installation, including without limitation, (1) the installation of conduit for type, depth, quantity, manner of installation, drag line observations; (2) the installation of foundations to insure proper location, size, type, anchor rod assemblies, mats, quality of concrete, number of bends, sidewalk finish; (3) the installation of pull boxes for proper types, locations, drainage, orientation, covers, sidewalk restoration; (4) the installation of cable for proper type, method of installation, conductors, fuses, tagging; (5) the operations, size, testing procedures, amplification systems, luminaries, photoelectric cells; (6) the installation of traffic posts for proper type, mats, cleats, orientations, grounding, installation of appurtenant fixtures on the post such as push buttons, signs, street light arms, luminaries; (7) the installation of all signal and lighting assemblies for proper orientation, grounding, wiring, installation; (8) the installation of all control boxes and controllers for proper mechanical and electrical installation, timing operations, phasing; (9) the installation and operation of all temporary signals, lighting overhead cable.

6.3.37 If the Project involves the installation of water mains, provide the following services: (1) review and approve pipe laying schedules, where required; (2) prepare pipe geometry, as required; (3) perform record search and field investigation to taps, connections and data on existing mains; (4) prepare, control and record the necessary requisitions for material from the Department of Environmental Protection's pipe yards; (5) plan and control, under Bureau of Water Supply guidance, necessary shutdowns of water mains to permit prosecution of the work; (6) under the guidance and subject to approval of the Bureau of Water Supply Personnel, recommend field changes in pipe, recommend resolution of utility and other interference problems, test and report on cleanliness of new mains, make final inspection and punch list, and (7) prepare all necessary change orders, extensions of time and correspondence.

6.3.38 If the Project involves the installation of fire alarm communication systems, the Engineer shall furnish all services required in this contract; however, final inspection of this work will be performed by the New York City Fire Department.

6.3.39 Undertake the following responsibilities with respect to the coordination of utility work:

(a) Provide a dedicated “utility coordinator” who shall perform the following tasks:

(1) Interpret and apply specifications and contract documents especially with regard to utility items and accommodation work
(2) Communicate daily with utility representative to reconcile items and quantities for work performed at various locations. This must be done at a time that is mutually agreed upon.
(3) Sign daily reconciliation sheets and verify that the quantities actually installed become part of the payment to the contractor for utility work.
(4) Verify that there are no discrepancies between quantities installed and quantities reflected on application for payment for utility work.
(5) Become familiar with all DOT and DEP regulations.
(6) Coordinate meetings with resident engineer, City representatives, and utility personnel to resolve any conflicts that may develop.
(7) Be responsible to facilitate all resolution discussions.
(8) Prepare reports that identify payments to date which includes all utility involvement.

(b) Check the relocation, replacement, support and protection of utility facilities for Con Ed, New York Telephone and Empire City Subway, Ltd. where a utility agreement is part of the construction contract. For such agreements each utility company shall provide inspectors at the work site to inspect work methods and verify quantities of work.

(c) Ensure that all utility work is coordinated with reference to Industrial Code Rule 53 of the New York State Department of Labor.

6.3.40 Community Construction Liaison: The Engineer shall, if directed by the Commissioner, as part of its personnel for the Project, provide a Community Construction Liaison (“CCL”), who shall perform the services set forth in this section with respect to interaction with the community. Prior to assignment to the Project, the CCL is subject to the prior written approval of the Commissioner. With respect to the proposed CCL, the Engineer shall provide the following: (1) resumes and any other information, and (2) a writing sample. The Engineer shall provide its CCL with PHOTO IDENTIFICATION, clearly indicting the Project Name/Number, EIC name/number, field office, phone/fax, and validation dates, which shall correspond with the anticipated contract duration plus three (3)

months. The Engineer shall also provide the CCL with business cards, which shall include the same Project information. The construction contractor shall provide a personal computer for use by the CCL. The CCL shall perform the following services:

(a) Produce and widely distribute within the community a monthly Reconstruction Newsletter, using WORD Software Template provided by the DDC Office of Community Outreach and Notification.

(b) Immediately after commencement of this Contract, the CCL shall participate in a program of Orientation and Training conducted by the DDC Office of Community Outreach and Notification. The following topics shall be Included in this orientation: Introduction to DDC; Review of NYC Charter, Site Safety, Maintenance and Protection of Traffic, Intergovernmental Networking/Notification, Plans and Contracts; City Government; Community Relations, and Media Relations.

(c) Immediately after commencement of this Contract, the CCL shall review the plans and specifications for the construction contract(s). Within five (5) business days of completing the contract review, the CCL shall organize and arrange for a walk through of the Project to assess its impact on the community. Notification of the walk through shall be given to the District Manager of the Community Board, other interested community representatives, and representatives of DDC.

(d) Water Service Interruption Notification: If the Project involves any water main replacement and related work, to assess the negative impact on the community, the CCL shall conduct a door to door survey of each commercial/residential property within the area of influence of water service interruption. The CCL shall notify the Resident Engineer and keep him abreast of persons, businesses, and properties which may require additional planning and coordination to minimize water service interruption impacts. The CCL will assist in the distribution and posting of notices and shall secure from DDC translations of notices/flyers for use on specific projects within targeted communities where and when indicated.

(e) The CCL shall develop, maintain and keep a current calendar of significant community events including: Ethnic/Religious Festivals, Street Fairs, Marathons, Parades, Play Street Closing and Block Parties/Celebrations.

(f) Community Notification Network/Record Keeping: With input and information provided from sources including the DDC Office of Community Outreach and Notification, the Community Board and elected officials, the CCL shall develop a Community Notification Network, identifying key community institutions and organizations by name, association and address. The CCL shall keep field office records regarding community interaction, including without limitation, complaints received and all correspondence, meetings, and task force minutes.

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

6.4 Services During Post Construction Phase: The services to be provided by the Engineer during the Post-Construction Phase shall include without limitation the services set forth below. All post construction services set forth below must by completed by the Engineer within ninety (90) days after Substantial Completion of the construction work for the Project, unless otherwise authorized by the Commissioner.

6.4.1 Final Payment Package: The final payment package shall be submitted to the Commissioner within one (1) month after the date of final inspection of the construction contract.

6.4.2 Contract Cost Summary/Close-out Report: During the performance of the work, the Engineer shall keep labor, equipment and material use (Time & Material) records to be used to report on the T&M used for every major facet of the work. The items of work shall include, but not be limited to, the installation of water mains and appurtenances, installation of various types and depths of sheeting systems, installation of sewers, fluming of sewers, catch basins, manholes/chambers and appurtenances, dewatering systems, curbs, roadway pavement (concrete and asphalt), sidewalks, etc. Within one month of Substantial Completion of the construction work, the Engineer shall submit to the Commissioner four (4) printed copies of a contract T&M summary/close-out report summarizing these construction activities. In addition, the Engineer shall submit a copy of the report and all back up data used to generate the report using Microsoft Office (i.e., Excel Spreadsheet, Word, etc.) software. The report shall include without limitation the items set forth below:

(a) Summary of the average time per unit quantity expended to perform such work and shall note the hours expended for each labor class and type of equipment utilized along with the amount and type of material and total quantity of work. No cost data is required.

(b) The report shall also include maximum, minimum and average rates of production and all circumstances that affected production rates for each facet of work.

(c) Summary description of the actual versus original contract duration/schedule, including mobilization. Any significant changes (including delays or time savings) to the original schedule are to be detailed (i.e. incentives, weather, utilities, etc.).

(d) Summary description of all change orders and large overruns.

6.4.3 Record "As-Built" Drawings: The Engineer shall prepare and submit all record "as-built" drawings for the Project. The record drawings shall accurately show all items and components of the work installed pursuant to the construction contract(s). Such record drawings shall be signed, stamped and sealed by a Professional Engineer. Such record drawings shall be in accordance with DDC standards and requirements, as set forth in Exhibit D.

6.4.4 Project Records: Upon completion of the required construction work for the Project, the Engineer shall submit to the Commissioner originals of all Project records, including without limitation, (1) all reports for the Project, including inspector's reports, as well as laboratory and plant testing reports; (2) all certificates and guarantees from manufacturers; (3) survey field books; (4) daily job diary or log book; (5) all records with respect to payment, including monthly and final estimates of quantities; (6) record "as-built" drawings in conformance with DDC requirements; (7) photographs of the various phases of construction, supplied by the construction contractor, and (8) all other data which may be required to complete the Project records.

6.4.5 Microfilming of Project Documents: The Engineer shall prepare, furnish, and index a complete and accurate set of the following Project documents on microfilm: (1) shop drawings; (2) working drawings; (3) record as-built drawings, which shall show the work as actually installed; (4) catalog sheets; (5) technical bulletins; (6) manuals; (7) diagrams, and (8) other printed matter as required. The microfilming of Project documents by the Engineer shall comply with DDC's requirements for microfilming, which shall be furnished to the Engineer upon request. Payment for the microfilming of project records shall be made through the Allowance for Reimbursable Services.

6.5 Reimbursable Services: The Engineer may be directed to provide reimbursable services. Reimbursable services shall be such services determined by the Commissioner to be necessary for the expeditious completion of the Project, and may include without limitation, the items specified below. The Engineer shall provide reimbursable services, if so directed in writing by the Commissioner. No reimbursable services shall be performed by the Engineer, or paid from the Allowance for Reimbursable Services, unless expressly authorized in advance in writing by the Commissioner. With respect to reimbursable services, the Engineer shall utilize the method of procurement and form of payment directed by the Commissioner. Payment for reimbursable services shall be in accordance with Article 7.4.

6.5.1 Microfilming of Project documents and records, as specified in Article 6

6.5.2 Printing of contract documents

6.5.3 Express mail postage, except as otherwise provided in Article 6.1.3 and excluding mail from the Engineer's main or home office to the Field Office

6.5.4 Arboricultural services as set forth in Article 6.3.34.

6.5.5 Laboratory services for detailed testing of materials and items of work

6.5.6 Purchase of long lead items for the construction work

6.5.7 Long distance travel, i.e., travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) Engineer's home office. Long distance travel shall not include travel expenses for the Engineer and/or any Subconsultants that are not located in New York City or its vicinity.

6.5.8 Any other services, determined by the Commissioner to be necessary for the Project.

6.6 Communications in Writing: All recommendations and communications by the Engineer to the Commissioner that will affect the cost of the Project shall be made or confirmed by it in writing. The Commissioner may also require other recommendations and communications by the Engineer to be made or confirmed by it in

writing. All recommendations relating to proposed changes in the work, work schedules, instructions to contractor(s) and all other matters requiring action by the Commissioner and the contractor(s) shall be made directly to the Commissioner, unless otherwise directed by the Commissioner. After approval by the Commissioner, the Engineer shall issue instructions directly to the contractor(s).

ARTICLE 7 - Payment Terms and Conditions

7.1 Total Payments

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, subject to Article 7.1.3 below..

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

7.1.3 Allowances: In the event the allowance amounts set forth in Articles 7.3 and 7.4 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.

7.2 Allowance for Fixed (or "Basic") Fee

7.2.1 Amount of Allowance: An allowance in the amount set forth in Exhibit A (the "Allowance for Fixed Fee") is established for payment of a Fixed Fee to the Engineer in accordance with the terms and conditions set forth below.

7.2.2 Fixed (or Basic) Fee for the Project: For all costs and expenses incurred by the Engineer in the performance of all required services for the Project, including all expenses related to management, overhead and any anticipated profit, exclusive of the allowance amounts specified in Articles 7.3 and 7.4 below, the City agrees to pay and the Engineer agrees to accept a Fixed Fee for the Project, the amount of which shall be calculated in accordance with Article 7.2.4 below (the "Fixed Fee"). The Fixed Fee shall include, but not be limited to, the items set forth below.

(a) Compensation to all personnel of the Engineer OTHER THAN ASSIGNED EMPLOYEES, compensation for whom is provided in Article 7.3. Personnel of the Engineer shall all officers, principals and employees, serving in whatever capacity, including without limitation the Project Executive. Compensation shall include without limitation the items set forth below.

(1) wages and/or salaries
(2) all payments mandated by law, including without limitation, social security and medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment).
(3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans.
(4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays.
(5) costs for any and all other fringe and/or supplemental benefits.

(b) All expenses incurred by the Engineer in connection with the performance of all required services for the Project, including without limitation: (1) expenses for non-reimbursable services, as set forth in Article 6, (2) meals, (3) lodging, and (4) expediting costs.

(c) All expenses incurred by the Engineer with respect to home office general facilities including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls to the job site and the DDC (except for long distance calls to other locations as specifically required by the Commissioner), sales, accounting fees and bookkeeping expenses,

electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing and postage (except for mailing of plans and specifications), office and any other miscellaneous expenses, except as otherwise expressly provided hereunder.

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

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

(f) Any losses for theft or robbery sustained by the Engineer.

(g) All expenses incurred by the Engineer with respect to fixed capital, including interest thereon or on moneys borrowed.

(h) All expenses incurred by the Engineer with respect to routine legal services for the firm.

(i) All management, administrative or overhead expenses of any kind whatsoever incurred by the Engineer, including such expenses incurred in the procuring of items or services pursuant to the Allowance for Reimbursable Services.

(j) Profit.

7.2.3 Partial Payments: Partial payments to the Engineer of the Fixed Fee shall be in accordance with the provisions set forth below.

(a) The Fixed Fee shall be paid to the Engineer on the basis of and in proportion to the percentage of completion of all required work for the Project, as determined by the Commissioner, subject to retainage of ten (10%) percent. The amount retained shall be paid to the Engineer conditioned upon the following: (1) final acceptance of the Project; (2) completion of all post construction services, as set forth in Article 6.5, and (3) acceptance by the Commissioner of all documentation required by Article 6.5, including without limitation, as-built drawings and Project records.

(b) Partial payments to the Engineer of the Estimated Fixed Fee shall be subject to adjustment in accordance with Article 7.2.5 below.

7.2.4 Calculation of the Fixed Fee: The Fixed Fee shall be calculated as follows: the total actual amount for staffing, as defined below, shall be multiplied by the percent set forth in Exhibit C, subject to the terms and conditions set forth below.

(a) The total actual amount for staffing for the Project shall be defined as the total dollar amount of all required staffing for the Project, calculated in accordance with the direct salary rates set forth in Exhibit B, times the Multiplier set forth in Exhibit A. The total actual amount for staffing for the Project shall be determined by the Commissioner upon completion of the Project, and his determination shall be final, binding and conclusive.

(b) The Fixed Fee is subject to the following limitation on payment: the total amount of Fixed Fee payable hereunder shall not exceed the percent set forth in Exhibit C, times the total estimated amount for staffing set forth in Exhibit B. In the event the total actual amount for staffing exceeds the total estimated amount for staffing set forth in Exhibit B, the Engineer shall not be entitled to any additional Fixed Fee.

(c) In the event the total actual amount for staffing is less than the total estimated amount for staffing set forth in Exhibit B, the Fixed Fee shall be whichever of the following is less: (1) an amount calculated by multiplying the total estimated amount for staffing set forth in Exhibit B times the percent set forth in Exhibit C, or (2) an amount calculated by multiplying the total actual amount for staffing times a percent which is two percentage points in excess of the percent set forth in Exhibit C.

7.2.5 Final Fixed Fee: Upon Final Acceptance of all required services for the Project, the Fixed Fee shall be determined in accordance with Article 7.2.4 and adjusted as set forth below.

(a) In the event the total of all partial payments of the Estimated Fixed Fee for the Project is more than

the total Fixed Fee for the Project determined hereunder, the Commissioner shall deduct and retain such excess out of the amount due and owing to the Engineer. In the event the amount due and owing to the Engineer is less that the amount of such excess payment of the Fixed Fee for the Project, the Engineer shall be liable to pay the difference upon demand by the Commissioner.

(b) In the event the total of all partial payments of the Estimated Fixed Fee for the Project is less than the total Fixed Fee for the Project determined hereunder, the City shall pay such difference to the Engineer.

7.3 Allowance for Staffing Expenses for the Engineer's Personnel

7.3.1 Amount of Allowance: An allowance in the amount set forth in Exhibit A (the "Allowance for Staffing Expenses for the Engineer's Personnel") is established for payment of the Engineer's staffing expenses for those engineering personnel described in Exhibit B, who have been assigned to the Project and identified in the Staffing Plan approved by the Commissioner pursuant to Article 5 (the "Assigned Personnel" or the "Assigned Employee"). After commencement of the Contract, the Commissioner shall break such allowance down into an amount for each of the following phases: Pre-Construction, Construction and Post Construction. The Engineer shall not be entitled to payment for staffing expenses for (1) Project Executive(s), or (2) any personnel not assigned to the Project and not included in the approved Staffing Plan.

7.3.2 Amount of Payment: For any given week during which an Assigned Employee performed services for the Project, payment to the Engineer for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in paragraph (a) by the number set forth in paragraph (b), and then multiply the result by the Multiplier set forth in Exhibit A; provided, however, the Multiplier shall **NOT** apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during overtime hours. The amount of payment for the services of an Assigned Employee calculated in accordance with this section may be subject to an equitable reduction if the conditions set forth in Article 7.3.3 below apply.

(a) Assigned Employee's Direct Salary Rate per hour, as set forth in Exhibit B. In the event the Engineer received written authorization from the Commissioner to have the Assigned Employee perform services for the Project during overtime hours, as defined in Article 7.3.5 below, the employee's Direct Salary Rate per hour may be subject to an increase for such overtime hours in accordance with Article 7.3.5 below.

(b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services for this Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined in paragraph (c) below; (2) any hours during which the Assigned Employee performed services for any other project, and (3) any overtime hours, as defined in Article 7.3.5 below, unless otherwise authorized in advance, in writing by the Commissioner in accordance with Article 7.3.5 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 the 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.

(d) The Multiplier applicable to Direct Salary Rates per hour shall be as set forth in Exhibit A. The Multiplier shall **NOT** apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during overtime hours, as defined in Article 7.3.5 below.

(e) The Multiplier set forth in Exhibit A shall be deemed to include all costs with respect to the Assigned Employee. Such costs shall include without limitation the items set forth below.

(1) wages and/or salaries (if and to the extent that such wages and/or salaries exceed the Direct Salary Rates provided for hereunder)

(2) all payments mandated by law, including without limitation, social security and medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment).

(3) employer contributions, if any, to retirement plans, including without limitation pension

and/or deferred compensation plans.

(4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays.

(5) costs for any and all other fringe and/or supplemental benefits.

(6) any other overhead cost in connection with the Assigned Employee

7.3.3 Equitable Reduction: The amount of payment to the Engineer for services performed for the Project by an Assigned Employee, calculated in accordance with Article 7.3.2 above, shall be subject to an equitable reduction if, for the given week during which an Assigned Employee performed services for the Project, the total number of hours for which the Assigned Employee was actually paid by the Engineer for that week, less any non-billable hours, is less than the total number of hours actually billed by the Engineer to all entities for the Assigned Employee's services for that week, including the number of hours billed for the Project. In such event, the amount of payment to the Engineer for services performed by an Assigned Employee for the week in question, calculated in accordance with Article 7.3.2 above, shall be reduced by multiplying such amount by the following: the fractional number resulting from the division of the number set forth in paragraph (a) below by the number set forth in paragraph (b).

(a) total number of hours for which the Assigned Employee was actually paid by the Engineer for the week in question, less any non-billable hours, as defined in Article 7.3.2 (c) above.

(b) total number of hours actually billed by the Engineer to all entities for the Assigned Employee's services for the week in question, including the number of hours billed for the Project.

7.3.4 Direct Salary Rates: Direct Salary Rates per hour for titles of personnel are set forth in Exhibit B. For each specific employee assigned to the Project and included in the Staffing Plan, the Commissioner shall determine the applicable title and Direct Salary Rate per hour, based upon the employee's qualifications.

(a) Increases in Direct Salary Rates: The Direct Salary Rates set forth in Exhibit B 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 two years after the commencement of the Contract, i.e., in the month of January of the year which is at least two 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 Estimated Direct Salary Rates shall be applied on a prospective basis only.

(b) Overtime: The Direct Salary Rate per hour for an Assigned Employee may be increased in accordance with Article 7.3.5 below, in the event the Engineer received written authorization from the Commissioner to have the Assigned Employee perform services for the Project during overtime hours.

7.3.5 Adjustment for Overtime: The Commissioner may authorize the Engineer 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. In the event of such authorization, for services performed during overtime hours, the Assigned Employee's Direct Salary Rate per hour shall be increased by a factor of 50%; provided, however, the Engineer shall **NOT** be entitled to such increase in the Assigned Employee's Direct Salary Rate per hour for services performed during overtime hours, unless the following two conditions are met: (1) the Engineer has a company wide policy in effect that is consistently applied to all clients and that provides for payment at increased rates to designated classes of employees for services performed during overtime hours, and (2) the total amount of such increase is actually paid in full by the Engineer to the Assigned Employee. The Multiplier set forth in Article 7.3.2(d) shall **NOT** apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during overtime hours. With respect to any Assigned Employee for whom an increase in the Direct Salary Rate per hour is requested for services performed during overtime hours, the Engineer shall provide a certification stating that the two conditions set forth herein have been met.

7.3.6 Requisitions: For any given week(s) for which the Engineer is requesting payment for staffing

expenses for an Assigned Employee, the Engineer shall submit the documentation set forth in Article 7.5 below.

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

7.4 Allowance for Reimbursable Services

7.4.1 An allowance in the amount set forth in Exhibit A (the "Allowance for Reimbursable Services") is established for reimbursement of expenses actually incurred by the Engineer in providing reimbursable services. Reimbursable services shall be as defined in Article 6. No reimbursable services shall be provided by the Engineer, or reimbursed from this allowance, unless expressly authorized in a written directive from the Commissioner. For reimbursable services in excess of $150, such written authorization must be provided in advance of the expenditure.

7.4.2 With respect to reimbursable services, the Engineer shall utilize the method of procurement and form of payment directed by the Commissioner.

7.4.3 In the event the Engineer is directed to purchase any items and/or equipment pursuant to the allowance for reimbursable services, such items and/or equipment shall, unless otherwise directed by the Commissioner, be the sole property of the City upon delivery to the designated location. The Engineer shall prepare and maintain an accurate inventory of all items and/or equipment which it is directed to purchase pursuant to the allowance for reimbursable services. Such inventory shall be provided to the City upon request. Upon completion of the required work, as directed by the Commissioner, the Engineer shall turn such items and/or equipment over to the City.

7.4.4 Reimbursement for reimbursable services shall be the actual and reasonable cost of the same, with no mark-up for the Engineer's overhead and profit. Requests for reimbursement for reimbursable services shall be accompanied by receipted bills or any other data required by the Commissioner.

7.4.5 In the event the Commissioner directs the Engineer to provide reimbursable services and such reimbursable services require the Engineer, through its personnel, to provide technical or professional services, the Engineer shall be paid for staffing expenses for its personnel through the Allowance for Staffing Expenses.

7.5 Requisitions for Payment

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

7.5.2 Requisitions for payment shall be accompanied by the following:

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

(b) Staffing Expenses: For any given period for which the Engineer is requesting reimbursement for staffing expenses for an Assigned Employee, the Engineer shall submit the documentation set forth below:

(1) the Assigned Employee's name and title;

(2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.

(3) the Assigned Employee's direct salary rate determined by the Commissioner in accordance

with Article 7.3.4 above and included in the Staffing Plan.

(4) the applicable Multiplier, as set forth in Article 7.3.2(d).

(5) number of hours worked each day by the Assigned Employee for the week(s) in question. The number of hours per day shall be broken down to indicate the number of regular hours and the number of overtime hours. The applicable Multiplier shall not apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during overtime hours.

(6) detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during the employee performed services for this Project; (2) actual hours during which the employee performed services for other projects, and (3) non-billable hours, as defined in Article 7.3.2 (c) above.

(7) copy of the Engineer's payroll register for the week(s) in question reflecting the amount actually paid by the Engineer to the Assigned Employee for that week.

(8) Certification described in Article 7.3.5, if applicable.

(c) Reimbursable Services: For any given period for which the Engineer is requesting reimbursement for expenses incurred for reimbursable services, the Engineer shall submit: (1) a report describing the reimbursable services the Engineer was directed to provide, and (2) receipted bills or any other data required by the Commissioner.

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

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

7.6 Prompt Payment

7.6.1 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.

7.6.2 The Engineer must submit a proper invoice to receive payment.

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

7.6.4 If the Engineer is paid interest, the proportionate share of that interest shall be forwarded by the Engineer to its subcontractor.

7.7 Acceptance of Final Payment: The acceptance by the Engineer or its assignees of the final payment under this contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the City from any and all claims of and liability to the Engineer 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 until Final Acceptance of all required construction work for the Project and completion of all required services hereunder, including Post Construction Services, as set forth in Article 6.5. The anticipated time frame for completion of all required services is set forth in Exhibit A.

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

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

8.4 Time of Essence: In performing the services hereunder, the Engineer shall place emphasis on considerations which will aid in expediting the construction of the Project consistent with the construction standards and procedures of the City. The Engineer agrees to use all resources at its command so that the Project is completed on or before the established Project completion date by the construction contractor(s). To accomplish such timely completion, the Engineer shall give constant attention to the adequacy of the contractor's planning, personnel, equipment and the availability of materials and supplies. The Engineer acknowledges that time will be of the essence in bringing the Project to completion and agrees to use its best efforts to prevent delays. If a situation cannot be resolved, the Engineer shall bring it to the immediate attention of the Commissioner.

ARTICLE 9 - Commissioner's Representative:

9.1 The Assistant Commissioner, acting on behalf of the Commissioner, shall, in writing, designate a City employed engineer to serve as the Commissioner's Representative with respect to this Contract. Such Commissioner's Representative shall be authorized to review the performance of the Engineer. The Commissioner's Representative shall be the senior authority in the field and shall be authorized to review the performance of the Engineer. The Engineer shall be responsible to the Commissioner's Representative.

ARTICLE 10 - Insurance

10.1 Required Insurance: From the date the Engineer is first ordered to commence work and throughout the term of this Contract, the Engineer must effect and maintain the following types and amounts of insurance.

10.1.1 Comprehensive General Liability Insurance: The Engineer 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 Engineer's name, shall name the City of New York as an additional insured thereunder. Such policy shall protect the Engineer and the City of New York from claims for property damage and/or bodily injury, including accidental death, which may arise from operations under this Contract, whether such operations are performed by the Engineer or anyone directly or indirectly employed by him/her. The coverage provided must by "occurrence" based; "claims made" coverage will not be accepted. The general liability insurance policy provided shall include the following endorsements:

(a) The City of New York, together with its officials and employees, is an Additional Insured under this policy.
(b) Notice under the Policy to the Additional Insured shall be addressed to the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York, New York, 11101.
(c) Notice of Accident shall be given to the Company by the Insured within one hundred twenty (120) days after notice of such accident has been sent to the Commissioner of the Department of Design and Construction.
(d) Notice of Claim shall be given to the Company within one hundred twenty (120) days after such notice shall be filed with the Comptroller of the City of New York.
(e) Notice of Claim to the Company by the Insured of an accident or claim on the site shall constitute notice by the City to the Company.
(f) Notice of Cancellation of Policy, as set forth in Article 10.2.4 below.
(g) The presence of representatives of the City at the Site shall not invalidate this policy.

10.1.2 Professional Liability Insurance: The Consultant shall provide Professional Liability Insurance covering as insured the Engineer 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 10.2.4 below.

10.1.3 Worker's Compensation Insurance: The Engineer 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.

10.1.4 Employers Liability Insurance: The Engineer 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.

10.2 General Requirements for Insurance Policies

10.2.1 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.

10.2.2 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.

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

10.2.4 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."

10.2.5 The Engineer 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.

10.2.6 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.

10.3 Proof of Insurance

10.3.1 On or before the commencement of work pursuant to this Contract, the Engineer shall submit to the Commissioner two certificates of Insurance for all policies required under this contract, together with originals of all endorsements required hereunder.

10.3.2 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.

10.3.3 The Engineer 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.

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

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

ARTICLE 11 - Indemnification

11.1 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 Engineer or its officers, agents, employees, or any person, firm, company, agent or others engaged by the Engineer 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 Engineer 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.

11.2 The Engineer 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 Engineer or anyone employed by the Engineer, in the performance of this Contract.

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

11.4 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.

11.5 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 12 - Engineer Independent Contractor

12.1 The Contractor and the Department agree that the Contractor is an independent contractor, and not an employee of the Department or the City of New York, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers nor employees of the City of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof make any claim demand or application to or for any right or privilege applicable to an officer or employee of the City of New York, including but not limited to, Workers Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit. The Engineer shall have no authority to bind the City in any way with third parties.

ARTICLE 13 - Relationship Between Engineer and Others

13.1 Nothing contained herein shall be deemed to create a contractual relationship between the Engineer and the contractor(s), subcontractors or material suppliers on the Project, nor shall anything contained herein be deemed to give any third party any claim or right of action against the City or the Engineer beyond such as may otherwise exist without regard to this Agreement.

ARTICLE 14 - Provisions for Termination

14.1 Rights of Commissioner to Postpone and Terminate: The Commissioner shall have the right upon ten (10) days written notice to the Engineer, to postpone, delay, suspend or terminate all or any portion of the services to be performed by the Engineer under this Contract, or any additions thereto or modifications thereof, at any time and for any reason deemed to be in the City's interest. In such event, the Engineer shall be paid such amount as determined by the Commissioner as shall fairly compensate him, in accordance with Article 7 hereof, for services satisfactorily performed prior to the termination date. Such postponement, delay, suspension or termination shall not give rise to any cause of action for damages or extra remuneration against the City, other than that provided for herein.

14.2 Termination for Cause: In the event that the Engineer: (1) fails to perform any of the terms, covenants or provisions of this Agreement on its part to be performed; or (2) fails to progress with the work called for under this Agreement in a manner considered satisfactory to the Commissioner; or (3) if in the judgment of the Commissioner, the conduct of the Engineer is such that the interests of the City are likely to be impaired or prejudiced; or (4) if the Engineer shall violate any of the terms, covenants or provisions of this Agreement, then the Commissioner may, upon written notice to the Engineer, immediately terminate this Agreement for cause. Upon such termination, the Engineer shall be entitled to payment of such amount, to be determined by the Commissioner, as shall fairly compensate him, in accordance with Article 13 hereof, for services satisfactorily performed prior 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 Engineer hereunder, but withheld or not paid, the total amount of additional expenses incurred by the City in order satisfactorily to complete the work required to be performed by the Engineer under this Agreement, including the expense of engaging another Engineer for this purpose. If such additional expense shall exceed the amounts otherwise due and payable to the Engineer hereunder, the Engineer shall pay the City the full amount of such excess incurred by the City.

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 - Services Furnished by the City

16.1 The City, through the personnel of the Department of Design and Construction, or by retaining the services of an architect or consultant, or through provisions in the construction contract(s), shall furnish for the use of the Engineer pile driving inspection, topographic surveys, inspection of concrete materials at mix plant and at job-site and such other services as the Commissioner, in his sole discretion, deems appropriate.

16.2 At the request of the Engineer, the City shall furnish, at its own expense, off-site inspections and tests of steel, cement asphalt aggregates, concrete sewer and drainage pipe, and such other materials.

16.3 Engineer shall be entitled to the use and occupancy of the contractor's Field Office with associated services as provided for in the standard DDC specifications during the progress of the construction contract(s) and to the completion and acceptance of the work by the Commissioner.

16.4 The Commissioner may direct the Engineer to provide any of the above described services as additional services in accordance with Article 6.8 hereof.

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. Engineers 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 Engineer.

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

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

17.5 All payments for change orders are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller. If the audits reveal that the Engineer'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 Engineer shall maintain complete, detailed and accurate cost and accounting records as to all costs. During the term of this Agreement and at any time within seven years thereafter, the Engineer 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 Engineer to retain the services of consultants or subcontractors for which the Engineer will be entitled to reimbursement hereunder, the Engineer agrees to include in all its contracts with such consultants and subcontractors 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 Agreement 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 Engineer, its consultants or subcontractors, or made available to the City as provided, herein, any item not supported by reason 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 Engineer, upon demand, shall refund to the City the amounts so disallowed. Payments to the Engineer or approval by the Commissioner of any application for payment submitted by the Engineer, shall in no way affect the Engineer's obligation hereunder or the right of the City to obtain a refund of any payment to the Engineer 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, as well as direct salary rate information and history submitted by the Engineer, shall be subject to audit and examination by the Engineering Audit Officer of the Department of Design and Construction and post-audit by the Comptroller of the City in accordance with Law.

ARTICLE 20 - Moneys Withheld

20.1 When the Commissioner shall have reasonable grounds for believing that: (1) the Engineer 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 Engineer or the City arising out of the negligence of the Engineer or the Engineer'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 Engineer 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 Engineer, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and

no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold moneys. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

ARTICLE 21 - Ownership of Working Papers

21.1 Any and all records or documents prepared by or for the Engineer pursuant to this Contract, including, but not limited to, office diaries, field diaries, engineers' and inspectors' diaries, daily records of labor, materials and equipment used, notes, designs, reports, including laboratory and plant inspection reports, drawings, tracings, estimates, specifications, 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 Engineer shall, upon demand, promptly deliver such 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 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 Engineer.

ARTICLE 22 - Patented and Proprietary Items

22.1 The Engineer 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 Engineer in the performance of this Agreement.

22.2 The Engineer shall not, without the prior written approval of the Commissioner, specify for the Project, or necessarily imply the required use of any article, products, materials 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.

ARTICLE 23 - Engineer's Performance

23.1 The Engineer shall be liable to the City for all losses, expenses and damage caused by the failure of the Engineer properly to perform its obligations under this Agreement and the Engineer 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 24 - Claims - Limitation of Action

24.1 No action shall be maintained by the Engineer, 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 25 - No Claim Against Officer, Agents or Employees

25.1 The Engineer 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.

25.2 The Engineer shall require each subcontractor to the Engineer 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 Engineer.

25.3 Nothing in this contract shall be construed to give any person other than the City and the Engineer 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 Engineer.

ARTICLE 26 - Notices

26.1 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 27 - Investigations

27.1 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.

27.1.1 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;

27.1.2 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;

27.1.3 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.

27.1.4 If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Article 27.3 below without the City incurring any penalty or damages for delay or otherwise.

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

27.2.1 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

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

27.3 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Articles 27.3.1 and 27.3.2 below. He or she may also consider, if relevant and appropriate, the criteria established in Articles 27.3.3 and 27.3.4 below in addition to any other

information which may be relevant and appropriate;

27.3.1 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.

27.3.2 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.

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

27.3.4 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 27.2 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 27.1.3 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.

27.4 Definitions Used in this Article

27.4.1 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.

27.4.2 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.

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

27.4.4 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.

27.5 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 28 - Assignments

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

28.2 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.

28.3 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 Engineer, his assignees or transfers, and the Engineer and his assignees shall forfeit and lose all moneys theretofore earned under the Contract, except so much as may be required to pay the Engineer's employees; provided, however, that nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Engineer for the benefit of creditors made pursuant to the statutes of the State of New York.

28.4 The Engineer 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.

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

ARTICLE 29 - Unlawful Provisions

29.1 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 30 - Errors

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

ARTICLE 31 - Representations, Warranties and Affirmations

31.1 Procurement of Agreement: The Engineer 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 Engineer 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 Engineer 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.

For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all moneys paid hereunder and the Engineer 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.

31.2 Conflict of Interest: The Engineer 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 Engineer 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.

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

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;

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

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

The fact that the Engineer (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.

31.4 Affirmations: The Engineer 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 Engineer to receive public contracts.

ARTICLE 32 - No Discrimination

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

32.1.1 That in the hiring of employees for performance of work under this contract or any subcontract hereunder neither the Engineer, subcontractor, nor any person acting on behalf of such Engineer 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;

32.1.2 That neither the Engineer, 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;

32.1.3 That there may be deducted from the amount payable to the Engineer 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

32.1.4 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.

32.1.5 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.

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

32.2.1 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.

32.2.2 It shall be unlawful for any person or any servant, agent, or employee of any person, described in subdivision 32.2.1 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.

32.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this

contract.

32.2.4 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 33 - Equal Employment Opportunity

33.1 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 Engineer agrees that:

33.1.1 The Engineer 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;

33.1.2 When it subcontracts, the Engineer 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;

33.1.3 The Engineer will state in all solicitations or advertisements for employees placed by or on behalf of the Engineer 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;

33.1.4 The Engineer 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

33.1.5 The Engineer 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.

33.2 The Engineer 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:

33.2.1 disapproval of the Engineer;
33.2.2 suspension or termination of the contract;
33.2.3 declaring the Engineer in default; or
33.2.4 in lieu of any of the foregoing, the Director may impose an employment program.

33.3 The Engineer 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 Engineer 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.

33.4 The Engineer 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 34 - All Prior Written or Oral Agreements Excluded

34.1 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 35 - Head Notes and Marginal Notations

35.1 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 36 - Dust Hazards

36.1 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 Engineer. Failure to comply with this provision after notice shall make this contract void.

ARTICLE 37 - Participation in an International Boycott

37.1 The Engineer agrees that neither the Engineer 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.

37.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Engineer 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.

37.3 The Engineer 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 38 - Effective and Binding

38.1 This contract shall neither be binding nor effective unless:

38.1.1 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

38.1.2 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

38.1.3 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.

38.1.4 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.

38.2 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 39 - Choice of Law, Consent to Jurisdiction and Venue

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

39.2 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 Engineer agrees:

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

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

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

39.2.4 If the Engineer 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 Engineer 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 Engineer shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

39.3 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 40 - Waiver

40.1 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 41 - All Defenses Reserved

41.1 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 42 - MacBride Principles Provisions

42.1 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.

42.2 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.

42.3 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.

42.4 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.

42.5 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.

42.6 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:

- 42.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- 42.6.2 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;
- 42.6.3 ban provocative religious or political emblems from the work place;
- 42.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
- 42.6.5 establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- 42.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- 42.6.7 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;
- 42.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- 42.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

42.7 The contractor agrees that the covenants and representations in Article 42.5 above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the

contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirement contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

ARTICLE 43 - Engineer's Report Information

43.1 A copy of each report submitted by the Engineer 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 44 - Vendex Questionnaires

44.1 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.

44.2 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.

44.3 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 45 – Ultra Low Sulfur Diesel Fuel – Rider for Public Works Contracts – Local Law 77
In accordance with Local Law 77 of 2003, codified at section 24-163.3 of the New York City Administrative Code:

I. DEFINITIONS: For purposes of this Local Law 77 Rider, the following definitions apply:

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

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

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

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

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

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

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

II. ULTRA LOW SULFUR DIESEL FUEL: The requirements of this Part II are effective June 19, 2004 for Public Works Contracts for Lower Manhattan and December 19, 2004 for all other Public Works Contracts.

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

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

C. Contractors shall not be required to comply with this Part II where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Local Law 77, provided that such Contractor in its fulfillment of the requirements of this contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of this Part II shall be in full force and effect unless the agency renews the finding in writing and such renewal is approved by the DEP Commissioner.

D. Contractors may check on determinations and approvals issued by the DEP Commissioner pursuant to Local Law 77, if any, at www.nyc.gov/dep or by contacting the Department issuing this solicitation.

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

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

III. BEST AVAILABLE TECHNOLOGY

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

All Contractors shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this contract.

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

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

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

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

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

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

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

IV. SECTION 24-163 OF THE NEW YORK CITY ADMINISTRATIVE CODE: Contractors shall comply with Section 24-163 of the New York City Administrative Code related to the idling of the engines of motor vehicles while parking.

V. COMPLIANCE

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

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

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

VI. REPORTING

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

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

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

ARTICLE 46 Ultra Low Sulfur Diesel Fuel – Rider for Public Works Contracts - Coordinated Construction Act for Lower Manhattan

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

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

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

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

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

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

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

II. REQUIREMENTS

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

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

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

ENGINEER:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

_____
Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY CORPORATION

State of _____ County of _____ ss:

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

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

_____
Notary Public or Commissioner of Deeds

**EXHIBIT A**

**CONTRACT INFORMATION**

1. Project: Reconstruction of Beekman Street from Park Row to Gold Street and Park Place from Broadway to West Broadway

2. Project Executive: _____ Title: _____

3. Resident Engineer: _____

4. Subconsultant(s): _____

5. DBE Participation: Goal = 18% see Exhibit E

6. Contract Term: This Contract shall commence as of the date of the advice of award and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services hereunder, including Post Construction Services, as set forth in Article 6.5. The anticipated time frame for completion of all required services is set forth below. All time frames below are in consecutive calendar days ("CCDs").

| | |
|---|---|
| Anticipated time frame for Completion of all Required Services: | 850 CCDs |
| Anticipated time frame for Pre-Construction Services: | 30 CCDs |
| Anticipated time frame for Construction Services: | 730 CCDs |
| Anticipated time frame for Post Construction Services | 90 CCDs |

7. Allowance for Staffing Expenses for the Engineer's Personnel: Not to Exceed $_____

8. Allowance for Reimbursable Services: Not to Exceed $_____

9. Fixed Fee: $_____

10. Multiplier: _____

11. Total Amount of Contract: $_____

**EXHIBIT B**

**STAFFING REQUIREMENTS**

Est. Construction Cost: $13,856,244

**Project ID: HWMWTCA6E** REI Duration: 28 months

**Description: Reconstruction of Beekman St., etc.** Construction Duration: 24 months

| TITLE | QUALIFICATIONS | STAFF NO. | **DIRECT SALARY RATE/HOUR** | HOURS/ MONTH | # OF MONTHS | **MULTIPLIER** | **ESTIMATED AMOUNT PER TITLE** |
|---|---|---|---|---|---|---|---|
| Project Executive | | 1 | N/A | | | | |
| Resident Engineer | ASCE-V | 1 | | 176 | 28 | | |
| Office Engineer | ASCE-III / NICET IV | 1 | | 176 | 28 | | |
| Senior Inspector | ASCE-III / NICET IV | 1 | | 176 | 24 | | |
| Inspector (s) | ASCE-II / NICET III | 2 | | 176 | 24 | | |
| Community Liaison | ASCE-III / NICET IV | 1 | | 176 | 25 | | |
| CADD Oper / Draftsperson (10%) | NICET II / NICET III | 1 | | 176 | 3 | | |
| TOTAL ESTIMATED AMOUNT FOR STAFFING | | | | | | | |

Increases in Direct Salary Rates: The Direct Salary Rates set forth above 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 one year after the commencement of the Contract, i.e., in the month of January of the year which is at least one full year 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 Direct Salary Rates shall be applied on a prospective basis only.

**EXHIBIT C**

**FIXED FEE**

Fixed Fee: _____

Calculation of the Fixed Fee: The Fixed Fee shall be calculated as follows: the total actual amount for staffing, as defined below, shall be multiplied by the percent set forth in Exhibit C, subject to the terms and conditions set forth below.

(a) The total actual amount for staffing for the Project shall be defined as the total dollar amount of all required staffing for the Project, calculated in accordance with the direct salary rates set forth in Exhibit B, times the Multiplier set forth in Exhibit A. The total actual amount for staffing for the Project shall be determined by the Commissioner upon completion of the Project, and his determination shall be final, binding and conclusive.

(b) The Fixed Fee is subject to the following limitation on payment: the total amount of Fixed Fee payable hereunder shall not exceed the percent set forth in Exhibit C, times the total estimated amount for staffing set forth in Exhibit B. In the event the total actual amount for staffing exceeds the total estimated amount for staffing set forth in Exhibit B, the Engineer shall not be entitled to any additional Fixed Fee.

(c) In the event the total actual amount for staffing is less than the total estimated amount for staffing set forth in Exhibit B, the Fixed Fee shall be whichever of the following is less: (1) an amount calculated by multiplying the total estimated amount for staffing set forth in Exhibit B times the percent set forth in Exhibit C, or (2) an amount calculated by multiplying the total actual amount for staffing times a percent which is two percentage points in excess of the percent set forth in Exhibit C.

## EXHIBIT D

## RECORD "AS-BUILT" DRAWINGS

**(A) Record "As-Built" Drawings**: The Engineer shall prepare and submit a complete set of record "as-built" drawings (hereinafter referred to as the "record drawings"). The record drawings shall accurately show all items and components of the work installed pursuant to the construction contract(s), including without limitation: (1) highways, (2) water mains, (3) retaining walls, (4) seawalls, (5) sewers (newly constructed, replaced or rehabilitated), (6) new structures, (7) utilities, (8) underground facilities, and (9) construction that differs from that of the contract drawings. Such record drawings must be signed, stamped and sealed by a Professional Engineer, and shall be in accordance with the standards and requirements set forth in this Exhibit.

**(B) Time Frame for Preparation and Submission:** The Engineer shall complete and submit record drawings within 90 days of Substantial Completion of the construction contract(s). The Engineer is advised that all field survey work, as well as the gathering of information necessary to prepare the record drawings, must be done throughout the progress of the work.

**(C) Payment:** The Engineer shall not be entitled to any additional compensation for the preparation of the record drawings, other than the standard terms and conditions of payment set forth in the Contract. In the event the Commissioner directs the Engineer to provide additional copies of the record drawings, above and beyond the requirements set forth Paragraph (D)(1) below, the Engineer shall be reimbursed for costs and expenses in connection with the printing of such additional copies through the Allowance for Reimbursable Services.

**(D) General Requirements:** The general requirements set forth below apply to all record drawings for projects involving highways, sewers, water mains, retaining walls and seawalls.

(1) The Engineer shall submit record drawings in the formats described below.

(a) Mylar: The Engineer shall submit TWO (2) complete sets of original record drawings in ink on mylar, in a format to be approved by the Commissioner prior to preparation. DDC will provide sample formats to the Engineer. All record drawings must be prepared on 4-millimeter mylar material with readable printing of sufficient thickness so that prints made from this mylar can be read without difficulty. All drafting must be in red permanent ink (or equivalent) and of microfilm quality.

(1) One (1) complete set of original record drawings shall be submitted to DDC.

(2) One (1) complete set of original record drawings shall be submitted to other city agencies and/or utilities, as directed by DDC. For projects involving highways, the Engineer shall submit a complete set of duplicate original record drawings to the Department of Transportation ("DOT"), Records Management Office. For projects involving sewers and/or water mains, the Engineer shall submit a complete set of duplicate original record drawings to the Department of Environmental Protection ("DEP"). Such duplicate original record drawings shall bear the original signature, stamp and seal of a Professional Engineer, as well as the date.

(b) Electronic: The Engineer shall submit record drawings in the latest version of Auto CADD.

(2) There shall be no erasures on the original record drawings. If revisions are necessary, the Engineer shall either (i) cross out the original data (e.g. numbers/letters/etc.) and show changes nearby, or (ii) prove supplementary record drawings to show the revision.

(3) The title sheet for the record drawings shall include the items set forth below:

(a) Original signature, stamp and seal of Professional Engineer, as well as the date

(b) Estimated and final quantities for all items of work, including without limitation work for highways, sewers, water mains, retaining walls and seawalls. The estimates quantities shall be consistent with the estimated quantities for the unit price items set forth in the bid documents for the construction contract(s).

(c) The contract information set forth below:

CONTRACTOR:
BOROUGH DIRECTOR:
SECTION ENGINEER:
RESIDENT ENGINEER:
JOB STARTED:
JOB COMPLETED:
DRAWN BY:
CHECKED BY:
SUBSTANTIAL COMPLETION:
FINAL COMPLETION:

(d) Legends, notes and box with revision information, i.e., number of sheets revised

(6) The record drawings shall show all items that differ from what is shown on the contract drawings, i.e., field changes in location of utilities, changes in roadway and/or sidewalk widths, etc.

(7) The record drawings shall include a separate fixed assets table for every block. Such fixed assets table shall be prepared utilizing field inspection records and shall show the actual location of all permanent fixtures, i.e., manholes, hydrants, etc.

**(E) Requirements for Record Drawings for Highway Projects:** In addition to the general requirements set forth in Paragraph (D) above, the requirements set forth below shall apply to all record drawings for projects involving highways.

(1) Record drawings must show all as-built grades which differ from grades shown on the contract drawings. Information regarding grades and any changes therein shall be based upon a final survey prepared by the Engineer.

(2) Record drawings shall conform to DOT Design Directive #83-S-5. DDC shall provide a copy of such directive to the Engineer upon request.

(3) Upon approval of the record drawings by DDC, one complete set of duplicate originals shall be transmitted to the DOT Records Management Office.

**(F) Requirements for Record Drawings for Sewer Projects:** In addition to the general requirements set forth in Paragraph (D) above, the requirements set forth below shall apply to all record drawings for projects involving sewers.

(1) The record drawings shall show the following: (i) all new, replaced and existing sanitary sewers, storm sewers, combined sewers, encased sewers, and sewers on piles; (ii) lining or guniting; (iii) all new, replaced and existing catch basins, including type, and (iv) all drainage structures and appurtenances constructed under the contract. All such items shall be indicated with a different legend.

(2) The record drawings shall indicate the budget code(s) funding the components of the work. DDC shall provide information regarding budget codes to the Engineer.

(3) For every sewer run between two manholes, the record drawings shall show the length between center lines of manholes, diameter, type of flow (sanitary, storm etc.), type of sewer (E.S.V.P., R.C.P., etc.) and the direction of flow.

(4) The record drawings shall show the following: (i) all house connections for both new and reconnections, including house numbers; (ii) locations of connections; (iii) risers, including height, and (iv) spurs, measured from the nearest downstream manhole.

(5) The record drawings shall include catch basin inventory information, labeled as per the latest DEP requirements, a copy of which will be provided to the Engineer by DDC.

(6) The record drawings shall show every manhole, including the type of manhole (A, B, etc.,) rim elevation and invert elevation, as well as the station number. The Engineer shall obtain and utilize necessary data (i.e., previous as-built drawings, etc.) from the respective DEP borough office.

(7) Upon approval of the record drawings by DDC, one complete set of duplicate originals shall be transmitted to DEP.

**(G) Requirements for Record Drawings for Water Main Projects:** In addition to the general requirement set forth in Paragraph (D) above, the requirements set forth below shall apply to all record drawings for projects involving water mains.

(1) The record drawings shall show the following: (i) all new and existing distribution and trunk mains; (ii) all replaced mains, lining methods and appurtenances, indicated with legend; (iii) for every run between two manholes or valves, the length, diameter and type of pipe, and (iv) all tap locations. The record drawings shall be in accordance with the latest DEP requirements, a copy of which will be provided to the Engineer by DDC.

(2) All measurements indicated on the record drawings shall be made from curb lines. All appurtenances (pipes, valves, hydrants, offsets, hydrants valves, regulators, etc.) must be tied into the curb lines.

(3) All depths of manholes indicated on the record drawings shall be made from final grades.

(4) The Engineers shall prepare field cards as the project progresses. The Engineer shall request from DEP current sample field cards.

(5) The record drawings shall indicate the type of valves installed.

(6) In preparing the record drawings, the Engineer shall obtain and utilize necessary data (i.e., previous as-built drawings, etc.) from the respective DEP borough office.

(7) Upon approval of the record drawings by DDC, one complete set of duplicate originals shall be transmitted to DEP.

EXHIBIT E

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $10,000 ($20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

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

5. NON-DISCRIMINATION REQUIREMENTS. The contractor agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such

numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION.

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

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

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

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

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

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

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

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

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

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

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized).

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

## SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL

(a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Order 45, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of $10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

The CONSULTANT, their sub-consultant and/or sub-contractor or any person acting on behalf of the CONSULTANT or sub-consultant and/or sub-contractor will accept as their operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, national origin, age, disability or marital status, and to promote the full realization of equal employment opportunity through a positive continuing program.

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER

The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY

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

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.

(3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

(1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT

(a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration.

In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. PERSONNEL ACTIONS

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

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

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

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

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION

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

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job

training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

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

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

8. UNIONS

If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

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

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

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

9. AFFIRMATIVE ACTION IN SUBCONTRACTING

(a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS

(a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).

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

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

(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) The CONSULTANT will submit to the New York State Department of Transportation, a monthly report for the first three months after beginning work, thereafter upon request, and each month of July following the initial submission for the duration of the project indicating the number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391, Federal-Aid Highway Construction Contractor's Monthly EEO Report. If on-the-job

training is being required by "Training Special Provision", the CONSULTANT will be required to furnish Form FHWA-1409, Federal-Aid Highway Construction Contractor's Semi-Annual Training Report.

(d) The CONSULTANT will comply with Federal Regulations Sections 49CFR 26.29 and 26.37 by providing a report of all payments made to subconsultants and subcontractors with each request for payment submitted to the New York State Department of Transportation. The Consultant Payment History Form AAP-7 shall be submitted with each request for payment consistent with Consultant Instruction 01-01 or any subsequent revision of that Consultant Instruction.

(e) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

(1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or

(2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in Article II, Item VII.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less that 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women

trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

**NYS Year 2000 Warranty**

The following Year 2000 warranty applies to procurements of:

**A) Product,** including: i) equipment incorporating embedded software or other technology (e.g. copiers, elevators, security systems), ii) software, or iii) other technology; or

**B) Services**, including: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing).

This Year 2000 Warranty shall survive beyond termination or expiration of the Contract through: a) one year, b) December 31, 2000, or c) the Contractor or Third Party Manufacturer's stated Year 2000 warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**A. Definitions:** For purposes of this warranty, the following definitions shall apply:

**i. "Product"** shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are furnished (e.g. maintenance, consulting, systems integration, code or data conversion, data entry) the term "Product" shall include resulting deliverables.

**ii. "Contractor's Product"** shall include all Product delivered under this Contract by Contractor other than Third Party Products.

**iii.** "**Third Party Product"** shall include product manufactured or developed by a corporate entity independent from Contractor and provided by Contractor on a non-exclusive licensing or other distribution agreement with the third party manufacturer. "Third Party Product" does not include product where Contractor is a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

**B. Warranty Disclosure** At the time of bid for individual or agency specific contracts, or at the time of ordering Product or Product quote for OGS centralized contracts, Contractor must disclose in writing to Authorized User:

**i) For Contractor Product and Products (including, but not limited to, Contractor and/or Third Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system:** Compliance or non-compliance of the Products individually and as a system with the Warranty set forth below; and

**ii) For Third Party Product not specified to perform as part of a system:** compliance on the grounds that the Contractor has passed-through the third party manufacturer Year 2000 Warranty or non-compliance based upon the fact that a) Contractor indicates that they can not pass through the third party manufacturer's year 2000 Warranty or b) there is no third party manufacturer's year 2000 Warranty to pass through.

**NOTE: AN ABSENCE OR FAILURE TO FURNISH THE REQUIRED WRITTEN WARRANTY DISCLOSURE SHALL BE DEEMED A STATEMENT OF COMPLIANCE BY THE CONTRACTOR OF THE PRODUCT(S) OR SYSTEM(S) IN QUESTION WITH THE YEAR 2000 WARRANTY STATEMENT SET FORTH BELOW.**

**C. Year 2000 Warranty** Year 2000 Warranty "compliance" shall be defined in accordance with the following warranty statement:

**Warranty Statement:** Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Contractor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Contractor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

**D. Year 2000 Warranty on Services** Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or date conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), in addition to the foregoing Year 2000 warranty on service deliverables, Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.