REQUEST FOR PROPOSALS

FOR

CONTRACT

HVR-200 CM-02

Construction Management Services for the Hillview Reservoir Flow Control Improvements

PIN: 82627P0001

TABLE OF CONTENTS:

All documents related to this solicitation are contained within PASSPort, unless otherwise specified by the Agency. Vendors should submit all responses via the PASSPort system. Please contact the MOCS Service Desk, if assistance is required for submitting a proposal response through PASSPort.

Purpose of RFP	With this RFP, DEP wishes to engage a Consultant to provide Construction Management Services for Hillview Reservoir Flow Control Improvements
A Pre-Proposal Conference has been scheduled for:	When: Monday, August 17, 2026 at 10:30AM Where: Microsoft Teams Meeting Join: https://teams.microsoft.com/meet/226949117404140?p=HVJDh62f1ZMjgjzEq2 Meeting ID: 226 949 117 404 140 Passcode: Yf7Pu7ZN
Questions	All questions and requests for additional information concerning this Request for Proposals ("RFP") must be directed to the Authorized Agency Contact Person, through the *Discussion Forum Tab* in PASSPort by the Question Deadline.
Exclusion from Participation in this RFP	Any **HVR-200 CM-02** CM services proposal submitted by a firm with a contract awarded under **HVR-200-DES** will be rejected as non-responsive. This exclusion applies to the consultant's subsidiaries and affiliates, and its Subconsultants that perform twenty (20%) percent or more of the total work based upon cost awarded from this RFP.

SECTION I: PROJECT INFORMATION

A. Project Description

Site Description

Hillview Reservoir is a 900 million gallon uncovered finished water reservoir located in Yonkers, NY that provides balancing storage and secondary disinfection for 90% - 100% of New York City's water supply and provides approximately 50% of Yonkers' water supply.

Hillview has been in service continuously since 1917 and is part of the final treatment step before water enters the distribution system through City Tunnels No. 1, 2, and 3. Hillview Reservoir balances the incoming flows of the Catskill and Delaware Aqueducts, which are treated at the Catskill/Delaware Ultraviolet Treatment Facility (CDUV), with the City distribution demands by providing sufficient storage to maintain a water surface elevation that provides adequate pressure throughout the water distribution system.

Similarly, adequate pressure and supply is provided to the City of Yonkers through a connection at Uptake Chamber No. 1. The chemical treatment provided for the City distribution system includes liquid chlorine for secondary disinfection, and to maintain a chlorine residual within the Reservoir, sodium hydroxide for pH balancing, and phosphoric acid for corrosion control.

The Reservoir is divided into an East and West basin by a concrete dividing wall that is approximately 2,750 feet long. The reservoir spillways connect to the Wakefield Avenue Blow-off Conduit that extends less than a mile to an outfall at the Bronx River. The site is bounded by both residential and commercial properties including the Empire City Casino/Raceway and the New York State Thruway.

The facilities at Hillview comprise Uptake Chamber No. 1 (UT1), North Connecting Conduit (NCC), Uptake Chamber No. 2 (UT2), West Basin Overflow Conduit (WBO), East Basin Overflow Conduit (EBO), Downtake Chamber No. 1 (DT1), Downtake Chamber No. 2 (DT2), Tunnel 3 Chlorination Building (T3CB), the Tunnel 3 Control Chamber (T3CC), and South Connecting Conduit (SCC).

Due to ongoing construction of two new chemical addition facility (CAF) buildings, the Hillview site will remain active through 2030. Following this, the Hillview Covered Storage project will extend construction activities on-site through 2049. The newly constructed CAF-North and CAF-South buildings will house chemical storage and delivery systems, as well as operations personnel.

Regulatory Background

The Hillview Reservoir facility is regulated under the United States Environmental Protection Agency ("USEPA") Risk Management Program (RMP) Rule (40 CFR 68) and OSHA Process Safety Management (PSM) of Highly Hazardous Chemicals (29 CFR 1910.119) program due to the onsite storage of chlorine gas. In compliance with these regulations, DEP developed and maintains a Process Safety Management/Risk Management Plan.

Hillview is a manmade reservoir, with a surface area of approximately 90 acres, impounded by an earthen embankment that reaches a maximum height of approximately 65 feet at the southern end. The Hillview Reservoir embankment is classified as a Class C (high-hazard) dam by the New York State Department of Environmental Conservation.

In January 2006, under the authority of the Safe Drinking Water Act ("SDWA"), the USEPA promulgated the Long-Term 2 Enhanced Surface Water Treatment Rule ("LT2") 40 C.F.R. Part 141, Subpart W. One of the requirements of LT2 is that *"[public water systems] using uncovered finished water storage facilities must either cover the storage facility or treat the storage facility discharge to achieve inactivation and/or removal of 4-log virus, 3-log Giardia lamblia, and 2-log Cryptosporidium on a State-approved schedule.*" Hillview Reservoir is classified as an uncovered finished water storage facility.

DEP, along with other public water systems, encouraged USEPA to perform a detailed review of the LT2 requirements regarding uncovered finished water reservoirs in comparison to the benefits of a risk management program. In August 2011, USEPA stated they would review the LT2 requirements as part of their six-year-review of drinking water standards. In January 2017, USEPA completed the six-year-review and determined that revisions to the uncovered finished water reservoirs requirement of the LT2 were not warranted. In May 2019, DEP entered into a Consent Decree with the United States Department of Justice ("USDOJ"), USEPA and New York State Department Of Health (Civil Action No. 19-1519) requiring implementation of improvements to Hillview Reservoir needed to achieve compliance with LT2.

Based on previous analyses and planning efforts, the Hillview LT2 compliance alternative will be constructed one basin at a time, with the other basin remaining in service, to maintain the facility's balancing function.

Operating with only half of the current balancing volume, the system has less capacity and ability to respond to changes in demand, which increases the risk that DEP would be unable to deliver an adequate supply of water. To reduce this risk, DEP prioritized several projects to improve system reliability and increase delivery capacity to Hillview Reservoir. The projects listed below must be in-service during single-basin operations at Hillview and have been identified in the Consent Decree as required predecessors to the work of HVR-400 for the Hillview Covered Storage.

- Kensico-Eastview Connection (multiple contracts in design and construction): construction of a new connection between Kensico Reservoir and the Catskill/Delaware Ultraviolet Treatment Facility (CDUV) to increase flow and reduce hydraulic losses.

- HVR-210 (in construction): construction of two new chemical storage and feed facilities including flow-paced chemical feed systems and a sitewide Supervisory Control and Data Acquisition (SCADA) System.

- HVR-230 (in-procurement): replace aging infrastructure and improve operational flow-control.

Since HVR-400 is the successor to the above-mentioned projects, coordination (with Kensico-Eastview Connection, HVR-210 and HVR-230) will be required. Coordination will also be required with CRO-636 (in design), which includes the repair of the South Connecting Conduit (SCC) at Hillview.

B. <u>Detailed Scope of Services</u>

The following is a description of work under this Contract, and shall not be construed as a complete description of the work to be performed. Proposers must self-perform at least 51% of the work. Please see the Scope of Services document for a general scope of services for this type of project.

The CM Consultant shall oversee:

- Demolition of existing chemical storage and feed systems;

- Hazardous materials abatement within existing Uptake Chamber No. 1 (UT1), Uptake Chamber No. 2 (UT2), Downtake Chamber No. 1 (DT1), Downtake Chamber No. 2 (DT2), Tunnel 3 Control Chamber (T3CC), and Tunnel 3 Chlorination Building (T3CB);

- Structural, architectural, plumbing, and electrical repairs and improvements in the existing chambers;

- Connection of carry water, sodium hydroxide (herein referred to as caustic), and chlorine gas vacuum piping, electrical, control, and other utilities installed under Contract HVR-210;

- Final restoration of all disturbed areas and completion of site-wide pavement repairs started under Contract HVR-210;

- Decommissioning and removal of the interim chemical systems installed as part of HVR-210, after successful start-up of the permanent chemical systems within the chambers;

- Replacement of boat docks and ramps;

- Manufacture of new sluice gates;

- Replacement of existing flow-control equipment at the uptake and downtake chambers, including sluice gates and operators, valves and operators, and stop shutters and lifting devices;

- Installation of permanent electrical, Supervisory Control and Data Acquisition (SCADA), chemical, and water quality monitoring equipment (to replace interim systems and equipment installed under HVR-210);

- New flow metering systems to measure flow in the South Connecting Conduit (SCC) and Delaware Bypass;

- Slab/beam and crack repair in Downtake Chamber No. 1(DT1) forebay area, Uptake Chamber No. 2 (UT2), and Downtake Chamber No. 2 (DT2);

- Trenchless crossing across the East Basin Overflow structure;

- Security maintenance;

- Stabilization of East Basin Overflow and West Basin Overflow structures;

- Installation of bi-directional flow meter in South Connecting Conduit (SCC)

Note: Please take notice that these documents will be provided for prospective proposers' information only, and will not become part of the contract. The contract documents contain confidential and sensitive information, and as such, will only be accessible for review via secure link, which shall be provided by DEP after the potential Proposer completes and submits the required forms to DEP for review and approval.

<u>List of Documents</u>:

- HVR-200 Hillview Reservoir Existing Conditions Assessment Report
- HVR-200 Facility Plan Report, March 2019
- HVR-230 Basis of Design Report (BODR), March 2020
- HVR-230 Preliminary Design Report
- HVR-230 60% Design Report
- Hillview Consent Decree and Judgement (Civil Action No. 19-1519) Long-Term Compliance Requirements – May 2019 (this is a public document)

C. Project Schedule

	Start	Finish
Facility Planning	05/01/2017	04/13/2020
Design	04/13/2020	12/31/2026
Const. Procurement	12/31/2026	12/15/2027
Construction	12/15/2027	08/28/2032
Close-Out	08/28/2032	08/07/2033

Anticipated start date **June 2027.**

SECTION II – SUMMARY OF KEY REQUIREMENTS

Proposers are advised to carefully review the form contract, attached to this RFP as **Exhibit 1**, in its entirety before submitting a proposal. Any Proposer awarded a contract resulting from this RFP will be required to execute this form of contract and provide all required services in accordance with applicable standards of performance.

A. Anticipated Contract Term

The anticipated term of the contract awarded from this RFP is for **2259** consecutive calendar days.

B. Anticipated Payment Structure

For Project Management, Cost-Plus-Overhead-Plus-Fee ("Cost-Plus") payment structure is the anticipated payment method for the contract awarded from this RFP for the General Requirements and the Project Management Task (Task 1). The cost for project management is capped at 10% of the Maximum Contract Amount (excluding the Project Management task). All Project Management services will be reimbursed on a Cost-Plus basis and in accordance with the Payment Schedule provided in the Contract.

The remaining tasks will be Cost-Plus. DEP will consider proposals to structure payments in a different manner and reserves the right to select any payment structure that is in the City's best interest, including performance-based payment plans.

C. Key Personnel Requirements

1. The following Key Personnel and backup roles have been identified for this project. Proposers are advised that meeting the personnel requirements does not guarantee that their proposal will be responsive nor does it preclude DEP from requesting copies of appropriate licenses required by law for any personnel proposed in response to this RFP.

- **Construction Manager,** The Construction Manager is the principal of the Construction Management team. They supervise, with the assistance of the Resident Engineer, a staff of engineers, technicians, inspectors, and other support personnel. The Construction Manager provides technical support and guidance on major issues, ensures compliance with applicable polices and performance measure, and implements managerial policies as detailed in the construction management plan.

- **Resident Engineer,** The Resident Engineer (RE) provides all services necessary and required for inspection, supervision, management, coordination and administration of the Project. The RE supervises the work of the construction contractor to ensure that work is properly executed, completed in a timely fashion and conforms to the requirements of the construction documents and to good construction practice from NTP through the Close-Out phase. The RE is situated at the work location and is responsible for the day-to-day activities of the CM field staff. The RE reviews contractor submittals for quality, compliance and completeness prior to forwarding to the Engineer-of-Record. The RE provides technical support and guidance on all issues and leads the communication and outreach efforts for the project.

- **Instrumentation and Monitoring Program Manager,*** The I & M Program Manager will be responsible for developing and implementing an instrumentation and monitoring program that will provide close geotechnical monitoring of the dam embankment in order to ensure dam stability and safety are not comprised for the duration of the work.

- **Regulatory Program Manager*** The Regulatory Program Manager is responsible for ensuring compliance with regulatory agencies regarding Judicial, Federal, or State issued consent decrees/judgements/orders enforcing the Long-Term 2 Enhanced Surface Water Treatment Rule ("LT2") regulations as they relate to Hillview Reservoir.

- **Assistant Resident Engineer, *** The Assistant Resident Engineer (ARE), under the supervision of the Resident Engineer, acts in a support role to the RE. The ARE is situated at the work location and fills the role of the RE when they are unavailable.

- **Environmental Health & Safety (EHS) Officer,*** The EHS Professional is responsible for day-to-day oversight of the EHS activities on the project. The EHS Professional shall review/monitor contractor activities for compliance with DEP's EHS Policies and Procedures, BEDC EHS Standards and all Federal, State, City and local regulations and requirements.

- **Chemical Process Safety Management/Risk Management Program (PSM/RMP) Manager, *** The Chemical PSM/RMP Manager will be responsible for preparing contract documents that clearly indicate PSM and RMP requirements; manage and mitigate exposure risks to operational, managerial, and construction staff, as will as the public, during construction, start-up, and close-out of the work; and ensuring PSM and RMP requirements are updated, as necessary, for the duration of the work

- **Quality Manager,** The Quality Manager is responsible for ensuring quality deliverables are provided to the Owner. The Quality Manager is also responsible for ensuring that quality construction work is performed, or non-conformance reports are issued.

Note: The proposed key personnel must possess and maintain a valid New York State professional engineering license for the duration for the contract. Key personnel with an asterisk (*) do not require a P.E. License. Any proposer that fails to submit proof of licensure for its key personnel to practice engineering in the State of New York may be deemed non-responsive.

Proposers must be authorized to practice engineering in the State of New York. A copy of the proposer's "Certificate of Authorization to provide Professional Engineering Services in New York State" issued by the New York State Education Department, Office of the Professions, must be included within the proposal. Any proposer that fails to include the "Certificate of Authorization" may be deemed non-responsive.

2. Proposers are encouraged to contact the New York City Conflicts of Interest Board regarding post-employment restrictions for former City employees if former DEP employees are proposed.

3. The Department will not reimburse for travel to the site for any staff who are required to be on-site continuously or from a home office that is located outside of New York State for work performed under a contract resulting from this RFP.

4. Prime Consultant shall not subcontract the Construction Manager and Resident Engineer roles.

D. Allowances

The following allowances have been identified for the Project and shall be included in Proposers' Price Proposals as part of the proposed Other Direct Costs (ODCs).

Description of Allowance Items	Value	Payment Term
Specialized Protective Equipment	$200,000.00	Cost Plus
Geotechnical Monitoring	$300,000.00	Cost Plus

E. Participation By Disadvantaged Business Enterprises

The resulting Contract from this RFP shall comply with the requirements in the State Revolving Fund Program. The selected contractor will be required to make documented good faith efforts to utilize at least **twenty percent (20%)** of the dollar value of the Contract for combined utilization of Disadvantaged Business Enterprises ("DBE").

All DBE firms must be certified in accordance with the - *New York State Revolving Fund Equivalency Projects: Program Requirements and Bid Packet*.

The *New York State Revolving Fund Equivalency Projects: Program Requirements and Bid Packet* contains the full requirements for the DBE program applicable to the resulting Contract from this solicitation. The attached packet (**ATTACHMENT B**) will be included in and be made part of the Contract.

Failure to attain the DBE goal or demonstrate good faith efforts to do so may subject the vendor to sanctions.

F. Compliance With Local Law 34 of 2007

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City established a computerized database containing the name of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. For the purposes of the database, proposers are required to complete the Doing Business Data Tab (LL34 Compliance Section) within PASSPort. If the proposer is a joint venture, the entities that comprise the joint venture must each complete a Data Form which will be generated by PASSPort. If the City determines that a proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the proposer will be notified by DEP and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to DEP. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the proposer has provided an e-mail address or fax number), no later than five (5) days from the date of mailing, or upon delivery, if delivered by other than U.S. mail. See **ATTACHMENT C** for more information.

G. Compliance With The Iran Divestment Act

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to affirm the Certification of Compliance with the Iran Divestment Act found in the Technical Questionnaire Tab-*Affirmations*, certifying that it is not on a list of entities engaged in investment activities in Iran created by the Commissioner of the NYS Office of General Service. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement to be uploaded in the Technical Questionnaire Tab which sets forth in detail the reasons why such statement cannot be made. If a proposer appears on that list, DEP will be able to award a contract to such proposer only in situations where the proposer is takings steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to https://ogs.ny.gov/iran-divestment-act-2012 for additional information concerning the list of entities.

H. Compliance with Community Hiring Rider

Pursuant to Section 3502 of the New York City Charter, the Contract to be awarded from this solicitation will be subject to the Community Hiring requirements set forth in the rules promulgated under Title 74 of the Rules of the City of New York ("Community Hiring Rules"). The Contract with a total value in excess of three million dollars ($3,000,000) will require the Contractor to make best efforts to employ Income-Based Community Hires as defined under Section 1-02 of the Community Hiring Rules, in order to meet the workforce goal (the "Community Hiring Goal"). Any Subcontractor awarded to perform services or other obligation under a sub-agreement exceeding twenty thousand dollars ($20,000) in total dollar value will be required to make best efforts to extend offers of employment to Income-Based Community Hires.

The Community Hiring Goal is to hire one Income-Based Community Hires for every five hundred thousand dollars ($500,000) in total value of the Contract. For credit towards the Community Hiring Goal, the Income-Based Community Hire hired by the Contractor or Subcontractor does not need to perform services under this Contract to be credited towards the fulfillment of the goal. See the Community Hiring Rider document (**ATTACHMENT A**) for further description of the requirement details

I. Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers to this RFP must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. Paper submissions, including certifications of no changes to existing VENDEX packages, will not be accepted in lieu of complete online filings.

For more information about PASSPort, please visit: www.nyc.gov/passport

J. City's Payee Information Portal (PIP)

Vendors must also register and create an account in the City's Payee Information Portal (PIP). In PIP, vendors can manage their financial transactions with the City of New York, register for Electronic Funds Transfer payments and much more. Once enrolled, vendors are required to report their subcontractors and subcontractor payments within PIP.

K. **Basis for Contract Award**:

A contract will be awarded to a responsive and responsible proposer that is determined to be the most advantageous to the City, taking into consideration the overall quality of the proposal as measured against factors or criteria as set forth in this Request for Proposals, including the quantitative preference to be provided to proposals submitted by vendors that are City or State certified M/WBE or State certified DBE, and successful negotiation of a fair and reasonable price. A contract award shall be subject to the timely completion of contract negotiations between DEP and the highest ranked proposer.

SECTION III: TECHNICAL PROPOSAL

PART 1: Proposal Evaluation

A. Evaluation Criteria:

Technical proposals will be evaluated based on the following:

Experience	30%
Organizational Capability	40%
Technical Approach	30%

B. Evaluation Procedures:

All proposals received by DEP will be reviewed for responsiveness to the requirements of this RFP. Proposals that are determined to be non-responsive will be rejected. DEP's Evaluation Committee ("EC") for this RFP will evaluate and rate all remaining proposals based on the evaluation criteria prescribed in paragraph A above.

DEP reserves the right to require in-person interviews and presentations and with certain proposers where their proposals are deemed technically viable. In the event DEP requests in-person interviews and presentations, the selected proposer(s) may be notified in advance, the aspects of their proposal that needs to be supported, demonstrated, or clarified. The proposer's attendance will be limited to no more than seven (7) persons from each proposer and will include time for questions regarding the proposal. The date, time and location of the in-person presentation may be scheduled within seven (7) calendar days notice.

New York City or State certified M/WBE or State certified DBE Proposers shall receive a point preference of 5% of the total technical points earned in the evaluation of the proposal.

Although discussions may be conducted with proposers submitting acceptable proposals, DEP reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best technical and price terms.

DEP will rank proposers by technical merit, and then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer. In the event DEP has chosen to negotiate a fair and reasonable price with the top-ranked proposer and such price is not successfully negotiated, DEP may conclude such negotiations and enter into negotiations with the next-ranked firm as necessary. DEP shall commence price negotiations upon written notification.

PART 2: Technical Proposal Requirements

The Technical Proposal consists of three parts: Experience, Organizational Capacity, and Technical Approach. Proposers must upload a PDF file for each section in the Documents tab in PASSPort. Please include the firm's name in the title when labeling the Technical Proposal documents as verification that minimum requirements have been met.

A. Experience

1. Prime Firm’s Relevant Project Experience:
Include a total of three (3) projects of similar contract value or complexity similar to that anticipated to be performed pursuant to this RFP. Provide the following information for each project:

a. Project name, owner, owner contact information (name, title, phone #). References may be contacted and used in the evaluation of your technical proposal.

b. Description of the firm’s role in the project (e.g., prime, member of joint venture including identity of the joint venture or subconsultant) and its specific services provided and responsibilities on the project (e.g., design lead, mechanical engineer, etc.)

c. Total value of the project (including design, construction management and construction costs).

d. Time period on job (year started and completed – or if on-going)

e. Describe the relevance of this project in comparison to the solicitation.

f. Description of the proposer’s performance, including quality, schedule, budget, and safety.

2. Proposed subconsultants:
Provide a list of all sub-consultants proposed for this project and describe each sub-consultant’s role. The Proposer shall provide (2) relevant projects for each sub-consultant, using the same format as the prime consultant’s experience above. The proposed sub-consultant’s relevant experience must reflect its anticipated function on the project (i.e., if the sub-consultant would be mainly performing air permitting services, the experience should be based on similar services). If there is an area of work that will be assigned to a subconsultant where the subconsultant has yet to be determined, then please note those areas of work as well. Describe the use of DBE or M/WBE subcontractors (as applicable) that will perform the work represented in this proposal.

B. Organizational Capability

1. Key Personnel:
Submit one resume for each of the key personnel and back up personnel identified in this RFP. Resumes should highlight previous employer(s), personnel qualifications with appropriate training and project experience. Ideally, proposed Key Personnel will have primary roles in the firm’s relevant project experience as described in Section A. Experience.

2. Staffing Summary*:*

a. Attach a complete organizational chart including Key Personnel and other proposed staff. Delineate the areas of responsibility and expertise of each proposed subconsultant and, if applicable, the areas of responsibility of each member of the joint venture.

b. Proposers shall provide a staffing schedule indicating the availability of the proposed staff throughout the term of the contract.

C. Technical Approach

1. Proposed Approach:
The firm shall demonstrate its understanding of the project through a narrative describing its approach to provide all required services to achieve successful project delivery. Within this response, the Proposer shall describe any other resources or expertise available to support the project's needs.

2. Critical Issues and Risks:
The firm shall identify potential critical issues and risks that can impact the delivery of the project and the corresponding measures to eliminate or mitigate these critical issues and risks.

3. Approach to Environmental Health and Safety (EHS):
Describe firm's commitment to EHS in relations to the firm's mission and core values. Also, provide a description of the firm's EHS training program for its staff; training methodology (i.e.: classroom, online, etc.); frequency of training, method of tracking the training; and implementation and management for the project. A summary of the firm's EHS Management Plan.

SECTION IV: PRICE PROPOSAL

Proposers must submit the Cost Proposal and applicable financial documents in the Documents tab in PASSPort. Additional information to support a Proposer's Price Proposal may be requested during negotiations, should the Proposer be selected as the highest technically ranked Proposer.

1. Cost Proposal in the provided Microsoft Excel format
a. Cost Proposals must be subdivided by Task and Subtasks and include:
i. Names and titles of proposed employees
ii. Anticipated hours per employee; anticipated assignment to field office or home office
iii. Salary rates based on the anticipated contract start date and including projected escalation
iv. Initial Interim Federal Acquisition Regulations Overhead Rates*
v. Fee for profit
1. The proposed fee percentage for the Proposer and for any proposed sub-consultants may vary, and is subject to negotiation. The proposed and negotiated fixed fee percentage may differ for each contract phase.
vi. ODCs (including Allowances listed in Section II, when applicable)

2. Document outlining assumptions made by the Proposer in developing the Cost Proposal.
3. Most recent annual Audit Report.

*Please refer to form contract template (Exhibit 1) for requirements.

SECTION V - GENERAL INFORMATION TO PROPOSERS

A. Complaints. The New York City Comptroller is charged with the audit of contracts in New York City. Any Proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

B. Applicable Laws. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at www.nyc.gov/ppbr.

C. General Contract Provisions. Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A— General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is attached.

D. Contract Award. 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 requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; 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 the Local Based Enterprises program and its implementation rules.

E. Proposer Appeal Rights. 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.

F. Multi-Year Contracts. Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

G. Prompt Payment Policy. Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

H. Prices Irrevocable. 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.

I. Confidential, Proprietary Information or Trade Secrets. Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of 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. All information not so identified may be disclosed by the City.

J. RFP Postponement/Cancellation. The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.

K. Proposer Costs. Proposers will not be reimbursed for any costs incurred to prepare proposals.

L. Department of Investigation and Administrative Fee. Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the Vendex system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to

$1,000,000, the fee will be $175. For contracts with an estimated value of greater than $1,000,000, the fee will be $350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to $1million) (above $1million).

M. Charter Section 312(a) Certification. < ACCO COMPLETES>

_____ The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not result in the displacement of any New York City employee within this Agency. See attached Displacement Determination Form.

_____ The Agency has determined that the contract(s) to be awarded through this Request for Proposals will result in the displacement of New York City employee(s) within this Agency. See attached Displacement Determination Form.

_____ The contract to be awarded through this Request for Proposals is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task order pursuant to such task order contract. Determinations for any subsequent task orders will be made in conjunction with such subsequent task orders.

J. Van

____ ____7/24/2026______

(Commissioner) (Agency Chief Contracting Officer) Date

Message from the New York City Vendor Enrollment Center

Get on mailing lists for New York City contract opportunities!

Submit a NYC-FMS Vendor Application - Call 212/857-1680

EXHIBIT 1: FORM OF CONTRACT (Draft Contract Template)

CONTRACT [INSERT TITLE]

PIN: [INSERT PIN NUMBER]

For the Construction Management Services of

[INSERT FIRM INFORMATION]

FOR

[INSERT TITLE]

Funded by Capital Project [INSERT FUNDING INFORMATION]

CONTRACT [INSERT CONTRACT TITLE]
TABLE OF CONTENTS

Special Provisions

CONTRACT [INSERT CONTRACT TITLE]

TABLE OF CONTENTS

This consultant contract dated _____________, 20__ is between the City of New York (the "City") acting through its Department of Environmental Protection with offices at 59-17 Junction Boulevard, Flushing NY 11373 (the "Department" or "DEP"), and [INSERT FIRM NAME] (the "CM Consultant" or "Consultant") with its principal office at [INSERT FIRM ADDRESS].

WHEREAS, pursuant to Section 1403 of the New York City Charter the Department has charge and control of and is responsible for all those functions and operations of the City relating to the provision of a pure, wholesome, and adequate supply of water, the disposal of sewage and stormwater and the prevention of air, water, and noise pollution; and

WHEREAS, [INSERT DESCRIPTION OF PROJECT TO BE CONSTRUCTED]; and

WHEREAS, the Department issued a Request for Proposals for construction management services on [INSERT DATE OF RFP RELEASE]; and

WHEREAS, the Department's proposal evaluation committee determined the Consultant to be the most qualified technical proposer and DEP entered into negotiations with the Consultant; and

WHEREAS, the Department wishes to engage the Consultant to perform construction management services for the [INSERT NAME OF PROJECT];

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

SPECIAL PROVISIONS

ARTICLE I – THE SERVICES

A. The Consultant shall perform the services required pursuant to this Contract (the "Services") in accordance with the terms and conditions of this Contract for compensation on the terms set forth in Articles XIV and XV, below, in a total amount not to exceed [WRITE OUT NOT-TO-EXCEED AMOUNT] dollars ($ [INSERT NOT-TO-EXCEED AMOUNT IN NUMBERS]) (the "Maximum Contract Amount"). The Services include, but are not limited to, the following:

1. [INSERT A BRIEF NARRATIVE DESCRIPTION OF THE WORK TO BE PROVIDED BY THE CONSULTANT(S)]

B. A more detailed description of the Services is contained in Attachment No. 1.

C. The Consultant shall perform the Services within [INSERT NUMBER OF TOTAL CONSECUTIVE CALENDAR DAYS FOR PROJECT] ([INSERT NUMBER OF CCDs IN NUMBERS]) consecutive calendar days ("CCDs"), starting upon the date set forth in the Notice to Proceed (the "Period of Performance"). The Consultant shall perform the Services in accordance with Attachment No. 1. DEP, in its sole discretion, may renew the Contract for an additional term of [XXX (XX)] CCDs, subject to a new maximum contract amount.

ARTICLE II – CONTRACT DEFINITIONS

In addition to the defined terms listed in Article 1 of Appendix A (the "General Provisions"), the following terms, wherever they appear in this Contract, are defined as follows:

A. "Audited Overhead Rate" means an Overhead Rate audited by DEP pursuant to Federal Acquisition Regulations (FAR) and Comptroller's Directive No. 2.

B. "Bureau" or "BEDC" means the Department's Bureau of Engineering Design & Construction.

C. "CEQR" means the New York City Environmental Quality Review Act.

D. "City" means the City of New York.

E. "Commissioner" shall mean the Commissioner of DEP or his/her duly authorized representative.

F. "Consultant" or "CM Consultant" means [INSERT FIRM NAME], the entity that will perform the Services. For the purposes of Appendix A and Attachment No. 8 , the Consultant is referred to as "the Contractor." For the purposes of Attachment No. 2, the Consultant is referred to as the "Service Provider."

G. "Contract" means the terms and conditions included in these Special Provisions and in all of the attachments in Article XIX herein. For the purpose of Appendix A, the Contract is referred to as the "Agreement."

H. "Cost-Plus" has the meaning set forth in Article XIV, Section (A).

I. "DBE" means Disadvantaged Business Enterprise.

J. "Department" or "DEP" means the City's Department of Environmental Protection.

K. "Documents" means all reports, drawings, materials, plans, schedules, and other data submitted by the Consultant to the Department to satisfy its obligations under this Contract.

L. "EHASP" means the environmental health and safety plan developed by the Consultant regarding its own actions and its employees', and its Subconsultants' employees' safety.

M. "EHS" means "environmental health and safety."

N. "Field Office" means an office, trailer, other facility, or location that the Consultant's employees or a Subconsultant's employees use to perform the Services. A Field Office may temporarily be designated as a Primary Workstation if an employee is regularly or periodically assigned to it to conduct work as part of their normal job responsibilities, for a period expected to exceed, or actually exceeding, one month.

O. "Home Office" means a permanent office location where the Consultant's employees or its Subconsultant's employees perform the Services.

P. "Initial Interim Overhead Rate" has the meaning set forth in Article XV, Subsection (A)(3)(b)(i), herein.

Q. "Knowledge Reservoir" means a component of the PMIS, which electronically stores guidance materials, including but not limited to, the SOPs.

R. "Maximum Contract Amount" has the meaning set forth in Article I, Section (A), herein.

S. "M/WBE" means a Minority or Women-owned Business Enterprise.

T. "New Employee" has the meaning set forth in Article XV, Subsection (A)(1)(c), herein.

U. "NTP" means the Notice to Proceed letter sent by the Department to the Consultant that sets forth the date upon which the Period of Performance of the Contract will commence.

V. "Operating Bureau" means the Department's [INSERT APPLICABLE BUREAU(S)].

W. "Other Direct Costs" or "ODC" has the meaning set forth in Article XV, Section (B), herein.

X. "Overhead Factor" has the meaning set forth in Article XV, Subsection (A)(2)(a), herein.

Y. "Overhead Multiplier" has the meaning set forth in Article XV, Subsection (A)(2)(b), herein.

Z. "Overhead Rate" has the meaning set forth in Article XV, Subsection (A)(3), herein.

AA. "Parties" means the Department and the Consultant, collectively.

BB. "Period of Performance" has the meaning set forth in Article I, Section (C), herein.

CC. "Phase(s)" refers to the five major life cycles of a City construction project: Facility Planning, Design, Procurement, Construction, and Close-Out.

DD. "PMIS" or "ePMIS" means the Bureau's Project Management Information System.

EE. "Primary Workstation" means the Home Office or Field Office where the employee has been officially assigned, and from which work is conducted on a permanent basis. Employees may have more than one Primary Workstation if they have permanent assignments in more than one location.

FF. "Principal" means an individual who holds a 10% or greater ownership interest in the Consultant or Subconsultant firm or who participates in the control of such business entity (irrespective of organizational title).

GG. "Premium Pay Amount" has the meaning set forth in Article XV, Subsection (D)(2)(c).

HH. "Profit Percentage" has the meaning set forth in Article XV, Subsection (A)(4), herein.

II. "Project" means the [INSERT NAME OF CONTRACT OR BRIEF DESCRIPTION OF PROJECT] as well as the construction management of that Project.

JJ. "Project Director" means the representative of the Consultant described in Article X, Subsection (D)(1), herein.

KK. "Project Management Plan" or "PMP" has the meaning set forth in Task [1.5] of Attachment No. 1.

LL. "Quality Management Plan" or "QMP" has the meaning set forth in Task [1.8] of Attachment No. 1.

MM. "RFI" means a request for information.

NN. "Risk Management Plan" or "RMP" has the meaning set forth in Task [2.4] of Attachment No. 1.

OO. "SEQRA" means the New York State Environmental Quality Review Act.

PP. "SOPs" means the Bureau's standard operating procedures.

QQ. "Special Provisions" refers to Articles I through XIX herein.

RR. "Stakeholder" means:

1. Federal, State and local regulators with jurisdiction over the Project; and

2. City agencies, utilities and other entities or persons affected by the Project.

SS. "Subconsultant" means an approved entity engaged by the Consultant to perform some of the Services under this Contract. For the purposes of Appendix A and Attachment No. 2, Subconsultants are referred to as "Subcontractors."

TT. "Task" means one of the various components of the Services to be performed by the Consultant, as described in Attachment No. 1.

ARTICLE III – NOT USED.

ARTICLE IV – [M/WBE / DBE] SUBCONTRACTOR UTILIZATION

[FOR SRF-FUNDED: The Consultant shall comply with the provisions set forth in State Revolving Fund Program (annexed as Attachment No. 2). The Consultant shall adhere to its approved "DBE Utilization Plan" for the participation of Disadvantaged Business Enterprises ("DBEs") in this Contract, pursuant to its DBE goals. The Consultant shall continue to use good faith efforts to seek opportunities for DBE participation during the Period of Performance of the Contract even if the DBE Utilization Plan objectives have been achieved.]

[FOR LL-1: The Consultant shall comply with the provisions set forth in Section 6-129 of the New York City Administrative Code. In accordance with the provisions of Attachment No. 2, the Consultant shall comply with its Subcontractor Utilization/Waiver Plan for Minority or Women-owned Business Enterprises (“M/WBEs”) that was approved by the Department at the time of the signing of this Contract, a copy of which is annexed as Attachment No. 8.]

ARTICLE V – COMMENCEMENT OF SERVICES

The Commissioner shall direct the Consultant by a written NTP for the Services, or a portion thereof, and the Consultant shall commence performance of the Services on the date specified in the NTP.

ARTICLE VI – ORDER OF PRECEDENCE

Conflicts among the various documents shall be resolved in the following order of precedence:

- Appendix A (including all addenda and riders thereto)
- these Special Provisions;
- Attachment No. 2;
- Attachment No. 1; and
- all other attachments.

ARTICLE VII – SUBMISSION AND APPROVAL OF DOCUMENTS

A. Submissions of Documents

The Consultant shall make submissions of Documents to the Department as set forth in Attachment No. 1. Documents prepared and furnished by the Consultant become the property of the City, in accordance with Article 6 of Appendix A. The Consultant may retain a record copy of Documents so delivered to the Department.

B. Electronic Submissions of Documents

a. The Consultant shall upload all Documents using the following link: https://a826-forms.dep.nyc.gov and uploaded files shall be labeled using the following naming convention:

DEP_*Registration Number*_*Contract Name*_*Vendor Name*_*Document Name*_*Date*.file extension

b. The most current versions of the following file extensions at the time of Contract signing are acceptable for electronic submissions: PDF, Word, Excel, Microsoft Project, .FBX, .STP, .STEP, .IFC, .IGS, IGES, .IPJ, .JT, .PRP, .PRW, .X_B, .DRI, .RVM, .SKP, .STP, .STEP, .STL, .WRL, .WRZ, .3DS, and .PRJV.

DEP will also accept the following file extensions:

AutoCAD	Inventor	Revit	Recap	Scene	Navisworks
DWG	IPT	RVT	RCP	FLS	NWC
DWT	IAM	RFA	RCS	SHA	NWD
DWS		RTE	RCC	SIG	NWF

DXF	RFT	DIFF	HLS
SAT		LLT	LSPROJ
WMF		E57	FPR
DGN		PCX	
3DM		PTS	

Electronic documents should not have macros enabled.

C. Approval of Documents

The Consultant shall revise and correct all Documents required to be provided hereunder, until approved by the Commissioner and any other agency whose approval is required under the terms of this Contract or pursuant to Law, as defined in Appendix A.

D. Standardization of Documents

Where applicable, the Consultant shall furnish Documents required for the Project in accordance with standards as may be furnished by the Commissioner or obtained from other agencies having jurisdiction, and shall conform to such standards to the maximum extent feasible.

ARTICLE VIII – ACCEPTANCE OF THE SERVICES

At all times, the Services to be performed by the Consultant will be subject to the approval of the Commissioner, whose decision will be final and binding upon the Consultant as to all matters arising in connection with, or relating to, this Contract. The Commissioner shall determine, in accordance with the terms of the Contract, the amount, quality, acceptability and fitness of Services being performed hereunder and shall determine all matters relative to the fulfillment of this Contract on the part of the Consultant.

ARTICLE IX – TASKS OF SERVICE

The Services are divided into Tasks as set forth in Attachment No. 1 of this Contract. Each Task must be approved by the Commissioner upon completion.

ARTICLE X – PROJECT PERSONNEL

A. Personnel of the Consultant

The Consultant shall engage, at its sole expense, all employees as may be required for the proper performance of Services under this Contract.

B. Subconsultants

1. The Consultant shall retain such Subconsultants as may be required to perform the Services, subject to the Department's approval in each case. If Subconsultants perform the work without the Department's approval, the Consultant shall receive an automatic unsatisfactory performance evaluation. The Consultant's responsibilities include the maintenance of schedules for such Subconsultants, the coordination of their work, and the resolution of all differences between them.

2. The Consultant must fully and completely inform all Subconsultants retained for this Project of all terms and conditions of this Contract, which such Subconsultants shall be subject to. The Consultant shall furnish the Commissioner with copies of all subcontracts with Subconsultants.

C. Qualifications of the Consultant, its Employees, and Subconsultants

1. The Consultant shall ensure that:

a. its employees and its Subconsultants' personnel possess the experience and knowledge necessary to qualify them individually for the particular duties they will perform hereunder; and

b. it will secure all licenses and permits, if any, that are necessary for the performance of its duties under this Contract, unless otherwise specified in Attachment No. 1.

2. The New York State Education Law requires that all business entities providing professional engineering and/or land surveying services in the State of New York obtain a "Certificate of Authorization to provide Engineering and/or Land Surveying Services in New York State" from the State Education Department. The Consultant shall ensure that these certificates of authorization remain valid and current throughout the Period of Performance of this Contract and any extensions thereto.

D. Project Director and Other Personnel (The titles listed below are for illustrative purposes only. They must match the delineated key personnel titles submitted by the Consultant and approved by DEP in response to Section (II)(D) of the RFP.)

1. The Consultant designates [INSERT NAME] as the "Project Director," who will be responsible for directing and coordinating all Services. If it becomes necessary for another individual to replace the Project Director, the replacement must receive prior written approval from the Commissioner before taking on the responsibilities of Project Director under this Contract.

2. The Consultant designates [INSERT NAME] as the "Project Manager," who will be responsible for managing and coordinating all Services. If it becomes necessary for another individual to replace the Project Manager, the replacement must receive prior written approval from the Commissioner before taking on the responsibilities of Project Manager under this Contract.

3. The Consultant designates each of the individuals listed in Attachment No. 4 and not referenced above in this Section (D) to perform in the positions described therein.

4. All replacement or additional employees must be approved by DEP. The Consultant shall notify the Bureau in writing prior to the replacement or addition of an employee of the Consultant or of a Subconsultant who is performing a portion of the Services under this

Contract. For the replacement of an employee, the notification must include the name of the replaced employee, the name of the proposed replacement employee, the proposed date of the replacement, the qualifications of such replacement employee, and any other information requested by the Commissioner for the purposes of determining that the replacement employee possesses equal qualifications as the employee who is being replaced. For the addition of an employee, the notification must include the name of the proposed additional employee, the capacity in which that employee will perform Services, the qualifications of that employee, and any other information requested by the Commissioner for the purposes of determining that the additional employee possesses sufficient qualifications. If any of the required information is unavailable at the time of notice of replacement or addition, the Consultant shall indicate why such information is unavailable.

5. The key employees are named above and in Attachment No. 4. Should any of these individuals cease providing Services under the Contract, the Consultant shall not be permitted to designate such key employee(s) on any proposal or contract for the purposes of securing a contract with DEP for a period of one (1) year from the date the key employee(s) ceased providing Services under the Contract.

ARTICLE XI – LABOR LAW REQUIREMENTS

A. Consultant must comply with all applicable provisions of the New York State Labor Law, as amended. Such compliance includes, but is not limited to, payment of the prevailing rate of wages, as described below.

B. In accordance with Section 220 of the Labor Law, for any category of labor included in the applicable Prevailing Wage Schedule the wages to be paid for a legal day's work to such laborers must not be less than the "prevailing rate of wages." The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Services are performed.

ARTICLE XII – PROFESSIONAL LIABILITY INSURANCE

A. The Consultant shall maintain professional liability insurance in the amount of at least five million dollars ($5,000,000.00) per claim, which must satisfy the requirements of Section 7.03(C) of Appendix A.

B. The Consultant shall cause all Subconsultants to comply with the requirements of Section 7.03(C) of Appendix A with respect to professional liability insurance.

ARTICLE XIII – INFORMATION TO BE FURNISHED BY THE DEPARTMENT

A. To assist the Consultant in performing the Services, the Department will make available to the Consultant all designs, studies, drawings and other data in its possession that it deems necessary for the proper performance of Services under this Contract. It is the responsibility of the Consultant to make customary and reasonable efforts to determine the reliability and accuracy of all information furnished by the Department.

B. If the Consultant believes that the information furnished is incomplete or inadequate to complete the Services, the Consultant shall inform the Commissioner. If the Commissioner agrees, the Consultant may take such steps as may be necessary to verify or amplify the information furnished.

ARTICLE XIV – BASIC COMPENSATION FOR SERVICES

A. Cost-Plus compensation for a portion of the Services performed by an employee of the Consultant or a Subconsultant will be calculated as the product of the direct salary costs incurred by the Consultant (or a Subconsultant) for that portion of the Services and the applicable Overhead Multiplier, as described in Article XV, Subsection (A)(2)(b), plus direct reimbursement for ODCs, as described under Article XV, Section (B).

1. The Consultant or Subconsultant shall not bill the Department for the Services of an employee such that the product of that employee's salary rate and the applicable Overhead Multiplier is greater than $420.00 per hour.

B. The Consultant represents and warrants that it has negotiated the Maximum Contract Amount and each of the not to exceed amounts for Project Management (Task 1), services for each Project Phase (Tasks 2-5), and ODCs , as set forth in the table below. The Department is not required to pay the Consultant an amount in excess of the Maximum Contract Amount as compensation for the Consultant's performance of the entirety of the Services. The Department is also not required to pay the Consultant any amount in excess of any of the not-to-exceed amounts listed below for each Task and ODCs as compensation for the Consultant's performance of the Services. No adjustments to the Maximum Contract Amount, nor any amount set forth in the table, below, will be made absent an amendment issued by the Department and registered in accordance with Section 328 of the City Charter and the related PPB Rules.

C. The total compensation paid for Services performed by Subconsultants shall not exceed 49% of the Maximum Contract Amount.

D. The allocation of the Maximum Contract Amount over the Tasks/Phases of the Project, inclusive of overhead and profit, is provided below.

[Adjust the tasks to reflect the tasks listed in the RFP]		
Billing Item	**Task/Phase # and Description**	**Task/Phase Amounts**
1	Task 1 – Project Management[1]	$
2	Task 2 – Design Phase Services	$
3	Task 3 – Construction Procurement Phase Services	$
4	Task 4 – Construction Phase Services	$
5	Task 5 – Close Out Phase Services	$
6	Other Direct Costs (ODCs) [2]	$
	Maximum Contract Amount	$

1. Project Management Services are capped at 10% of the Maximum Contract Amount (excluding the Project Management Task 1).

2. ODCs can be utilized for any Phase. Available ODC funds may be reallocated as direct labor for any Phase, subject to Department approval and Article XIV(B) herein.

ARTICLE XV – PAYMENT TERMS

A. Cost Plus Payment Terms

1. Salary Rates

a. Payment for salary costs of the Consultant and its Subconsultants will be limited to the direct payroll costs for Consultant's or Subconsultants' employees listed in Attachment No. 4 or added or replaced pursuant to Article X, Subsection (D), and will not include amounts paid for vacation, holidays, social security taxes, unemployment insurance, workers' compensation insurance or other fringe benefits. This is not intended to prevent the Consultant from hiring employees with vacation, holiday pay, health benefits, or sick time in their employment terms.

b. The Consultant represents and warrants that the hourly wages listed in Attachment No. 4 are the wages paid to its employees and its Subconsultants' employees as of the date of the execution of this Contract.

c. For any employee not listed in Attachment No. 4 ("New Employee"), upon the Department's request, the Consultant must support the New Employee's proposed salary rate by submitting documentation of the New Employee's actual salary rate for the last six (6) months prior to the date of submission of the proposed salary rate.

d. Salary increases within the Period of Performance are subject to approval of the Department and may be granted only once each calendar year; however, during the first year of the Contract, the Department will allow firms to provide an additional salary increase to account for regularly scheduled salary increases that occurred between negotiation of this Contract and its subsequent registration.

i. Except for Subsection (ii) below, in no case shall the annual salary increase for any single employee billed to the Department be more than the employee's actual increase up to seven percent (7%) or $4.00 per hour, whichever is greater. The Department will not reimburse the Consultant for any salary increases in excess of such permitted amounts.

ii. Salary increases due to promotion will be considered on a case-by-case basis and are subject to Article X, Subsection (D). Promoted employees must be approved by DEP to replace a previous employee in the same title or position, or to fill a vacant position for that title. A promotional increase of up to 10% per year is allowed until the approved salary of the predecessor's salary is attained.

iii. In no event shall a promotional increase and an annual increase be allowed in the same calendar year.

e. Salary adjustments will not affect the Maximum Contract Amount or any of the not-to-exceed amounts.

f. The first monthly invoice that is submitted to the Department by the Consultant subsequent to a salary adjustment must include a table containing the following information:

i. the names of those employees of the Consultant or a Subconsultant billing salary hours under the Contract;

ii. the pre-adjustment hourly wage rates of those employees receiving an adjustment;

iii. the post-adjustment hourly wage rates of those employees receiving an adjustment; and

iv. the hourly wage rates of those employees not receiving an adjustment.

2. Overhead Multipliers

a. An "Overhead Factor" is equal to an "Overhead Rate," described in Subsection (A)(3), below, plus 100%.

b. An "Overhead Multiplier" is equal to the product of:

i. an Overhead Factor; and

ii. the sum of the Profit Percentage, described in Subsection (A)(4), below, and 100%.

3. Overhead Rates

a. The Consultant's and its Subconsultants' Overhead Factors shall be calculated on the basis of either a Field Office Overhead Rate or Home Office Overhead Rate. A Field Office Overhead Rate shall be applied to an employee whose Primary Workstation is a Field Office; a Home Office Overhead Rate shall be applied to an employee whose Primary Workstation is a Home Office.

b. Overhead Rates will be calculated as follows:

i. An Initial Interim Overhead Rate will consist of the following: (i) the latest Audited Overhead Rate; or (ii) the most current CPA-certified Overhead Rate that is compliant with the Federal Acquisition Regulations ("FAR") for government contracts and NYC Comptroller Directives; or (iii) in the event that Contractor or Subconsultant does not have either (i) or (ii) above, a maximum of one hundred fourteen percent (114%) for Home Office and a maximum of one hundred percent (100%) for Field Office.

ii. When the Period of Performance commences, Initial Interim Overhead Rates will be used to calculate the Overhead Factors of the Consultant and all Subconsultants. The Initial Interim Overhead Rates to be used to calculate the Overhead Factors of the Consultant and these Subconsultants are shown in the table below. If it is necessary to include additional Subconsultants not listed below at any point during the Period of Performance, the new Subconsultant's Overhead Rate shall be calculated pursuant to this Subsection (A)(3)(b).

Firm	**Initial Interim Home Office Overhead Rate (%)**	**Initial Interim Field Office Overhead Rate (%)**	**Profit Percentage (%)**
[INSERT CONSULTANT AND SUBCONSULTANTS (AND THEIR RELEVANT OVERHEAD RATES)]			

iii. If the Department completes an audit of the Consultant or a Subconsultant listed above, for the purpose of making subsequent payments to the Consultant, the Department shall replace that firm's Initial Interim Overhead Rate with the Audited Overhead Rate for the most recent year for which the Department has conducted an audit. Each time the Department completes a subsequent audit, the Audited Overhead Rate for the most recent year available will take precedence for subsequent payments. Notwithstanding any provision to the contrary, no Audited Overhead Rate will exceed the corresponding Initial Interim Overhead Rate by more than ten percentage points (10%), except where the Initial Interim Overhead Rate is less than or equal to 114% for Home Office Overhead Rates, or 100% for Field Office. In the event of an audit, the Consultant or Subconsultant must provide documentation of its latest CPA-certified Overhead Rate that is compliant with the FAR for government contracts and NYC Comptroller Directives; failure to do so will result in an Audited Overhead Rate no higher than hundred fourteen percent

(114%) for Home Office and no higher than one hundred percent (100%) for Field Office.

iv. Over the course of the Period of Performance of this Contract, as the Department completes audits of the Consultant and its Subconsultant's overhead data, the Department will retroactively adjust all payments previously made to the Consultant using the Audited Overhead Rates for the years in which the Consultant or that Subconsultant rendered the applicable portion of the Services.

(1) If the Department determines that the Consultant's or a Subconsultant's overhead data is unavailable to complete an audit for a particular year during the Period of Performance, or if the Department determines that such an audit would be prohibitively labor-intensive, the Department may elect to retroactively adjust previous payments using the Audited Overhead Rate that the Department deems to be the best substitute.

(2) In conducting a retroactive Overhead Rate Adjustment described in this Subsection (A)(3)(b)(iv), the Department may instruct the Consultant to resubmit a copy of every invoice subject to retroactive adjustment and revised versions of those invoices recalculated in conformance with applicable Audited Overhead Rates.

v. The Department is not required to increase the Maximum Contract Amount to provide additional compensation associated with the addition of new Subconsultants described in Subsection (A)(3)(b)(ii) or Overhead Rate adjustments described in Subsection (A)(3)(b)(iv). Similarly, the Consultant's obligations under this Contract are not limited by such Overhead Rate adjustments.

c. In the event the Consultant proposes to assign this Contract, and the overhead rate of the assignee is higher than that of the Consultant, the overhead rate shall be the Consultant's last Audited Overhead Rate until the Consultant obtains written approval from the Department, which shall be at the sole discretion of the Department.

4. Profit

The "Profit Percentage" used to calculate the Consultant's and all Subconsultants' Overhead Multipliers under this Contract will be 10%. This rate will remain fixed over the Period of Performance of the Contract. If the Department issues a time extension to the Period of Performance in accordance with Article XVI, Section (B), the Department may renegotiate a lower Profit Percentage used to calculate the Overhead Multiplier for the portions of the Services performed during the extension.

5. Monthly Invoices

For those portions of the Services that are compensated on the basis of Cost Plus, the Consultant shall prepare a monthly invoice, that includes a full accounting of all labor, Project Management, ODC (inclusive of allowances) costs organized by Phase and Task.

For services rendered pursuant to an amendment, the Consultant must identify each service by the corresponding amendment cost code, to be paid separately from the original Maximum Contract Amount.

The Consultant shall invoice for Services performed and shall provide, in its monthly report to DEP, an accounting and a forecast of all costs at the Subtask level. The Consultant shall collect costs and maintain forecasts to the lowest level of the Scope of Services (Task, Subtask, or Sub-subtask Level) and shall provide this information when requested by DEP.

The Consultant may invoice DEP for any reasonable labor associated with the preparation of proper monthly invoices. The charged hours must be separately and clearly identified in each invoice.

B. Other Direct Costs ("ODCs")

1. ODCs are reasonable "out-of-pocket" expenses essential for the performance of the Services and authorized by the Department that: (1) do not involve the practice of "engineering," as defined by Subsection 7201 of the New York State Education Law, (2) are not otherwise included in the Consultant's or Subconsultants' proposed labor that is subject to an overhead rate, and (3) have not been agreed to be paid by any other method as specified herein. The Department shall reimburse the Consultant for the actual and reasonable cost of such ODCs with no provision for overhead or profit.

2. ODCs include the following:

a. authorized direct materials and equipment purchases and/or leases with the exception of computers or tablet devices;

b. bulk printing of reports or special documents as part of the Services under this Contract;

c. travel

1. The Department will compensate the Consultant for travel performed by its employees and Subconsultants' employees, in accordance with the normal travel allowances of the City of New York for its own employees, as provided in Comptroller's "Directive No. 6, Travel, Meals, Lodging, and Miscellaneous Agency Expenses" (December 30, 2016 version or later) ("Directive No. 6"). Any changes in compensation amounts that may arise from future versions of Directive No. 6, if any newer versions are issued, shall not increase the Maximum Contract Amount. The Consultant shall submit to DEP for prior approval, anticipated hotel location and the billing rate for any travel request, in order to receive complete reimbursement;

d. use of motor vehicles

1. The Department will compensate the use of motor vehicles owned by the employees of the Consultant and Subconsultants on the project sites or between the project sites and various DEP offices, when directed by the Commissioner, or his/her duly authorized representative, on a mileage basis to be paid within the normal allowances of the City for its own employees, in accordance with Directive No. 6;

e. miscellaneous out-of-pocket costs authorized by the DEP; and

f. extraordinary mailing and shipping charges directly related to the Project.

3. ODCs may also include borings and surveys, permit fees and other construction-related Services as authorized by the Department.

4. The Consultant is NOT permitted to use ODCs for the purchase of food or beverages for any meetings.

5. The Department will compensate the Consultant for New York State and City taxes incurred in purchases of those ODCs that are not eligible for tax exemption under the Law.

6. If identified in the table below, the following ODC items will be compensated an amount not to exceed the following allowance value:

Description of Allowance Item	Allowance Value	Unit of Measurement
Allowance 1 Travel Travel from: Contractor: [insert Contractor's Home Office/local address] Subcontractors: respective Home Offices in New York		Per Directive No. 6
Allowance 2		

C. Principals' Compensation

This Section (C) applies only if a Principal of the Consultant or of a Subconsultant is billing hourly and bears responsibility for execution of a portion of the Services.

1. Compensation for Services performed by a Principal of the Consultant or a Subconsultant will be calculated as the product of the direct salary costs incurred by the Consultant (or a Subconsultant) for that portion of the Services and the applicable Overhead Factor. Profit will not be paid to Principals.

2. The Consultant shall not bill the Department for the Services of a Principal such that the product of that Principal's salary rate and the applicable Overhead Factor is greater than $420.00 per hour.

3. The total compensation paid for Services performed by Principals shall not exceed 35% of the Maximum Contract Amount.

D. Overtime Costs

1. "Overtime" is defined as the time beyond 40 hours in a week worked by an employee of the Consultant or a Subconsultant performing a portion of the Services. The Department shall compensate the Consultant for hours spent by its employees and Subconsultants' employees performing Overtime in accordance with the provisions of Subsection (D)(2) below. The Department will only provide Overtime compensation to the Consultant if the Department authorizes such Overtime.

2. Payment will be made for authorized Overtime, on the following basis:

   a. The maximum Overtime salary rate shall not exceed 150% of the regular salary rate of the employee performing Overtime. Payment shall only be made with approved authorization by DEP. Such authorization shall cover all employees who worked overtime during the monthly billing period.

   b. The Overhead Multiplier described in Subsection (A)(2)(b), above, will not be applied to the "Premium Pay Amount" of Overtime salary costs. Instead, the Consultant will apply an "Overtime Multiplier" to the Premium Pay Amount of Overtime salary costs.

   c. The "Premium Pay Amount" for an employee of the Consultant or a Subconsultant is defined as the difference between the Overtime salary rate for that employee and the non-Overtime salary rate for that employee.

   d. The Overtime Multiplier for all employees of the Consultant or a Subconsultant is equal to 115%. The Overtime Multiplier provides compensation for overhead, such as government mandated insurance expenses incurred by the Consultant (including payroll taxes such as FICA) and unemployment taxes for performing portions of the Services as Overtime.

E. Lump Sum Payment Terms

   a. For those portions of the Services that are compensated on the basis of lump sum payments, Consultant shall prepare a monthly invoice detailing the items in the lump sum payment that are invoiced by the Consultant, based on the Lump Sum Payment

Schedule in Attachment XX, and the corresponding portions of the Services that were performed by the Consultant.

b. An acceptance letter for each deliverable, signed by DEP, must accompany each lump sum item billed.

c. Upon DEP's request, the Consultant shall submit all documentation and justification in support of lump sum expenditures or fees, which include, but is not limited to timesheets, material and supplies, invoices, travel receipts and other proof of lump sum expenditures. The Consultant must submit supporting documentation for any work performed by staff subject to prevailing wage regulations.

ARTICLE XVI – MISCELLANEOUS PROVISIONS

A. Field Office

If dictated by the needs of the Project, the Department shall provide the Consultant the use of an on-site Field Office during the Construction Phase of the Project and until the end of the Period of Performance. Such Field Office, including furniture, utilities, servers, internet access, WIFI access, phone service, office supplies, and janitorial service, shall be provided at no cost to the Consultant.

B. Consultant's Services Required Beyond Specified Period of Performance

If the Consultant's Services are required beyond the Period of Performance and the Consultant applies for a time extension in writing, the Department may grant such a time extension by Contract amendment to allow the Consultant to perform the Services in accordance with the PPB Rules.

C. Extra Services

If the Department determines that extra services are required of the Consultant, the Department may issue an amendment adjusting the scope of the Services and the Maximum Contract Amount, in accordance with Article 9 of Appendix A and the PPB Rules. Prior to the issuance of any such amendment, the Consultant shall submit a proposed staffing schedule for the anticipated remainder of the Project for the approval of the Commissioner.

D. Delivery of Materials and Equipment

At the conclusion of the Period of Performance or any extensions thereto, the Consultant shall deliver all material and equipment purchased under this Contract to DEP.

ARTICLE XVII – TIMING OF PAYMENTS

A. Timing of Payments

The Consultant shall submit an itemized invoice each month for the Services provided in the immediately preceding month. The Department shall make payments to the Consultant upon presentation to the Commissioner of such itemized monthly invoices, including supporting documentation, certified by the Consultant, which the Commissioner shall in turn certify for payment after approval by the Department.

B. Final Payment

The invoice for final payment to the Consultant shall include the final month's Services provided to complete the Contract requirements. This payment shall become due and payable only upon completion of all required Services by the Consultant, the completion of all audits by the Department, and approval of the entirety of the Services by the Commissioner.

ARTICLE XVIII – WITHHOLDING FOR NEGLIGENCE

In addition to any withholding permitted pursuant to Article 8 of Appendix A to this Contract, in the event that the Department must pay additional construction-related costs as a direct result of Consultant negligence as determined by the Department, the Department shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover said damages; provided, however, that the Department shall not withhold costs that the Department would have had to pay in the absence of such negligence. Such determination shall be subject to the dispute resolution procedures set forth in Section 12.03 of Appendix A.

ARTICLE XIX – DOCUMENTS FORMING THE CONTRACT

The Contract shall consist of these Special Provisions and the following attachments:

Appendix A	General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services (Architects & Engineers)
Attachment No. 1	Scope of Services
Attachment No. 2	New York State Revolving Fund Requirements [or New York City M/WBE Requirements]
Attachment No. 3	Sample Invoice Documents
Attachment No. 4	Tabulation of Salary Rates
Attachment No. 5	Electronic Funds Transfer Information and Form
Attachment No. 6	PMIS Rider
Attachment No. 7	Hiring and Employment Rider
Attachment No. 8	Schedule B [if New York City M/WBE requirements are applicable]

EXECUTION BY THE COMMISSIONER AND THE CONSULTANT

IN WITNESS WHEREOF, the Parties hereto have executed five copies of this Contract, three of which are to remain with the Commissioner, one to be filed with the Comptroller, and one copy to be delivered to the Consultant.

THE CITY OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By ____
Commissioner

Approved as to Form
Certified as to Legal Authority

(See Attached)

____
Acting Corporation Counsel

Date ______________

CONSULTANT
[INSERT CONSULTANT FIRM NAME]

By ____

NAME:___________________________________

Seal and Attest

____
Date

ACKNOWLEDGMENT BY THE COMMISSIONER

STATE OF NEW YORK)
)ss:
COUNTY OF QUEENS)

On this_______ day of______________, 20__ before me personally came ______________________________, to me known and known to me to be the __________________of the Department of Environmental Protection of the City of New York, the person described as such in and who as such executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as Commissioner for the purposes therein mentioned.

____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY THE CONSULTANT

STATE OF NEW YORK)
)ss
COUNTY OF _________)

On this ___________ day of__________, 20__, before me personally came ___________________, who being by me sworn, did depose and say that he/she resides in _________________, _____; that he/she is the ____________________ of [INSERT FIRM NAME], and possesses the power and authority to enter into this Contract on behalf of [INSERT FIRM NAME] and has been authorized by all necessary action to do so.

____
Notary Public or Commissioner of Deeds

ATTACHMENT A: NYC COMMUNITY HIRE RIDER

Community Hiring Rider

For Professional Services, Human Services, Standard Services (except Building Services) Contracts

Version: February 20, 2025

Program Description

Community Hiring, as authorized under Chapter 79 of the New York City Charter ("Charter"), is an initiative to set workforce goals on City procurement for contractors to employ low-income individuals and residents of economically disadvantaged communities.

The provisions set forth in this Rider shall apply to contracts with an estimated total value exceeding three million dollars, unless otherwise exempt under the rules set forth under the Community Hiring Rules, adopted as Title 74 of the Rules of the City of New York (RCNY). Under 74 RCNY § 1-03(b), the following contracts are exempt: preferred source contracts; contracts for the performance of services by a city-affiliated not-for-profit corporation, goods contracts; contracts in an amount below the small purchase threshold; contracts for investigative or confidential services; contracts subject to federal or state funding requirements that preclude or substantially conflict with the application of Community Hiring Goals; contracts awarded through the United States General Services administration, or through the New York State Office of General Services; contracts for emergency demolition services procured by the Department of Housing Preservation and Development; contracts for which contractor selection is made by an elected official other than the Mayor or an agency other than a Mayoral Agency; contracts subject to 9 RCNY § 1-02(f); contracts designated for inclusion in a mentoring program as defined in Section 1206 or 1309 of the Charter; and contracts for banking services, electronic payment services, or other related services procured by the New York City Department of Finance.

The Community Hiring Rules are hereby incorporated in this Contract by reference and all terms used herein shall have the meanings given such terms in the Community Hiring Rules. In the event of any conflict between the Community Hiring Rules and this Rider, the rules shall control. As of the execution of this Contract, the Contactor represents that it has read, in its entirety, and agrees to comply with the Community Hiring Rules.

The Community Hiring program supersedes the HireNYC initiatives and the related riders, including, but not limited to references to the Public Assistance Commitment Rider and the HireNYC Hiring and Employment Rider. If the Contract to which this rider is attached is based on the City's standard construction contract, then Article 35.6 of the standard construction contract is amended and replaced with the Community Hiring Rules.

Community Hiring Requirements

The Contractor agrees to comply with the requirements of the Community Hiring Rules in the performance of this Contract.

A. Community Hiring Goal

Pursuant to 74 RCNY § 4-02(c), the Contractor shall make best efforts to meet the goal of hiring one Income-Based Community Hire for every five hundred thousand dollars in total contract value ("Community Hiring Goal").

In accordance with 74 RCNY § 5-01(b), the Contractor shall require its subcontractors, as defined under 74 RCNY § 1-02, to make best efforts to meet the Community Hiring Goal on this Contract and comply with the applicable requirements set forth in 74 RCNY § 5-02.

B. Advertising Employment Opportunities

The Contractor agrees to advertise the Employment Opportunities, as defined in 74 RCNY § 1-02, in conspicuous places available to the public and in a manner reasonable for the industry.

For purposes of meeting a Community Hiring Goal, the Contractor shall notify a Referral Source, as provided in accordance with 74 RCNY § 3-02(a), of the job opportunities to be filled by Community Hires. The Contractor shall provide notice to the Office of Community Hiring and Workforce Development (OCH) when the Referral Source has impeded the Contractor's efforts to meet the Community Hiring Goal.

C. System Enrollment and Reporting

The Contractor shall enroll with an electronic system designated by the Director of OCH in accordance with 74 RCNY § 5-01(e).

Once enrolled into the system, the Contractor shall be responsible for updating the information in the system in a reasonable and timely manner. The information to be updated includes, but is not limited to, the job opportunities to be filled by Community Hires, qualifications for such jobs, anticipated start schedule, and any other information as required by the Community Hiring Rules.

The Contractor may fulfill the advertising requirement set forth in 74 RCNY § 5-01(c) by posting in such system all the relevant information of an Employment Opportunity to be filled by Community Hires. The Contractor shall also provide to the City on a quarterly basis, and when requested by the City with reasonable notice, any information related to the Contractor's compliance with or progress towards meeting the Community Hiring Goal.

Records

A. Retention

The Contractor shall maintain records in accordance with the applicable requirements set forth in 74 RCNY §§ 6-01 and 6-02.

For purposes of 74 RCNY § 6-01(b), the Contractor shall designate a representative to monitor all activity related to compliance to ensure that the Contractor is exercising best efforts to meet the Community Hiring Goal, and maintain the records to submit the documentation relating to the provisions herein.

B. Access to Records

The Contractor shall furnish, and require its subcontractors to furnish, all information and reports in accordance with the laws, rules, regulations or guidance from the City.

Compliance

Without limitation to any other provisions under this Contract and any other legal remedies available to the City, a failure to comply with the requirements under the Community Hiring Rules is a non-compliance that may be subject to civil penalties pursuant to Chapter 7 of the Community Hiring Rules and may be considered as a factor in evaluating contract performance in accordance with 9 RCNY § 4-01.

A. Best Efforts

Where the Contractor has failed to meet the Community Hiring Goal, the Contractor shall demonstrate that it exercised best efforts to meet the goal. Where determined, as set forth in 74 RCNY § 5-03, that the Contractor failed to make best efforts, the City shall send written notice to the Contractor's designated representative, notwithstanding the notice provisions in the Contract. The Contractor shall respond in accordance with the instructions in the notice. Failure to timely respond can result in a non-compliance determination subject to civil penalties as set forth in 74 RCNY § 7-01.

B. Corrective Action

Where the City determines that the non-compliance may be remedied through a corrective action and provides notice to the Contractor pursuant to 74 RCNY § 7-02(a)(2), the Contractor shall respond in accordance with the requirements outlined in the notice. The Contractor is responsible for timely demonstration of taking the requisite corrective action. Demonstration of corrective action to the satisfaction of the Director of OCH, may result in waiving of the civil penalties[1] as set forth in the Community Hiring Rules.

C. Civil Penalties

Where Contractor is found non-compliant subject to civil penalties, the City can impose a civil penalty amount in accordance with the schedule set forth in 74 RCNY § 7-03.

The City may withhold from the Contractor the amount of the civil penalties upon final determination as set forth in 74 RCNY § 7-01(d).

[1] Only civil penalties relating to non-compliance with the Community Hiring Rules can be waived in this instance.

Community Hiring Vendor FAQ

1 Introduction

1.1 What is Community Hiring?

Community Hiring is a procurement-based initiative that authorizes City agencies to set workforce goals in their procurement contracts for vendors to provide employment and apprenticeship opportunities for low-income individuals and those living in low-income communities. The Office of Community Hiring (OCH) is responsible for managing the rollout and implementation of Community Hiring, supporting City agencies and vendors, and reporting on Community Hiring Goals.

1.2 How does Community Hiring work?

When a City agency releases a procurement subject to Community Hiring, the solicitation will clearly indicate that Community Hiring applies. If the contract is subject to Community Hiring, the vendor must agree to make best efforts to achieve the workforce goal outlined in the contract. To support this, the vendor will connect with a "Referral Source" that can help connect the vendor with qualified Community Hires to meet the goal. The vendor with a City contract subject to Community Hiring must review the Community Hiring Rules and the terms of such contracts.

1.3 How can the vendor benefit from Community Hiring?

The vendor awarded a City contract subject to Community Hiring will gain free job recruitment services for access to job-ready and qualified talent who can count towards the Community Hiring Goal while meeting the vendor's business needs.

1.4 Is Community Hiring in effect?

Community Hiring is implemented by the rules promulgated under Title 74 of the Rules of the City of New York ("Community Hiring Rules"), which went into effect on January 23, 2025.

2 Contracts Subject to Community Hiring

2.1 What types of contracts are subject to Community Hiring?

Mayoral agency procurement contracts for construction, human services, professional services, and standard services are subject to the Community Hiring

Rules. Procurements with a contract value of more than $3 million will have Community Hiring Goals with some exceptions.

2.2 What types of City contracts are not subject to Community Hiring?

The following contracts are not subject to Community Hiring requirements:

- Contracts $3 million or less
- Goods contracts
- City Council Discretionary contracts
- Contracts subject to federal or state funding requirements that preclude or substantially conflict with Community Hiring Goals
- Intergovernmental contracts with OGS and GSA
- Government-to-Government contracts
- Mentoring program contracts as defined in Section 1206 or 1309 of the NYC Charter
- Preferred source contracts
- Contracts subject to Section 1-02(f) of the PPB Rules
- Investigative or confidential services contracts
- Contracts performed by city-affiliated not-for-profit corporation
- HPD emergency demolition services contracts
- DOF banking services and electronic payment services contracts
- Emergency procurement contracts* pursuant to Section 315 of the NYC Charter

*While emergency procurement contracts are not subject to Community Hiring, the City has the discretion to set goals where possible.

2.3 Does Community Hiring apply to subcontracts?

Yes, but Community Hiring applies differently across industries.

For construction, if the prime contract is subject to Community Hiring, all subcontracts (of all tiers) performing trade labor will be subject to Community Hiring.

For the non-construction services (professional, human, standard services), if the prime contract is subject to Community Hiring, only subcontracts with a value exceeding $20,000 are subject to Community Hiring.

2.4 Will Community Hiring Goal apply to contracts with Minority and Women-Owned Business Enterprise (M/WBE) participation goals?

Yes, Community Hiring does not preclude contracts from having M/WBE participation goals. The vendor must continue to comply with the M/WBE requirements.

2.5 How will the transition from HireNYC to Community Hiring impact existing contracts?

HireNYC is a suite of various programs with different requirements that will be phased out and replaced with Community Hiring. Vendors are required to comply with the HireNYC requirements under any existing contracts.

2.6 Will existing contracts be amended to add Community Hiring requirements to the contract?

No, Community Hiring does not apply retroactively to contracts registered before the Community Hiring Rules went into effect.

2.7 Are Sole Source procurements subject to Community Hiring?

Yes. Sole Source Procurements are subject to Community Hiring.

2.8 Are MWBE Small Purchases subject to Community Hiring?

Community Hiring Goals do not apply to contracts with a value at or below $3 million. Since the MWBE Small Purchase threshold is currently $1.5 million, MWBE Small Purchases will not have Community Hiring Goals.

2.9 Do Community Hiring Goals apply to Master Services Agreements?

If the anticipated contract award(s) are expected to be over $3 million, the solicitation will include the Community Hiring requirements. If the Master Services Agreement is subject to Community Hiring, then the vendor is obligated to comply with the Community Hiring requirements once the cumulative value of the Task Orders exceeds $3 million.

2.10 If the vendor has a contract with a contract value that was originally under $3 million but increased to over $3 million due to an amendment or change order, will Community Hiring now apply?

Community Hiring Goals do not apply to contracts with a value of $3 million or below. If the original contract did not include a Community Hiring Goal, an increase in contract value (through renewal, extension, etc.) alone would not subject the contract to Community Hiring.

2.11 Does Community Hiring apply to the vendor on the City's Prequalified List (PQL)?

Yes, Community Hiring Goals apply to procurements using a PQL unless another exemption applies.

2.12 Can the vendor submit a waiver request to remove or reduce the goal during procurement?

The vendor cannot submit a waiver request to remove or reduce the Community Hiring Goals.

2.13 Will Community Hiring apply to contracts that are subject to federal Section 3 requirements?

Yes, Community Hiring may apply to contracts that are subject to Section 3 as long as the federal requirements do not explicitly preclude or substantially conflict with Community Hiring Goals. Any requirements regarding Community Hiring or Section 3 will be outlined in the solicitation documents.

2.14 How does Community Hiring work on contracts subject to Project Labor Agreements?

For contracts subject to a Project Labor Agreement (PLA), which is defined in the Rules as a pre-hire collective bargaining agreement that the City enters into, the workforce goal outlined in the PLA is the Community Hiring Goal that apply to those contracts. While the 2020 and 2021 City PLAs may use slightly different workforce terminology (e.g., Program Hires) from the recent PLAs, the Community Hiring requirements under the contract are the same regardless of which PLA applies.

2.15 Can contracts be subject to both Community Hiring Goals and the Apprenticeship Program Directive?

The City's Apprenticeship Program Directive requires certain vendors with construction and construction-related maintenance contracts to maintain apprenticeship agreements with programs registered with and approved by the New York State Department of Labor. Contracts subject to the Apprenticeship Program Directive can also have a Community Hiring Goal. The vendor is obligated to comply with both workforce initiatives.

3 Community Hiring Goals

3.1 What are the Community Hiring Goals?

The Community Hiring Goal depends on the service being procured.

For building services, the Community Hiring Goal is for 30% of building services opportunity labor hours to be performed by Residence-Based Community Hires.

For construction, the Community Hiring Goal will depend on whether the construction work is subject to a project labor agreement (PLA).

If not subject to a PLA, the Community Hiring Goal is for 30% of construction trade labor hours to be performed by Residence-Based Community Hires, as outlined in the Community Hiring Rules.

If subject to a PLA, the workforce goals set forth in the PLA will apply. The solicitations for contracts subject to a PLA will outline the applicable workforce goal.

For professional services, human services, and standard services (except building services), the Community Hiring Goal is to hire 1 Income-Based Community Hire for every $500K in contract value

3.2 Who is a Residence-Based Community Hire?

A Residence-Based Community Hire is an individual who resides in NYCHA housing or in an Economically Disadvantaged Region. The Community Hiring Goal on building services and construction contracts is to employ Residence-Based Community Hires.

3.3 What is an Economically Disadvantaged Region?

An Economically Disadvantaged Region is defined as a ZIP code in which at least 15% of the population lives below the federal poverty threshold. Please visit the OCH website for the full list of Economically Disadvantaged Regions.

3.4 Who is an Income-Based Community Hire?

An Income-Based Community Hire is an individual with an individual or household income that falls below 300% of the federal poverty guidelines. The Community Hiring Goal on professional services, human services, and standard services (except building services) is to employ Income-Based Community Hires.

4 Vendor Compliance

4.1 How does the vendor comply with Community Hiring?

If the vendor is awarded the contract subject to Community Hiring, the vendor must make best efforts toward meeting the Community Hiring Goal and adhere to the Community Hiring requirements, including, but not limited to, publishing Employment Opportunities and reporting on the progress towards meeting Community Hiring Goals.

4.2 What are the Community Hiring requirements?

The vendor entering into a City contract agrees to the responsibilities set forth in the Community Hiring Rules:

- Make best efforts to employ Community Hires to meet the applicable goal
- Require its subcontractors to agree to make best efforts to meet the applicable goal
- Publicly disclose any vacancy to perform services under the contract (except construction work subject to a project labor agreement)
- Notify Referral Sources of the applicable goal and any vacancies to be filled
- Enroll in an electronic system designated by the OCH Director
- Monitor and document compliance with Community Hiring

4.3 What does it mean for the vendor to make "best efforts" to meet the Community Hiring Goal?

Best efforts may vary across vendors and their circumstances. The City will determine whether the vendor made best efforts on a case-by-case basis, considering how the vendor:

- Advertised Employment Opportunities
- Evaluated Community Hires' qualifications in good faith
- Collaborated with Referral Sources or apprenticeship programs
- Organized project tasks to remove barriers to meeting the Community Hiring Goal
- Tracked and documented efforts to meet the Community Hiring Goal
- Contacted OCH at routine intervals
- Undertook all commercially reasonable actions to achieve workforce goals.

However, making best efforts does not mean the vendor has to:

- Undertake undue financial burden
- Terminate or reduce work levels of existing employees
- Extend job offer to individuals whose labor is not commercially useful
- Forgo filling building service opportunities with Absorption Hires on building services Contracts
- Forgo requesting, employing, or hiring any individuals or assigning individuals to perform construction Work in accordance with terms of an agreement with a Referral Source for the sourcing of labor

4.4 Does the vendor have to hire Community Hires for every vacancy?

The vendor with a Community Hiring Goal is required to connect with a Referral Source for purposes of meeting the goal. However, the vendor has the discretion to identify the positions to be filled by Community Hires. The vendor who fails to meet the Community Hiring Goal will need to demonstrate the efforts made to meet the Community Hiring Goal, including the vacancies identified and the efforts made to review and organize the work under the contract in order to eliminate the obstacles to meeting the Community Hiring Goal.

4.5 Does the vendor need to terminate anyone or reduce the work levels of existing employees to meet the Community Hiring Goal?

No, the vendor is not required to terminate or reduce the work levels of existing employees to meet the Community Hiring Goal.

4.6 What happens if the vendor does not have a vacancy or a hiring need during the term of the contract?

If the vendor does not have a vacancy or hiring need, Community Hiring does not require the vendor to hire or employ a Community Hire whose labor would not be commercially useful. However, the vendor will be responsible for demonstrating the best efforts made to meet the Community Hiring Goal.

4.7 Does the vendor who use union labor need to comply with Community Hiring?

Yes, if the vendor who uses union labor is awarded a contract with a Community Hiring Goal, then such vendor is required to comply with Community Hiring. However, the vendor is not required to violate the terms of a collective bargaining agreement in order to meet the Community Hiring requirements.

4.8 Can the vendor hire an Income-Based Community Hire from somewhere other than a Referral Source?

No. Income-Based Community Hires must be referred by a Referral Source. Referral Sources are responsible for connecting vendors with jobseekers who are certified as Income-Based Community Hires. Community Hiring does not require or encourage the vendor to ask its job candidates about their income.

4.9 Can the vendor employ Residence-Based Community Hire from somewhere other than a Referral Source?

Possibly. For building services and construction contracts, the Community Hiring Goal is based on the percentage of trade labor hours performed by Residence-Based Community Hires. The vendor may employ existing workforce who are certified as Residence-Based Community Hires via the certified payroll reports.

4.10 Do existing employees count towards the Community Hiring Goal?

For professional services, human services, or standard services (except building services) contracts, the Community Hiring Goal is to hire Income-Based Community Hires based on the total value of the transaction. Existing employees do not count towards the fulfillment of Community Hiring Goals.

For construction and building services contracts, the Community Hiring Goals are based on a percentage of trade labor hours so the labor hours of existing employees that are certified Residence-Based Community Hires may count towards the fulfillment of Community Hiring Goals on such contracts.

4.11 By when does the vendor need to employ a Community Hire?

For construction and building services contracts, the Community Hiring Goals are based on trade labor hours performed on the specific project so the Residence-Based Community Hires must work on that project.

For professional services, human services, or standard services (except building services) contracts, the Income-Based Community Hire must be hired during the term of the contract that is subject to Community Hiring.

4.12 What are the consequences for the vendor who fails to comply with Community Hiring requirements?

If the vendor fails to meet its Community Hiring Goal, then the vendor must demonstrate that it made best efforts to meet the requirements. Where the vendor fails to meet its Community Hiring Goal and does not demonstrate that it made best efforts, then the vendor may be found non-compliant and subject to civil penalties. The City will issue a Notice of Non-Compliance with further instructions on how to respond. If the vendor is found non-compliant, the City may withhold the civil penalty amount from the contract.

4.13 Can the vendor's past performance with Community Hiring be considered as part of the evaluation criteria in a solicitation for future contract awards?

No, agencies cannot consider a vendor's past track record with Community Hiring as part of the evaluation criteria on a solicitation. However, the vendor's performance with Community Hiring requirements, like any other contract requirement, may be evaluated by an agency as part of a performance evaluation on a contract with a Community Hiring Goal. Performance evaluations are considered by an agency as part of determining that the vendor is "responsible" for a future contract award.

4.14 Are there exemptions for the vendor in highly specialized occupations/trades?

No, Community Hiring does not exclude the vendor in highly specialized occupations/trades. The vendor should carefully consider its hiring needs and the skills and experiences needed to perform the work. Community Hiring does not require the vendor to hire anyone whose labor is not commercially useful to the vendor's business.

4.15 What happens if the vendor has multiple contracts subject to Community Hiring?

The vendor may have multiple contracts subject to Community Hiring Goals (either with the same agency or multiple agencies). For a construction contract or building services contract subject to Community Hiring, each goal remains solely connected to the respective contract awarded since the goals are based on labor hours performed on such contract. For all other services (professional, human, and standard except building services), the Community Hiring Goal for such contracts awarded will be aggregated to form one goal for each vendor.

4.16 What if the Community Hire referred by a Referral Source does not meet the requirements for a job?

The vendor is required to contact a Referral Source to be connected to Community Hires who are qualified to meet the requirements for the job. If the referred Community Hires do not meet the job qualifications, the vendor is encouraged to connect with other Referral Sources from the Directory. However, the vendor is not required to extend an offer of employment to anyone whose labor would not be commercially useful in view of factors including, but not limited to, the skills expertise, or licenses relevant to the vendor's work.

5 Referral Source

5.1 How can the vendor connect with qualified Community Hires to meet the Community Hiring Goal?

In order to help achieve the Community Hiring Goals, the vendor is required to contact a Referral Source. Referral Sources certify jobseekers as Community Hires and help ensure that the jobseekers meet the vendors' employment needs.

5.2 What is a Referral Source?

A Referral Source is an entity responsible for connecting vendors with qualified Community Hires for purposes of meeting the Community Hiring Goal. Referral Sources include the City's public workforce system (e.g., SBS's Workforce1 and HRA's Business Link), union referral systems, and other entities that provide job placement or workforce development services.

5.3 Does the vendor with established hiring processes, such as online applications, have to contact Referral Sources?

Yes, the vendor awarded a contract subject to Community Hiring is required to contact a Referral Source for purposes of meeting the Community Hiring Goal. Referral Sources, such as the City's Workforce1 system, have experience working with employers in different sectors that use online applications.

The Office of Community Hiring (OCH) will work with the vendor and help find the best way to incorporate Community Hiring into the already established processes.

5.4 How many Community Hires are vendors required to interview?

There is no set quota on how many Community Hires should be interviewed. The vendor's efforts to interview Community Hires will be a factor for determining whether the vendor made best efforts to meet the Community Hiring Goal.

6 Retention and Reporting

6.1 What types of documents is the vendor responsible for maintaining?

The vendor is responsible for maintaining records documenting:

- Publication of Employment Opportunities, if applicable
- Community Hires employed through a Referral Source
- Labor hours performed by Community Hires (this information may be maintained on certified payroll reports)
- Efforts to meet the Community Hiring Goal
- Compliance with or progress towards meeting the Community Hiring Goal

6.2 What are the vendor's Community Hiring reporting requirements?

The vendor must use specific reporting systems to comply with Community Hiring requirements. For construction and building services contracts, the vendor will use a digital labor compliance tool to submit Certified Payroll Reports. For other services, reporting will be centralized through OCH. These systems will help ensure accountability and transparency by allowing the City to monitor the vendor's progress toward meeting Community Hiring Goals.

7 Support and Resources

7.1 Are there any training or support services available to the vendor?

Yes, OCH will offer vendor support, including system navigation training, guidance on workforce development practices, and ongoing support throughout the hiring process. Please check out the OCH website and subscribe to the OCH newsletter for more information and resources on Community Hiring.

7.2 Where can the vendor go with questions?

If there are questions about Community Hiring, please contact OCH at CommunityHiring@talent.nyc.gov. If there are specific questions related to a specific procurement or a contract with a Community Hiring Goal, please contact the designated representative of the contracting agency.

ATTACHMENT B: NOTICE TO PROPOSERS-DBE PARTICIPANTS

NEW YORK STATE
Environmental Facilities Corporation | Department of Health

KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

Guidance For Equivalency Project Mandatory State Revolving Fund Terms and Conditions

For Equivalency Projects Funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

Effective October 1, 2025

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924
www.efc.ny.gov

Contents

INTRODUCTION

The New York State Environmental Facilities Corporation ("EFC") implements the New York State Revolving Fund ("SRF") for both Clean Water and Drinking Water projects. The SRF encompasses several funding programs, including, but not limited to, the SRF financial assistance loan programs, emerging contaminant grants, and the lead service line replacement program.

This Guidance on Mandatory SRF Terms and Conditions provides a brief description of federal program requirements for Contracts and Subcontracts funded in whole or part by the New York State Clean Water and Drinking Water SRFs, and guidance materials to assist entities in complying with these requirements. Contracts that do not meet the required conditions may not be eligible, in whole or in-part, for financing.

The Guidance Materials are for informational purposes only and are not intended to be used as contractual language. Please do not incorporate the Guidance Materials into any Contracts or Subcontracts.

PROGRAM REQUIREMENTS SUMMARY

The following requirements apply to Equivalency projects funded with the NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund. Note some requirements do not apply to non-Treatment Works projects, as discussed within the relevant sections of this guidance:

- Architectural and Engineering (A/E) Procurement pursuant to 40 U.S.C. 1101 et seq. and 48 Code of Federal Regulations (CFR) Part 36 Subpart 36.6;
- Participation by Disadvantaged Business Enterprises ("DBE") in United States Environmental Protection Agency ("EPA") Programs pursuant to 40 CFR Part 33;
- Equal Employment Opportunities pursuant to Titles VI and VII of the Civil Rights Act of 1964, 40 CFR Part 7, and 41 CFR Part 60-1 Subpart A;
- Affirmative Action requirements pursuant to 41 CFR Part 60-4;
- Non-discrimination requirements pursuant to Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972;
- Build America, Buy America Act (BABA) pursuant to P.L. 117-58 and 2 CFR Part 184;
- American Iron and Steel ("AIS") pursuant to P.L. 113-76, Consolidated Appropriates Act, 2014; WRRDA Section 608 of the Federal Water Pollution Control Act, as revised;
- Davis Bacon Related Acts ("DB") consisting of the following: The Davis Bacon Act; Copeland Act (40 U.S.C. § 3145); Reorganization Plan No. 14; Department of Labor 29 CFR Parts 1, 3, and 5; Contract Work Hours and Safety Standards Act;
- Requirements regarding suspension and debarment pursuant to 2 CFR Part 180, 2 CFR Part 1532 and 29 CFR § 5.12; and,

- Restrictions on Lobbying pursuant to 40 CFR Part 34.

EFC or its authorized representatives, and other governmental entities as applicable, reserve the right to conduct occasional site visits to verify compliance with SRF program requirements and review recipients monitoring of requirements.

This document is not intended to be inclusive of all applicable legal requirements and there may be other legal requirements that need to be included in a particular Contract or Subcontract that are not set forth here. Accordingly, EFC recommends that Recipients, Contractors, Subcontractors, and any other involved entities consult their legal counsel for advice on compliance with all applicable laws, including but not limited to local laws. This document is not intended to be legal advice.

Refer to the EFC website at www.efc.ny.gov for the latest version of the Mandatory State Revolving Fund Equivalency Terms and Conditions (Equivalency T&Cs) to ensure that the most recent contract language is being used.

GUIDANCE MATERIALS

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Construction means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

Contract means an agreement between a Recipient and a Contractor.

Contractor means all bidders, prime contractors, surety that is completing performance for a defaulted contractor pursuant to a performance bond, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

Equivalency means projects in the amount equal to the funds “directly made available” by an Environmental Protection Agency (EPA) Capitalization Grant and funding for those projects is considered federal funds, or federal financial assistance. The Equivalency designation is indicated in the Intended Use Plan.

Manufactured products means articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified under Build America, Buy America as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR § 184.4(e), then it is not a manufactured product.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

MBO is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

Non-Construction Provider means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

Recipient means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

State means the State of New York.

State Recipient means Environmental Facilities Corporation, Department of Health, and Department of Environmental Conservation.

Subcontract means an agreement between a Contractor and a Subcontractor.

Subcontractor means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

Supplier means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Treatment Works is defined in Clean Water Act (CWA) Section 212. This does not include nonpoint source projects as defined in CWA Section 319 and estuary management program projects as defined in CWA Section 320.

APPLICABILITY OF PROGRAM REQUIREMENTS

This table contains a breakdown of the applicable program requirements based on contract type and its value. For further details pertaining to each requirement, refer to the section identified in the heading.

Type of Contract	A/E Procurement Section 1	**DBE** Section **2**	EEO[1] Section **2**	Title VII Section **2**	BABA & AIS Section 3	Davis Bacon Section 4	FAAR[2] Section **2**	Suspension & Debarment Section 5	Restrictions on Lobbying Section **6**	Prohibition on Telecommunications Section 7
Construction: Treatment Works & Drinking Water Projects										
All		**X**	**X**	**X**	**X**			**X**		**X**
If greater than:										
$2,000		**X**	**X**	**X**	**X**	**X**		**X**		**X**
$10,000		**X**	**X**	**X**	**X**	**X**	**X**	**X**		**X**
$100,000		**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**
Construction: Non-Treatment Works										
All		**X**	**X**	**X**				**X**		**X**
If greater than:										
$10,000		**X**	**X**	**X**			**X**	**X**		**X**
$100,000		**X**	**X**	**X**			**X**	**X**	**X**	**X**
Non-Construction Provider										
All	**X**[3]	**X**	**X**		**X**					**X**
If greater than:										
$25,000		**X**	**X**		**X**					**X**
$100,000		**X**	**X**		**X**				**X**	**X**

1 For purposes of this table, "EEO" includes the following: EEO requirements under 40 CFR Part 33, Title VI, Section 504, Age Discrimination Act, and Section 13.

2 For purposes of this table, "FAAR" means the Federal Affirmative Action Regulations.

3 Architectural and Engineering Services for federal CWSRF and/or DWSRF grants and financing

SECTION 1 GUIDANCE FOR FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

I. Federal A/E Requirements

A. Types of Services

The types of services covered are contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or A/E services as defined in 40 U.S.C. 1102(2)(A-C) below:

(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;
(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

B. Applicability

A/E services must be procured pursuant to this guidance for such A/E services to be eligible for any Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) grant or financing.

C. Qualification Based Procurement

The requirements for qualification-based procurement are as follows:

1. Public announcement of the solicitation (e.g., a Request for Qualifications);
2. Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
3. Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
4. Selection of at least three firms considered to be the most highly qualified to provide the required services; and
5. Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

D. Compliance

Municipalities will be required to complete an EFC Certification for Architectural/Engineering Services Procurement for Federally Funded Projects. The Certification must be signed by an authorized representative of the municipality. It cannot be signed by a hired contractor or consultant.

The Certification for Architectural/Engineering Services Procurement for Federally Funded Projects and documentation evidencing completion of the procurement steps outlined above is required to be kept on file by the municipality and be made available for inspection upon EFC's request.

E. Amendments

Significant contractual amendments are subject to this requirement. Significant contractual amendments are amendments to existing contracts that have a value greater than $100,000 AND introduce a new scope of work or task.

II. Summary of A/E Procurement Forms

A. Forms to be Submitted

1. **Certification for Architectural/Engineering Services Procurement**
To be submitted by the Recipient with executed agreement for reimbursement of funds.

SECTION 2 GUIDANCE FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

I. Equal Employment Opportunities (EEO)

A. EEO Poster

Applicable to all construction Contracts

Attachment 1, *EEO Poster*, is the notice provided by the United States Department of Labor. Contractor must identify the employee responsible for EEO compliance in the designated area, as required by 40 CFR § 7.95. A copy of the EEO poster can be found at: https://www.eeoc.gov/sites/default/files/2023-06/22-088_EEOC_KnowYourRights6.12ScreenRdr.pdf

B. EEO Goals

Applicable to construction Contracts greater than $10,000

Pursuant to 41 CFR Part 60-4, the United States Department of Labor has established EEO goals for the employment of minorities and women. Goals for Contractors on federal and designated federal assistance projects for minorities and females are established as a percentage participation rate. These goals are applicable to all of a Contractor's construction work sites (whether or not these sites are also the result of a federal Contract or are federally assisted). The goals are applicable to each nonexempt Contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a federal, federally assisted or non-federally related project Contract or Subcontract. Contractors should apply to each work site the goal for the geographical area that each particular work site is located in.

II. Good Faith Efforts and Fair Share Objectives for DBEs

A. Fair Share Objectives

The Terms & Conditions Section 2(III)(A) provide the applicable Fair Share Objectives for the contract. DBE fair share objectives for a contract will be based on the fair share objectives in place at the time of the execution date of each respective contract, unless otherwise specified. Please contact the MBO if you have any questions about the applicable DBE fair share objectives for your contract.

B. Good Faith Efforts

The Contractor must make good faith efforts to develop an adequate DBE Utilization Plan and must continue such good faith efforts in order to try to meet or exceed applicable DBE fair share objectives. The Contractor shall maintain documentation of good faith efforts to solicit participation of DBE firms for identified SRF-funded Equivalency projects. If a Contractor is unable to meet contract DBE fair share objectives, documentation of such good faith efforts must accompany the Utilization Plan. See Terms & Conditions Section 2(III)(D). The Contractor should also continue good faith efforts to seek opportunities for DBE participation during the life of the contract even if proposed fair share objectives have been achieved.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract, such as a copy of the schedule of values from the bid submission, and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with, or obtaining supplies or services from, DBEs.
- Printed screenshots of the applicable directory for DBEs that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation (e.g., faxes and emails) that the Contractor offered relevant plans, specifications, or other related materials to DBE firms to participate in the work, with the responses.
- A log prepared by the Contractor in a sortable spreadsheet documenting the Contractor's solicitation of DBEs for participation as Subcontractors or Suppliers. The log should consist of the list of DBE firms solicited, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email), the date of the solicitation, and the outcome.
  See a sample log at https://efc.ny.gov/mwbe-forms
  If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first, e.g. email followed by phone call, and entered in additional columns on the log.
- Any bids or quotes received from non-DBE firms that were more competitive than a bid or quote from DBEs, along with the DBE's bid or quote for comparison.
- Copies of any advertisements of at least 30 days to effectively seek participation of certified DBEs timely published in appropriate general circulation, trade and DBE oriented publications, together with listing and dates of publication of such advertisements. A log should be kept of the responses to the ads, similar to the log for DBE firm solicitation and should include the non-DBE firms that responded and the bid prices.
- Documents demonstrating that insufficient DBEs are reasonably available to perform the work.
- The date of pre-bid, pre-award, or other public meetings scheduled by the Recipient, if any, and the contact information of any DBEs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for DBE participation in their work. For instance, Prime Contractors and MBOs should develop a list of DBE firms that have expressed interest in working on SRF-funded projects.

C. DBE Utilization Plan
Applicable to construction Contracts greater than $100,000 and Non-Construction Provider Contracts greater than $25,000

1. The DBE Utilization Plan must be submitted to the MBO after the bid opening, but in no case later then the execution date of the contract.

2. The MBO will evaluate the completed DBE Utilization Plan and the good faith effort documentation. When the MBO finds the Utilization Plan sufficient, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan or good faith effort insufficient, the Contractor should work with the MBO to address deficiencies before the MBO submits to EFC for final review.

3. In coordination with the MBO, EFC will accept a DBE Utilization Plan upon consideration of many factors, including the following:
   a. The DBE Utilization Plan indicates that the proposed fair share objectives for the project will be achieved;
      i. A Contractor, who is a certified DBE, will be credited for up to 100% of their certification but should deduct any subcontracting by non-DBE subcontractors from their own DBE credit; and,
   b. Submittal of adequate documentation to demonstrate good faith efforts and/or support a specialty equipment/services exclusion as described below in Section III(E).

4. EFC reserves the right to request additional information and/or documentation to support the adequacy of the Utilization Plan.

D. Eligibility for DBE Participation Credit

1. To receive DBE participation credit, Contractors or Subcontractors performing work that have been identified in an approved DBE Utilization Plan must be certified DBEs pursuant to 40 CFR Part 33 by an authorized certifying entity such as the Small Business Administration (SBA).

2. Prime Contractors may also include second tier Subcontractors (Subcontractors hired by Subcontractors) on their Utilization Plan.

3. Participation of Brokers and Truckers/Haulers
   a. Contractors cannot count the participation of a DBE who acts as a Broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE’s prime Contract or Subcontract is subcontracted to a non–DBE, the DBE prime contractor or subcontractor will be presumed to be a Broker.
   b. Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a “commercially useful function,” according to the following factors:
      i. The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
      ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

E. Submission of Good Faith Effort Documentation
Applicable to construction Contracts greater than $100,000 and Non-Construction Provider Contracts greater than $25,000

1. If the Contractor’s application of good faith efforts does not result in the utilization of DBE firms to achieve the aforementioned fair share objectives or a specialty equipment/service exclusion is requested, the Contractor may attach appropriate documentation of good faith efforts as noted in Section III(B) above and submit same to the MBO. See also Terms & Conditions Section 2(III)(D).

2. The MBO will review each Utilization Plan that does not meet the fair share objectives based on the good faith effort criteria presented above and the documentation

submitted with the Utilization Plan. When the MBO deems the documentation acceptable, the MBO will submit the documentation to EFC for final review.

3. The Contractor may request a specialty equipment/service exclusion from the MBO in cases where:
   a. equipment is made by only one non-DBE manufacturer,
   b. the technical specifications call for equipment that is not available through a DBE Supplier;
   c. the equipment is constructed on site by specially trained non-DBE labor;
   d. the service is not available through a DBE (such as work done by Consolidated Edison);
   e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
   f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no DBE firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract amount to determine the DBE Eligible Amount and the fair share objectives will be applied to the DBE Eligible Amount. This determination is made at the discretion of EFC.

Example:
$2,000,000 - $500,000 = $1,500,000
Total Contract Value - Specialty equipment/service = DBE Eligible Amount
The DBE fair share objectives are applied to the DBE Eligible Amount.

A request for a specialty equipment/service deduction can be indicated on the Utilization Plan form and submitted to the MBO. The request must include: a copy of the page from the contract where the equipment or service is described; an email or screenshot of the manufacturer's website showing the manufacturer's representatives (if manufactured item); a DBE search result for the representative; and documentation of the cost of each item. Additional documentation may be requested by the MBO or EFC.

III. Subcontractor's Responsibilities

A. Subcontractors should:
1. Maintain their DBE certifications and notify the Contractor and MBO of any change in their certification status.
2. Notify the Contractor of any DBE Subcontractors they hire so they may be included on the Contractor's Utilization Plan as a second-tier subcontractor.
3. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
4. Maintain business records that should include, but not be limited to, contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
5. Ensure that required EFC Terms & Conditions are included in each Subcontract.
6. Notify the MBO and EFC when contract problems arise, such as non-payment for services or when the Subcontractor is not employed as described in the DBE Utilization Plan.

IV. Summary of DBE and EEO Forms

A. Forms to be Submitted Prior to Contract Execution

1. **DBE Utilization Plan**
   Applicable to construction Contracts greater than $100,000 and Non-Construction Provider Contracts greater than $25,000

To be submitted by the Contractor to the MBO with the bid documentation, but in no case later than the award date of the contract.

B. Forms to be Submitted During the Term of the Contract

1. **EEO-1 Report**
   Applicable to all construction Contracts

   To be reported in the online filing system by the Contractor and Subcontractor, as applicable, annually during the term of the Contract or Subcontract. The reporting period is typically May – July. When the data collection period is open, the filing system can be accessed on this website: https://eeocdata.org/eeo1/signin and the instruction booklet can be obtained from this website: https://eeocdata.org/EEO1/home/index. See Terms & Conditions Section 2(II).

2. **Good Faith Effort Documentation**
   Applicable to construction Contracts greater than $100,000 and Non-Construction Provider Contracts greater than $25,000

   To be submitted by the Contractor to the MBO if the Contractor's good faith efforts do not result in obtaining DBE participation that meets the fair share objectives. The DBE Utilization Plan form contains a list of the required documentation.

3. **Quarterly Report**
   Applicable to construction Contracts greater than $100,000 and Non-Construction Provider Contracts greater than $25,000

   To be submitted by the Contractor to the MBO by the fifteenth business day following the end of each calendar quarter over the term of the Contract. This form is emailed to the MBO by EFC prior to the end of the quarter and will then be passed on to the Contractor. The Contractor must complete the form and email the completed form to the MBO.

V. Protests/Complaints

Contractors or Subcontractors who have any concerns, issues, or complaints regarding the implementation of EFC's DBE & EEO Program or wish to protest should do so in writing to the MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate, if warranted, and determine whether action is required. If the Contractor or Subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

VI. Waste, Fraud, and Abuse

Subcontractors, Contractors, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the DBE & EEO Program should notify the MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the USEPA – Office of Inspector General Hotline at (888) 546-8740, or the New York State Office of Inspector General at (800) 367-4448.

A. Waste, Fraud, and Abuse Poster
   Applicable to all construction Contracts

   Attachment 12, *Waste Fraud and Abuse Poster*, is the notice provided by the USEPA – Office of Inspector General. A copy of the poster can be found at: https://www.epa.gov/system/files/documents/2022-08/2022_HOTLINEPOSTER_crc_85x11_aug2022.pdf

SECTION 3 GUIDANCE FOR BUILD AMERICA, BUY AMERICA (BABA) ACT AND AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

The requirements of this section apply to all Contracts and Subcontracts.

The Build America, Buy America Act was signed into law in 2021 creating a BABA requirement that expands upon and is broader in scope than the AIS requirement. BABA applies to iron, steel, manufactured products and construction materials on all DWSRF and CWSRF Equivalency projects, whereas the AIS requirement applies to only iron and steel products on projects waived for BABA and Treatment Works projects funded with DWSRF or CWSRF. BABA and AIS will not apply to individual projects at the same time. Accordingly, all DWSRF or CWSRF Equivalency Contracts and Subcontracts are subject to the BABA requirement, unless an EPA waiver applies or can be obtained. If a BABA EPA waiver applies or is obtained, then the AIS requirement applies, unless an AIS EPA waiver is separately obtained.

I. BABA Requirements

If a Recipient uses CWSRF and DWSRF financial assistance to fund all or a part of the construction, alteration, maintenance or repair a public water system or Treatment Works, then all the iron, steel, manufactured products, and construction materials incorporated in the project must be produced in the United States.

Please consult Subsection II below for AIS requirements associated with iron and steel products.

Manufactured products must be manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR § 184.2(a). The costs of components of a manufactured product are determined according to 2 CFR § 184.5. A letter from the manufacturer must be provided certifying compliance with BABA. At a minimum, the letter must (1) be on company letterhead and signed by a company representative; (2) reference the project; (3) contain a list of products used in the final manufactured product; (4) include the City and State where the final manufacturing takes place; (5) reference BABA; and (6) include statement that the product "meets the 55% component test" for manufactured products.

Construction materials must have all manufacturing processes for the construction material occur in the United States. Some examples of construction materials are non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood and drywall. Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material. Produced in the United States is defined as followed for the materials listed below.

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the

United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

A. BABA Project Waivers

The EPA may waive the BABA requirement for a project if:

1. applying the requirement would be inconsistent with the public interest;
2. types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall infrastructure project by more than 25 percent.

A request for a waiver must include adequate information for EPA's evaluation of the request, including:

1. Waiver type (nonavailability, unreasonable cost, or public interest)
2. Recipient name and Unique Entity Identifier (UEI)
3. Financial Assistance listing name and number
4. Total cost of expenditures, including Federal and non-Federal funds
5. Infrastructure project description and location
6. List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each
7. A certification that the Recipient made a good faith effort to solicit bids for domestic products supported by terms in RFPs, contracts and nonproprietary communications with the prime contractor.
8. A statement of waiver justification, including a description of efforts made by the Recipient in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation
9. Anticipated impact if no waiver is issued
10. Any relevant comments received through the public comment period

Recipients may request waivers from EPA if the recipient reasonably believes a waiver is justified. Requests for BABA waivers must be submitted through the Recipient to EFC for Clean Water or DOH for Drinking Water projects on form OMB Control No. 0505-0028 Build America Buy America Waiver Request Data Collection. Upon review, EFC/DOH will submit BABA waiver requests to EPA. When EPA receives a request for a waiver, EPA will submit to OMB Made in America Office (MIAO) and publish the request and any accompanying material on the MIAO official public Internet site, allowing public input on the request for a period of not less than 15 calendar days before granting or denying the waiver request. The form is available for use on EFC's website under Forms & Guidance: https://efc.ny.gov/american-iron-and-steel-and-build-america-buy-america-guidance.

Additionally, OMB MIAO has the authority to issue waivers that are national in scope. National waivers may be for specific products or in the public's interest.

B. Adjustment Period Waiver
The Adjustment Period Waiver is noteworthy as it waives the BABA requirements for DWSRF and CWSRF projects that initiated project design planning prior to May 14, 2022. Any listed projects subject to the adjustment period waiver will be notified in writing from EFC/DOH.

C. De Minimis Waiver
The De Minimis General Applicability Waiver, "De Minimis" permits the use of miscellaneous materials subject to BABA as long as the funds used for the de minimis incidental components cumulatively comprise no more than 5% of the total project cost. Items covered by de minimis are miscellaneous in character and often low-cost and bought in bulk. This waiver is not additive with the existing American Iron and Steel national de minimis waiver. An AIS and BABA Compliance and De Minimis Worksheet is available for use on EFC's website under Forms & Guidance: https://efc.ny.gov/american-iron-and-steel-and-build-america-buy-america-guidance.

D. Small Project Waiver
The small project waiver permits a municipality with a project in an assistance agreement with EFC totaling less than $250,000 to be waived from the BABA requirements.

OMB continues to adopt additional waivers and issue further guidance on waivers. Additional information on waivers can be found at EPA's website at: https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers. All waivers will be posted on the OMB MIAO website at https://www.madeinamerica.gov.

Additional information and guidance about the BABA requirement can be found at EPA's website: https://www.epa.gov/cwsrf/build-america-buy-america-baba#rfi.

II. AIS Requirements

If a Recipient uses CWSRF or DWSRF financial assistance to fund all or a part of the construction, alteration, maintenance or repair a public water system or Treatment Works, the Recipient must use iron and steel products that are produced in the United States for the entire project.

The term "iron and steel products" means the following permanently installed products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, or construction materials. For one of the listed products to be considered subject to the AIS requirement, it must be made of greater than 50% iron and steel, measured by material cost (with the exception of reinforced precast concrete products).

The term "produced in the United States" means that all manufacturing processes of the iron or steel, including application of coatings, take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

The EPA may waive the AIS requirement for a Treatment Works project if:

1. applying the requirement would be inconsistent with the public interest;
2. iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

A request for a waiver to use foreign iron or steel products must include adequate information for EPA's evaluation of the request, including:

1. A description of the foreign and domestic iron, steel, and/or manufactured goods;
2. Unit of measure;
3. Quantity;
4. Cost;
5. Time of delivery or availability;
6. Location of the project;
7. Name and address of the proposed Supplier; and,
8. A detailed justification for use of foreign iron or steel products, including potential impact to the overall project schedule.

EPA can assist with material availability research prior to a waiver request. Requests for EPA assistance must be submitted through EFC for Clean Water and DOH for Drinking Water projects. EFC/DOH will request any necessary supporting documentation and submit to EPA for feedback.

Requests for AIS waivers must be submitted to EFC/DOH. Upon review, EFC/DOH will submit AIS waiver requests to EPA. When EPA receives a request for a waiver, EPA will publish the request and any accompanying material on EPA's official public Internet site, allowing informal public input on the request for at least 15 days before granting or denying the waiver request.

Additionally, EPA has the authority to issue waivers that are national in scope. National waivers may be for specific products or in the public's interest. These waivers can be found at EPA's website at: https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-approved-national-waivers-0

The "De Minimis Waiver" permits the use of iron and steel products when they occur in de minimis incidental components of DWSRF or CWSRF projects, as long as:

1. the funds used for the de minimis incidental components cumulatively comprise no more than 5% of the total cost of the materials used in a project; and,
2. the cost of an individual item does not exceed 1% of the total cost of the materials used in the project.

Items covered by the de minimis waiver are:

1. essential, but incidental to the construction;
2. incorporated into the physical structure of the project; and,
3. often low-cost and bought in bulk.

Examples of "de minimis" items include: washers, screws, nuts, bolts, fasteners, miscellaneous wire, corner bead, ancillary tubing, etc.

Examples of items that are NOT incidental and therefore are not considered "de minimis" include: process fittings, tees, elbows, flanges, brackets, valves, sewer or water pipes for distribution, treatment or storage tanks, large structural support systems, etc.

To use the de minimis waiver, Contractors should prepare a record in spreadsheet form that tracks the cost of all materials incorporated into the project. This spreadsheet can be either project specific or contract specific. If it is contract specific, a material tracking record for each construction contract should be prepared and items that are subject to the AIS de minimis waiver should be highlighted. There should be a clear calculation available to indicate that the cost of the de minimis iron and steel items is 5% or less of the total cost of all materials. An AIS and BABA Compliance and De Minimis Worksheet is available for use on EFC's website under Forms & Guidance: https://efc.ny.gov/american-iron-and-steel-and-build-america-buy-america-guidance.

Additional information, guidance and Questions and Answers about the State Revolving Fund American Iron and Steel (AIS) requirement can be found at EPA's website: https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement

SECTION 4 GUIDANCE FOR DAVIS BACON (DB) PREVAILING WAGE REQUIREMENTS

The requirements of this section apply to all construction Contracts and Subcontracts greater than $2,000 for either DWSRF projects or CWSRF Treatment Works projects.

I. Davis-Bacon Act

The Davis-Bacon Act requires Contractors and Subcontractors performing construction, alteration and repair work under Contracts in excess of $2,000 funded from SRF monies, to pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location.

A. Requirements for Recipients.

This guidance describes how Recipients assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Water Resources Reform and Development Act of 2014 (WRRDA) with respect to State Recipients and Recipients. Recipients, Service Providers or Contractors with questions about when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring should contact the State Recipient. Recipients can also obtain guidance from DOL's web site at http://www.dol.gov/whd/

1. Applicability of the DB prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of Treatment Works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with the State Recipient before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Recipients must obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. If multiple construction types apply on separate wage determinations, each applicable wage determination must be incorporated. These wage determinations must be incorporated into solicitations and any subsequent Contracts. Prime Contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime Contract.

(i) While the solicitation remains open, the Recipient must monitor https://sam.gov/content/wage-determinations weekly to ensure that the wage determination contained in the solicitation remains current. Recipients must amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipient may request a finding from the State Recipient that there is not a reasonable time to notify interested Contractors of the modification of the wage determination. The State Recipient will provide a report of its findings to the Recipient.

(ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersessions DOL makes to the wage determination contained in the solicitation shall be effective unless the State Recipient, at the request of the Recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor https://sam.gov/content/wage-determinations on a weekly basis if it does not award the Contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the Recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Recipient must insert the appropriate DOL wage determination from https://sam.gov/content/wage-determinations into the ordering instrument.

(c) Recipient must update wage determinations after contract award when the contract or order is changed to include additional, substantial construction[4] either

(i) not within the scope of the work, or when the contract or

(ii) the order is changed to require the Contractor to perform work for an additional time period not originally obligated, including when an option is exercised on a contract or order.

The Recipient must include the most recent revision of any wage determination(s) at the time the contract is changed, or the option is exercised.

(d) Recipients must review all Subcontracts subject to DB entered into by prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's Contract after the award of a Contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the Contract or ordering instrument. If this occurs, the Recipient must either terminate the Contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the Contract or ordering instrument by change order. The Recipient's Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

B. Compliance Verification

(a) The Recipient must periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that Contractors or Subcontractors are paying the appropriate wage rates. All interviews must be

[4] When the cost of construction exceeds either $2,500,000 or 20% of total project costs.

conducted in confidence. The Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The Recipient must establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the Contract or Subcontract. Recipients must increase the frequency of the interviews if the initial interviews or other information indicates that there is a risk that the Contractor or Subcontractor is not complying with DB. Recipients must immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews must be conducted in confidence.

(c) The Recipient must periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or Subcontractors are paying the appropriate wage rates. The Recipient must establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the Contract or Subcontract. At a minimum, the Recipient must spot check payroll data within two weeks of each Contractor or Subcontractor's submission of its initial payroll data and two weeks prior to the completion date the Contract or Subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the Contractor or Subcontractor is not complying with DB. In addition, during the examinations the Recipient must verify evidence of fringe benefit plans and payments thereunder by Contractors and Subcontractors who claim credit for fringe benefit contributions.

(d) The Recipient must periodically review Contractors' and Subcontractors' use of apprentices to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that Contractors and Subcontractors are not using disproportionate numbers of laborers and apprentices. These reviews must be conducted in accordance with the schedules for spot checks and interviews described in Item (b) and (c) immediately above.

(e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at https://www.dol.gov/agencies/whd/contact/complaints.

II. Applicable State and Local Labor Standards

A. Contractors and Subcontractors working under a public works contract subject to DB may also be subject to additional labor standards, including but not limited to prevailing wage requirements, under State and local laws. When preparing the bid for SRF project, the Contractor, and any Subcontractors, must use the higher of the prevailing federal, state, or applicable local wage rates paid to each trade.

III. Responsibilities of Contractors and Subcontractors

A. After execution of any SRF eligible Contracts, the Contractor and Subcontractor have the following responsibilities:

1. Display the Davis Bacon Wage Poster and applicable federal, state, and local wages in a visible area at the construction site. This poster may be found on the EFC website (Attachment 10)at https://nysefc.app.box.com/s/d6sys8owtgzv4ndqjvqvpwr0htp20l9s.
2. Make your employees available for wage interviews if necessary. Wage interviews must be conducted confidentially and using Labor Standard Interview Form (SF-1445),

included in Attachment 11.

3. Use federal payroll form WH-347 and complete the certifications on the back. If another form is being used, inform the Recipient and obtain a determination that the form is equivalent to the federal form. (Refer to the attached required forms)
4. Pay the higher of applicable prevailing federal, state, or local wages, including benefits (fringe & holidays), to each trade and overtime not less than one and one-half times the basic rate of pay for hours in excess of forty hours on Contracts in excess of $100,000. The wage rates apply to Subcontractor trades as well.
5. Maintain proof of apprentice and trainee ratios for both Contractor and Subcontractor and certifications onsite.
6. Pay wages to your employees and your Subcontractors on a weekly basis. Ensure that your Subcontractors are paying their employees weekly.
7. Ensure that the Subcontracts contain the Davis Bacon contract language, the applicable federal, state, or local wage determinations and equal employment opportunity language. This language is provided in the EFC Terms & Conditions. Federal wage determinations are available at https://sam.gov/content/wage-determinations.
8. Provide payroll forms and apprentice and trainee certifications to the Recipient for their records.
9. Report potential waste, fraud and abuse violations to the EPA Davis Bacon Contact and DOL Wages and Hours District Office found on their website. https://sam.gov/.

B. Any violations in payroll reporting or unpaid wages are subject to a daily monetary penalty.

SECTION 5 GUIDANCE FOR REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

The requirements of this section apply to all Contracts and Subcontracts.

Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the following lists:

- A list of debarred and suspended contractors, pursuant to 2 CFR Parts 180 and 1532, 29 CFR § 5.12, and Executive Order 12549 is available on the US Department of Labor’s website at www.sam.gov/SAM.

- A list of contractors and subcontractors deemed ineligible to submit a bid on or be awarded a public contract or subcontract, pursuant to Article 8 of the State Labor Law, is available on the New York State Department of Labor’s website at http://labor.ny.gov/workerprotection/publicwork/PDFs/debarred.pdf

- A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development’s Division of Minority and Women's Business Development.

SECTION 6 GUIDANCE FOR RESTRICTIONS ON LOBBYING

The requirements of this section apply to all Contracts and Subcontracts greater than $100,000.

With their bid or proposal submittal, each Contractor and any Subcontractor that has a Contract or Subcontract exceeding $100,000 shall provide to the Recipient a completed Certification Regarding Lobbying pursuant to 40 CFR Part 34 (“Lobbying Certification”) on Attachment 3 consistent with the prescribed form provided in Appendix A to 40 CFR Part 34. The form provides a certification that the Contractor or Subcontractor will not expend appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in accordance with the provisions of

40 CFR Part 34, and to maintain such certification for their own records.

SECTION 7 GUIDANCE ON PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The requirements of this section apply to all Contracts and Subcontracts.

Effective August 13, 2020, Recipients of SRF funding must comply with regulations at 2 CFR 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of Public Law 115-232. The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use "covered telecommunications equipment or services" identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that "uses any equipment, system, or service that uses covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list.

There is no exhaustive list of components and services that fall under the prohibition. Contractors should exercise due diligence and be particularly mindful of procuring and installing project components with internet or cellular connections. Examples of common video and telecommunications equipment include, automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse Recipients for these costs.

SECTION 8 GUIDANCE FOR CONSTRUCTION SIGNS

The requirements of this section apply to all EFC projects. Additional permanent signage is required for projects receiving funding from the NYS Bond Act.

All projects are expected to post a construction sign, the Recipient may determine the party required to provide and install the sign. Sample construction sign specifications can be found at www.efc.ny.gov for standard signage, as applicable. Permanent signage for projects receiving funding from the NYS Bond Act is available upon request, as applicable.

SECTION 9 SUMMARY OF CONTRACTOR REQUIREMENTS FOR SRF-FUNDED EQUIVALENCY PROJECTS

Forms can be found as attachments to this document or online at www.efc.ny.gov

Forms should be submitted electronically via email or through EFC's dropbox

To be submitted with this bid:	Guidance Section
☐ Lobbying Certification	Section 6
☐ BABA Contractor's Certification	Section 3
☐ AIS Contractor's Certification	Section 3

To be submitted prior to or upon Contract award:	
☐ Executed Contracts, Subcontracts, agreements, and purchase orders	
☐ Utilization Plan and/or Good Faith Effort Documentation	Section 2

Tasks for construction start:	
☐ Ensure that all Subcontracts contain correct Required EFC Terms & Conditions	
☐ Display EEO Poster	Section 2
☐ Display Waste, Fraud and Abuse Poster	Section 2
☐ Ensure Construction Sign is Posted	Section 8
☐ Pay the higher of prevailing federal, state, or local wages including benefits	Section 4
☐ Display Davis Bacon Wage Poster AND Federal Wage Rates	Section 4
☐ Use Federal Payroll Form (WH-347) or equivalent	Section 4
☐ Obtain apprentice certifications	Section 4
☐ Obtain BABA or AIS Manufacturer's Certs for all applicable products	Section 3

Ongoing documentation & tasks:	
☐ Submit EEO-1 Report, online	Section 2
☐ Submit Quarterly Reports to MBO	Section 2
☐ Maintain weekly certified payrolls for all Prime & Subcontractors	Section 4
☐ Maintain proof of payments for DBE Subcontractors	Section 2
☐ Maintain BABA or AIS Manufacturer's Certifications	Section 3

ATTACHMENTS (Required Forms)

Attachment 1 – EEO Poster

Know Your Rights:
Workplace Discrimination is Illegal

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

Who is Protected?

- Employees (current and former), including managers and temporary employees
- Job applicants
- Union members and applicants for membership in a union

What Types of Employment Discrimination are Illegal?

Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the bases of:

- Race
- Color
- Religion
- National origin
- Sex (including pregnancy, childbirth, and related medical conditions, sexual orientation, or gender identity)
- Age (40 and older)
- Disability
- Genetic information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)
- Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding
- Interference, coercion, or threats related to exercising rights regarding disability discrimination or pregnancy accommodation

What Organizations are Covered?

- Most private employers
- State and local governments (as employers)
- Educational institutions (as employers)
- Unions
- Staffing agencies

What Employment Practices can be Challenged as Discriminatory?

All aspects of employment, including:

- Discharge, firing, or lay-off
- Harassment (including unwelcome verbal or physical conduct)
- Hiring or promotion
- Assignment
- Pay (unequal wages or compensation)
- Failure to provide reasonable accommodation for a disability; pregnancy, childbirth, or related medical condition; or a sincerely-held religious belief, observance or practice
- Benefits
- Job training
- Classification
- Referral
- Obtaining or disclosing genetic information of employees
- Requesting or disclosing medical information of employees
- Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, or participating in an investigation or proceeding
- Conduct that coerces, intimidates, threatens, or interferes with someone exercising their rights, or someone assisting or encouraging someone else to exercise rights, regarding disability discrimination (including accommodation) or pregnancy accommodation

What can You Do if You Believe Discrimination has Occurred?

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

Submit an inquiry through the EEOC's public portal: *https://publicportal.eeoc.gov/Portal/Login.aspx*

Call 1–800–669–4000 (toll free)
1–800–669–6820 (TTY)
1–844–234–5122 (ASL video phone)

Visit an EEOC field office (information at *www.eeoc.gov/field-office*)

E-Mail *info@eeoc.gov*

Additional information about the EEOC, including information about filing a charge of discrimination, is available at *www.eeoc.gov*.

EMPLOYERS HOLDING FEDERAL CONTRACTS OR SUBCONTRACTS

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces the nondiscrimination and affirmative action commitments of companies doing business with the Federal Government. If you are applying for a job with, or are an employee of, a company with a Federal contract or subcontract, you are protected under Federal law from discrimination on the following bases:

Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, National Origin

Executive Order 11246, as amended, prohibits employment discrimination by Federal contractors based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

Asking About, Disclosing, or Discussing Pay

Executive Order 11246, as amended, protects applicants and employees of Federal contractors from discrimination based on inquiring about, disclosing, or discussing their compensation or the compensation of other applicants or employees.

Disability

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals with disabilities from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment by Federal contractors. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship to the employer. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

Protected Veteran Status

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits employment discrimination against, and requires affirmative action to recruit, employ, and advance in employment, disabled veterans, recently separated veterans (i.e., within three years of discharge or release from active duty), active duty wartime or campaign badge veterans, or Armed Forces service medal veterans.

Retaliation

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination by Federal contractors under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under OFCCP's authorities should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP)
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
1–800–397–6251 (toll-free)

If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services. OFCCP may also be contacted by submitting a question online to OFCCP's Help Desk at *https://ofccphelpdesk.dol.gov/s/*, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor and on OFCCP's "Contact Us" webpage at *https://www.dol.gov/agencies/ofccp/contact.*

PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Race, Color, National Origin, Sex

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

Individuals with Disabilities

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

(Revised 6/27/2023)

Attachment 2 – EFC DBE Utilization Plan

Environmental Facilities Corporation | Department of Health

NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. Submit the completed signed (electronic signature box checked and dated) form to the Recipient's Minority Business Officer (MBO) no later than the date of contract execution. Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be obtained from EFC.

If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified DBE, please contact EFC for assistance.

DBEs on this form may include disadvantaged firms certified by the New York State Unified Certification Program (NYSUCP), and disadvantaged firms certified by the Small Business Administration. In addition, the participation of DBEs will be credited according to the following requirements:

- Contractors cannot count the participation of a DBE who acts as a broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE's prime contract or subcontract is subcontracted to a non–DBE, the DBE prime contractor or subcontractor will be presumed to be a broker.
- Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a "commercially useful function," according to the following factors:
  - The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
  - The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

See the Mandatory Equivalency Terms and Conditions or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

If the Utilization Plan will not meet or exceed the DBE fair share objective, then the good faith effort documentation noted in Section 4 must be submitted with this form.

NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan

SECTION 1: MUNICIPAL INFORMATION					
Recipient/Municipality:		**County:**			
Project No.:		**Contract ID:**		**Registration No. (NYC only):**	
Minority Business Officer:		**Email:**		**Phone #:**	
Address of MBO:					
Electronic Signature of MBO: ☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.				**Date:**	

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION					
Firm Name:		**Contract Type:** ☐ Construction ☐ Other Services			
Is the Prime Firm certified as a DBE? ☐ Yes ☐ No If yes, please include Prime information in Section 3.					
Address:		**Phone #:**		**Fed. Employer ID #:**	
Description of Work:		**Email:**			
Award Date:	**Start Date:**	**Completion Date:**		**DBE Fair Share Objective**	**PROPOSED DBE Participation**
Total Contract Amount: $ **DBE Eligible Contract Amount: $** (DBE Fair Share Objectives are applied to this amount and includes all change orders, amendments, & specialty waivers)				**Total: 20**% $	**Total:** % $
If fair share objectives are not met, documentation must be attached: ☐ No Participation ☐ Short of the DBE Fair Share Objective					
☐ **Specialty Equipment/Services:** must be of SIGNIFICANT cost – attach list of cost and type of equipment and good faith effort documentation					

NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan

SECTION 3: DBE SUBCONTRACTOR INFORMATION			
This Submittal is: ☐ The First/Original Utilization Plan ☐ Revised Utilization Plan #:			
DBE Subcontractor Information		**Contract Amount**	**For EFC Use:**
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			

NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan

SECTION 3: DBE SUBCONTRACTOR INFORMATION continued			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			
Business Name:	**Fed. Employer ID#:**		
Address:	**Phone #:**		
Scope of Work:	**Email:**		
Certifying Entity: ☐ DOT in State of ; or ☐ SBA ☐ Other (indicate entity):	**Start Date:** **Completion Date:**		
Full Contract Amount $			

SECTION 4: GOOD FAITH EFFORT DOCUMENTATION
Utilization Plans that do not meet the Fair Share Objective must be accompanied by the documentation requested in numbers 1 – 7, as listed below. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in number 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in number 13, as listed below. Please contact the MBO and/or EFC for assistance or to request sample documentation.

Provide the following:

1. A letter of explanation detailing the scope of work, DBE search results, and results of good faith efforts that were made.

2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.

3. Screenshots of search results (using commodity codes) from DBE Directories of all certified DBEs that were solicited for purposes of complying with your DBE fair share objective. Each search should be saved as an individual file.

4. A log of solicitation results, consisting of the list of DBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians). The log should show that each firm was contacted twice by two different methods (e.g., email and phone); who was spoken to; what was said; and the final outcome of the solicitation.

5. List of the general circulation, trade association, and DBE oriented publications and dates of publication soliciting for certified DBE participation as a subcontractor/supplier and copies of such solicitations.

6. Description of the negotiations between the contractor and certified DBEs for the purposes of complying with the DBE goals of this contract.

7. Any other information deemed relevant to the request.

EFC and the MBO reserve the right to request additional information and/or documentation.

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no DBE firms could be utilized to provide the equipment.

9. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.

10. Letter, email, or screenshot of website from the manufacturer listing their distributors in NYS and the locations.

11. Screenshots of DBE Directory searches for the equipment or service showing that it is not found in the Directory.

12. An invoice or executed purchase order showing the value of the equipment.

NYS Environmental Facilities Corporation
Disadvantaged Business Enterprise (DBE) Utilization Plan

Documentation for Requests for Specialty Service Exclusions:

13. A letter of explanation containing information about the scope of work and why no DBE firms could be subcontracted to provide that service.

SIGNATURE	
Electronic Signature of Contractor: ☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all DBE subcontractors will participate in subcontracts in accordance with the requirements of 40 CFR Part 33. **Name** (Please Type)**:**	**Date:**

Attachment 3 – Lobbying Certification

NEW YORK STATE

Environmental Facilities Corporation | Department of Health

CERTIFICATION REGARDING LOBBYING
FOR
CONTRACTS, GRANTS, LOANS, AND
COOPERATIVE AGREEMENTS
40 CFR Part 34

SRF Project No.:	
Recipient:	
Project Description:	

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature:	
Name:	
Title:	
Company Name:	
Date:	
Contract ID:	

Attachment 4 – BABA Contractor's Certification

Environmental Facilities Corporation | Department of Health

BABA CONTRACTOR CERTIFICATION

FOR CONSTRUCTION CONTRACTS PAID FOR WITH EQUIVALENCY FUNDS THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR
THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: ______

Contractor's Name: ______

Contract ID: ______

SRF Project No.: ______

SRF Recipient Name: ______

I certify that all iron and steel, manufactured products and construction materials permanently incorporated into the project under this construction contract will be and/or have been produced in the United States or have been waived by the United States Environmental Protection Agency (EPA) and the Made in America Office, in accordance with the requirements of the EPA and Pub. L. No. 117-58 and any regulations promulgated thereunder. I will develop and maintain the necessary documentation to demonstrate that the applicable products permanently incorporated into the project were produced in the United States and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: ______

Name (print): ______

Title: ______

Date: ______

Attachment 5 – BABA Waiver Request Form

BUILD AMERICA BUY AMERICA WAIVER REQUEST DATA COLLECTION

This data collection is for submitting a waiver request to the Build America, Buy America requirements. According to the Build America Buy America Act (BABAA), "none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program[1], may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States."

Waivers are explained in the Office of Management and Budget Memorandum 22-11 and required by the Infrastructure, Investments and Jobs Act (IIJA) sections 70901 through 70952. Each waiver request must provide responses to the form questions, as applicable. Instructions are provided in the next paragraph. Recipient instructions can be found on pages 9 through 12 of this document. Contact your Federal Agency contact for your award or for additional assistance with completing this data collection.

Instructions: The applicant/recipient/subrecipient need to complete questions 1 through 16, sign and certify the form, and email/submit the waiver request to the Federal agency contact identified in your Federal award notification. The Federal agency will complete questions 1A through 11A. The Federal agency will review and determine to approve or not approve the waiver request.

If additional space is needed, see attachment instructions on page 8.

Required fields are marked with an asterisk (*)

Questions to be Answered by the Applicant, Recipient, or Subrecipient

1. Submitter Type: * ○ Applicant ○ Recipient ○ Subrecipient

2. Submitter Contact Information

Legal Name *		Unique Entity Identifier (UEI) *
Address 1 *		
Address 2		
City *	County/Parish	State
Province	Country *	Zip/Postal Code *

3. Submitter First and Last Name*

4. Submitter Email *

5. Submitter Phone Number *

[1] See IIJA, § 70913(c) for description of the term "deficient program."

6. Describe the infrastructure project description and location, to the extent known. *

7. Total funding, including federal and non-federal shares: *

8. Total estimated infrastructure costs, including all federal and non-federal shares (to the extent known): *

9. Is this waiver for a specific product or a category of products? Check one below: *

a. ◯ Specific Product
b. ◯ Category of Products

10. Listing of Materials, Technical Specifications, and Quantity: *

List of iron or steel items, manufactured products, and construction materials proposed to be excepted from BABAA requirements, including name, cost, countries of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code for each. List each item separately. List the name of the product, how much the product costs, in U.S. dollars, the country or countries of origin, if known, and the relevant PSC and NAICS for each product. Links to manuals that provide the PSC and NIACS codes:

- PSC Codes: https://www.acquisition.gov/psc-manual
- NAICS Codes: https://www.census.gov/naics/

10.1 Technical specification descriptions of items to be waived, if applicable.

10.2 Quantity required:

11. Waiver Type *

Choose one of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type.

- **Nonavailability waivers:** Complete questions 11.1.1, and 11.1.2.
- **Unreasonable Cost waivers:** Complete questions 11.2.1, 11.2.2, and 11.2.3.
- **Public Interest waivers:** Complete question 11.3.

11.1 ☐ Nonavailability Waiver

Applicable responses to the following are required:

11.1.1 A description of the due diligence performed by the applicant, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.

11.1.2 If one or more respondent indicated that they could provide a Build America Buy America (BABA) compliant item, but you are requesting the non-availability waiver because the lead time to obtain the BABA compliant item is excessive, indicate below how the difference in lead time between a BABA compliant and non-compliant item is going to cause the project to miss a significant milestone or deadline.

11.2 ☐ **Unreasonable Cost Waiver** (BABA compliance increases total project cost by more than 25 percent)

Applicable responses to the following are required:

11.2.1 What is the additional cost of the BABA compliant items, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin? Attach documentation of prices for BABA compliant and non-compliant items for items to be included in the cost comparison. Attach an additional PDF file if needed. *(See page 8 for attachment instructions)*

11.2.2 What is the additional administrative cost for compliance with the BABA requirements? Attach a certification from the engineer or architect attesting to the actual or expected additional administrative cost. Attach an additional PDF file if needed. *(See page 8 for attachment instructions)*

11.2.3 The BABA requirements will be waived for individual items until the total additional cost of BABA compliance is less than 25 percent of the total project cost. Which items is the applicant requesting to be waived from the BABA requirements to reduce costs below the 25 percent cost threshold?

11.3 ☐ **Public Interest Waiver**

Explain how waiving the BABA requirement for this project or product serves the public interest.

12. Additional Waiver Information

Provide any additional information for the Agency's consideration of the requested waiver.

13. Anticipated Impacts *

Identify any anticipated impacts if no waiver is issued. Attach additional PDF pages if needed.
(See page 8 for attachment instructions)

14. Certifying Official Name: *

15. Certifying Official Signature: *

16. Date of Certification: *

Questions to be Answered by the Federal Agency

All fields are required and must be filled out.

If additional space is needed see attachment instructions on page 8.

Federal agency instructions can be found on pages 13 and 14 of this document.

1A. Federal Awarding Agency

2A. Federal Financial Assistance Program Listing Number

3A. Federal Financial Assistance Program Title

4A. Federal Awarding Agency Point of Contact

First Name	Last Name
Email	Phone

5A. FAIN and Federal Awarding Agency Organizational Information

Provide the Federal Award Identification Number (FAIN) (if available) and Federal Agency name, subcomponent name (if known), and the CGAC code (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code).

Enter the Federal Agency name, and subcomponent name, if known, and the CGAC code. USDA's CGAC code is 012. For example, an appropriate response would be U.S. Department of Agriculture, Forest Service, CGAC 012.

FAIN

Federal Agency name, and subcomponent name, if known, and the CGAC code

6A. Waiver Level

Select one of the four waiver levels:

◯ Project ◯ Award ◯ Program ◯ Agency

7A. Is this a general applicability waiver?

Yes ◯ No ◯

8A. Agency Summary and Determination

Provide an agency summary and determination regarding the waiver request.

9A. Agency Waiver

This response should be a narrative and include all necessary information to support the justification for a waiver. To avoid the need for a project-specific waiver, a justification may cite, if applicable, the absence of any BABA compliant bids received in response to a solicitation.
(See page 8 for attachment instructions).

10A. Public Comments

Provide any relevant comments received through the public comment period. This section is to be filled out after the waiver has been posted to the Agency's BABA Website. For example, the USDA website is found at https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.

11A. Waiver Timeline

Select the timeline you are requesting for the waiver of the BABAA domestic sourcing requirements.

◯ For the entire period of performance of the grant in which the infrastructure projects will occur.

OR

◯ For a limited time during the period of performance of the grant. We request a waiver of the identified BABAA domestic sourcing requirements from [ ] to [ ] date.

File Attachment Instructions

Attach PDF files if additional space is needed to answer any of the questions in this form. Indicate which questions the attachment addresses.

To attach a file, select the "Attach File" button to open the Attachment Panel in Adobe Reader or Acrobat.

Attach File

Drag and drop your attachments to the panel or select the "Add a New Attachment" button from the left Attachment panel in Adobe reader or Acrobat.
Please indicate which questions the attachments address by naming your file with the question number (i.e., Question 9A.pdf).

Recipient Instructions:

1. **Submitter Type:** Select a submitter type. Applicant, Recipient or Subrecipient.
2. **Submitter Contact Information:**
   - **Legal Name:** Required. Enter the legal name of the financial assistance award recipient that is seeking a waiver under the award. This is the organization that has registered with the System for Award Management (SAM). Information on registering with SAM may be obtained by visiting SAM.gov.
   - **UEI**: Required. Enter the organization's Unique Entity Identifier (UEI) received from SAM. The UEI is a unique 12 character organization identifier. Information on registering with System for Award Management (SAM.gov) may be obtained by visiting the Grants.gov website. If the entity is not required to register in SAM.gov, respond "Exempt from registration in SAM.gov."
   - **Address:** Required. Enter address: **Address 1** (required); **City** (required); **County/Parish, State** (required if country is US); **Province; Country** (required); **9-digit ZIP/Postal Code** (required if country is US). If +4 does not exist or it is unknown for the address, enter "0000".
3. **Submitter First and Last Name**: Provide the first and last name of the person submitting the waiver request.
4. **Submitter Email**: Enter the email of the person submitting the waiver request.
5. **Submitter Phone Number:** Enter the area code and phone number of the person submitting the waiver request. Include the area code, phone number and phone extension if applicable.
6. **Describe the infrastructure project description and location** (to the extent known). The location can be an address (street, city, state, country and postal code) or a description of an area, such as a roadway or tract of land. Global Positioning System (GPS) location information may also be used.
7. **Total Funding, including Federal and non-Federal shares**: Report the total funding amount for the award, in whole dollars. If the entity is contributing non-Federal funds, sometimes known as cost sharing or match, and add that to the Federal funding amount and report the sum of the two figures in the field.
8. **Total estimated infrastructure costs, including all Federal and non-Federal shares** (to the extent known)**:** List the portion of the total award amount that represents construction costs, including any Federal funding being used for this project. If the entity is contributing non-Federal funds, sometimes known as cost sharing or match, add that to the Federal funding amount and report the sum of the two figures in the field.
9. **Is this a waiver for a specific product or a category of products?** Check the box next to Specific Product or Category of products.

   Example:
   9a. **Product waiver:** 8-inch stainless steel valves
   9b. **Category of products**: all valves on the project.
10. **Listing of Materials, Technical Specifications, and Quantity**

    List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from BABAA requirements, including name, cost, country(ies) of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code for each. Please see the instructions below for listing the items. List the name of the product, how much the product costs, in U.S. Dollars, the country or countries of origin, if known, and the relevant PSC and NAICS for each product. Links to manuals that provide the PSC and NIACS codes can be found below.

10.1 **Technical specifications description of items to be waived, if applicable.** Provide the technical specifications for each of the items listed in question 10.

10.2 Quantity required: List the quantity required for each item listed in question 10.

- PSC Codes: https://www.acquisition.gov/psc-manual
- NAICS Codes: https://www.census.gov/naics/

List each item separately.

- "Manufactured Product": Items that consist of two or more of the listed construction materials below that have been combined together through a manufacturing process, and items that include at least one of the listed construction materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

- "Construction Materials" includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that is or consists primarily of:
  - non-ferrous metals;
  - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - glass (including optic glass);
  - lumber; or drywall.

11. Waiver type: Choose one of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type:

- **Nonavailability waivers:** Complete questions 11.1, 11.1.1, and 11.1.2.
- **Unreasonable Cost waiver**s: Complete questions 11.2, 11.2.1, 11.2.2, and 11.2.3.
- **Public Interest waivers:** Complete question 11.3.

Provide sufficient information related to the specific request.

11.1 **Nonavailability Waiver:** Check this box if seeking a Nonavailability waiver. By choosing this selection, this means you are unable to obtain American made iron, steel, manufactured products, or construction materials for an infrastructure project. You are requesting the Federal agency to waive the application of the Build America Buy America domestic preference. You must demonstrate market research, which may be accomplished with assistance from the Federal agency, and adequately considered qualified alternate items, products, or materials.

Applicable responses to the following are required:

11.1.1 A description of the due diligence performed by the applicant, engineer/architect, or contractor, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.

11.1.2 If one or more respondent indicated that they could provide a BABA compliant item, but you are requesting the non-availability waiver because the lead time to obtain the BABA compliant item is excessive, indicate below how the difference in lead time between a BABA compliant and non-compliant item is going to cause the project to miss a significant milestone or deadline.

11.2 Unreasonable Cost. (BABA compliance increases total project cost by more than 25 percent). This checkbox is chosen when the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the total project cost to the overall project by more than 25 percent. You are requesting the Federal agency to waive the application of the BABAA domestic preference. You must provide documentation to the Federal agency that no domestic alternatives are available within the cost parameter. This may be accomplished with assistance from the Federal agency.

Applicable responses to the following are required:

11.2.1 What is the additional cost of BABA compliant iron and steel, manufactured products, and construction materials, compared to items of non-domestic or unknown origin? Attach documentation of prices for BABA compliant and non-compliant items for items to be included in the cost comparison. Such documentation may include quotes from suppliers or bid tabulations from bid actions which solicited both BABA compliant and non-compliant products. Attach an additional PDF file if needed.

11.2.2 What is the additional administrative cost for compliance with the BABA requirements? Attach a certification from the engineer or architect attesting to the actual or expected additional administrative cost. Attach an additional PDF file if needed.

11.2.3 The BABAA allows for a waiver in cases where “the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.” If you are requesting a waiver under this requirement, we will waive items until the excess costs due to BABA are less than 125 percent of the non-BABA project. The BABA requirements will be waived for individual items until the total additional cost of BABA compliance is less than 25 percent of the total project cost.

For example, the project has three items which each cost $20 for the non-domestic item. The equivalent domestic item costs $30. Total project cost includes those items, along with $40 of labor and soft costs. (“Soft costs” is a construction industry term or contractor accounting term for an expense item that is not considered direct construction cost. Soft costs include architectural, engineering, financing, and legal fees, and other pre- and post-construction expenses.) In this example, administration of BABA adds $4 to soft costs. The total cost of the non-BABA project would be $100 (3 x $20 + $40) and the BABA project is $134 (3 x $30 + $44), a 34 percent increase. Waiving BABA requirements for one of the three items would decrease total project cost to $124, which is less than 25 percent cost threshold.

Item	BABA cost	Non-BABA cost
Construction contracts		
Items procured outside of construction contract		
Architecture/engineering services		
Subconsultants		
Land and right-of-ways		
Legal services		
Funds administration		
Construction management		
Construction contingency		
Interest		
Equipment		
Refinancing		
Other soft costs		
Total Project Cost	**A**	**B**

1) Percentage increase in total project cost due to BABA (= 100 percent multiplied by (A-B)/B):

2) Dollar amount to be waived (= A – 1.25 multiplied by B):

Indicate which items the applicant wishes to waive from the BABA requirements to bring the total costs below 125 percent of the non-BABA total project cost. Items should be selected judiciously so that the total cost savings of using non-BABA items exceeds the amount in Row 2 by the smallest practicable amount. Only items submitted in response to question 10.2.1 are eligible for a waiver (it is not expected that soft costs will be affected significantly by the waiver).

11.3 Public Interest. Explain how waiving the BABA requirement for this project or product serves the public interest. By choosing this checkbox, you will explain how waiving the BABA domestic preference for this project or product serves the public interest. You can demonstrate definite impacts on the community if specific items, products or materials are not utilized in an infrastructure project. You are requesting the Federal agency waive the application of the BABA domestic preference because the domestic content preference would be inconsistent with the public interest. You will ensure this waiver is used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

12. **Waiver Additional Information:** Indicate any additional information for the Agency's consideration of the requested waiver.
13. **Anticipated Impacts:** Identify any anticipated impacts if no waiver is issued. Provide a narrative that will explain the impact to the award, project, or the public should the waiver be denied. Attach additional PDF pages if needed.
14. **Certifying Official Name:** The name of the person who is certifying the waiver request.
15. **Certifying Official Signature:** The signature of the person who is certifying the waiver request will sign this section.
16. **Date of Certification:** Provide the date (MM/DD/YYYY) that the signature was provided.

Federal Agency Instructions:

1A. Provide the Federal awarding agency.

2A. Provide the Federal financial assistance program listing number.

3A. Provide the Federal financial assistance program title.

4A. Provide the first name, last name, email, and phone number of the Federal awarding agency point of contact.

5A. Provide the Federal Award Identification Number (FAIN) (if available) and the Federal awarding agency organizational information (e.g., Common Government wide Accounting Classification (CGAC) Agency Code). Enter the Federal Agency name, and subcomponent name if known, and the CGAC code. **USDA's CGAC code is 012. For example, an appropriate response would be U.S. Department of Agriculture, Forest Service, CGAC 012.**

6A. Indicate waiver level. Project, Award, Program or Agency.

7A. Is this a general applicability waiver? Indicate if this is a general applicability waiver or not.

8A. Agency summary and determination regarding the waiver request. Provide a narrative summarizing the Federal Agency's determination of the waiver request. It should include the reasons for approving or disapproving the waiver.

9A. Agency waiver: In an attempt to avoid the need for a project specific waiver, such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation. This should be a narrative and include all necessary information to support the justification for a waiver. This may be submitted as an attachment as a PDF file.

10A. Any relevant comments received through the public comment period. This is to be filled out after the waiver has been posted to the Agency's Buy American Website. For example, the USDA website if found here: https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.

11A. Select the timeline you are requesting for the waiver of the BABAA domestic sourcing requirements:

For the entire period of performance of the grant in which the infrastructure projects will occur.
OR
For a limited time during the period of performance of the grant. We request a waiver of the identified BABAA domestic sourcing requirements from [XX/XX/XXXX] only until [XX/XX/XXXX] date. After the identified end date, if there is a need for another waiver for the infrastructure projects, a new Build America Buy America Waiver Request form must be completed and submitted to the Federal agency. The waiver time frame cannot exceed the approved period of performance of the grant unless there is an approved grant extension by the Federal awarding agency.

Public Posting of Waiver Request Information

The BABAA domestic sourcing requirements waiver authority generally requires the Federal awarding agency to post this waiver information for a period of public comment and review. The Department will not publicly post information considered to be personally identifiable information (PII), including signatures and specific contact information such as an email address and phone number. However, all other information contained in this form, along with any supporting documentation, may be publicly posted so that the public has adequate information to comment on your requested wavier of the BABAA domestic sourcing requirements. If you feel that some of the information contained in this waiver request is “proprietary information” and do not want this information disclosed, please follow the instructions in “Submission of Proprietary Information”, below. Please note that your designations of exempt material are not binding on the Department.

Submission of Proprietary Information

FOIA exempts from mandatory disclosure any “trade secrets or commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4) (Exemption 4). In accordance with Exemption 4, the Department will maintain as confidential any documents submitted by you, or prepared by the applicant or grantee, that are both customarily and actually treated as private by the applicant or grantee, or closely held and not publicly disseminated. If you feel that some or all of this submission falls within the scope of Exemption 4 and is entitled to confidential treatment, you must indicate the specific information the applicant or grantee considers proprietary in a cover attachment to this form. Please note that your designations of exempt material are not binding on the Department.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0028. Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.
The obligation to respond to this collection is *required to obtain or retain benefit* (with section 70914 of the Build America Buy America Act (Pub. L. No. 117-58 §§ 70901-70952)). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application, or survey, please contact your assigned program officer directly.

Attachment 6 – BABA Sample EPA Manufacturer's Certifications

The following information is provided as a sample letter of certification for **BABA** compliance for Non-Ferrous **Construction Materials**. **Documentation must be provided on company letterhead**.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the non-ferrous construction materials shipped/provided to the subject project are in full compliance with the Buy America, Build America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). Each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurred in the United States, per OMB Guidance 2 CFR 184.6. Detailed standard provided below.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. Xxxx
2. Xxxx
3. Xxxx

Such product manufacturing process(es) took place at the following location(s): (City and State)

1. Xxxx
2. Xxxx
3. Xxxx

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative
Printed name of company representative
Professional title of company representative
Email address
Phone number

§ 184.6 Construction material standards.

(a) The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered "produced in the United States."

(1) ***Non-ferrous metals.*** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) ***Plastic and polymer-based products.*** All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) ***Glass.*** All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(4) ***Fiber optic cable (including drop cable).*** All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) ***Optical fiber.*** All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

(6) ***Lumber.*** All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) ***Drywall.*** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) ***Engineered wood***. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

The following information is provided as a sample letter of certification for **BABA** compliance for **Manufactured Products**. **Documentation must be provided on company letterhead**.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the manufactured product(s) shipped/provided to the subject project is/are in full compliance with the Build America, Buy America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). This/these product(s) meet(s) the 55 percent component cost test, where the cost of components that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components; and final manufacturing occurred in the United States.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. Xxxx
2. Xxxx
3. Xxxx

Final product manufacturing process(es) took place at the following location(s): (City and State)

1. Xxxx
2. Xxxx
3. Xxxx

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative
Printed name of company representative
Professional title of company representative
Email address
Phone number

The following information is provided as a sample letter of certification for **BABA** compliance for **Iron/Steel Products**. **Documentation must be provided on company letterhead**.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the (initial melting, reheating, refining, forming, rolling, drawing, finishing, fabricating, coating, assembly) of the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel Requirement (AIS) (if applicable), and for the iron/steel category of products in the Build America, Buy America Act requirement, as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable).

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. Xxxx
2. Xxxx
3. Xxxx

Such product manufacturing process(es) took place at the following location: (City and State)
Initial Melting location: (City and State)
Bending, Cutting, etc location: (City and State; list out each step taken by a different manufacturer or producer)

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative
Printed name of company representative
Professional title of company representative
Email address
Phone number

Attachment 7 – AIS Contractor's Certification

Environmental Facilities Corporation | Department of Health

AIS CONTRACTOR CERTIFICATION

FOR CONSTRUCTION CONTRACTS FUNDED THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR
THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: ____________________

Contractor's Name: ____________________

Contract ID: ____________________

SRF Project No.: ____________________

SRF Recipient Name: ____________________

I certify that the iron and steel products permanently incorporated into the public water system or wastewater treatment works project under this construction contract will be and/or have been produced in the United States or have been waived by the United States Environmental Protection Agency (EPA), in accordance with the requirements of the EPA and 33 U.S.C. § 1388, 42 U.S.C. § 300j-12(a)(4) and any regulations promulgated thereunder. I will develop and maintain necessary documentation to demonstrate that the iron and steel products permanently incorporated into the project were produced in the United States, and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: ____________________

Name (print): ____________________

Title: ____________________

Date: ____________________

Attachment 8 – AIS Sample EPA Manufacturer's Certification

1. The following information is provided as a manufacturer's sample letter of **step** certification for AIS compliance. Documentation must be provided on company letterhead.

    Date

    Company Name

    Company Address

    City, State Zip

    Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

    I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

    Item, Products and/or Materials:

    1. Xxxx

    2. Xxxx

    3. Xxxx

    Such process took place at the following location: ________________________________

    If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

    [Signed by company representative]

2. The following information is provided as a manufacturer's sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. Xxxx

2. Xxxx

3. Xxxx

Such process took place at the following location: ________________________________

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

[Signed by company representative]

Attachment 9 – Federal Payroll Form (WH-347)

U.S. Department of Labor
Wage and Hour Division

Davis-Bacon and Related Acts Weekly Certified Payroll Form

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Unless otherwise noted, the information requested is specific to the named project below.

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rev. January 2025
OMB No.: 1235-0008
Expires: 01/31/2028

☐ SUBMISSION OF FINAL DBRA CERTIFIED PAYROLL FORM ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR

PROJECT NAME	PROJECT NO. or CONTRACT NO.	CERTIFIED PAYROLL NO.	PRIME CONTRACTOR'S/SUBCONTRACTOR'S BUSINESS NAME
PROJECT LOCATION	WAGE DETERMINATION NO.	WEEK ENDING DATE	PRIME CONTRACTOR'S/SUBCONTRACTOR'S BUSINESS ADDRESS

(1A)	(1B)	(1C)	(1D)	(1E)	(2)	(3)		(4)							(5)	(6A)	(6B)	(6C)	(7A)	(7B)	(8) DEDUCTIONS FOR **ALL WORK**				(9)
WORKER ENTRY NO.	WORKER LAST NAME	WORKER FIRST NAME	WORKER MIDDLE INITIAL	WORKER IDENTIFYING NO.	(J) JOURNEYWORKER (RA) REGISTERD APPRENTICE	LABOR CLASSIFICATION	ST = STRAIGHT TIME OT = OVERTIME	(TOP) DAYS OF WORK WEEK (BOTTOM) DATES; HOURS WORKED EACH DAY							TOTAL HOURS WORKED FOR WEEK	HOURLY WAGE RATE PAID FOR ST AND OT	TOTAL FRINGE BENEFIT CREDIT	PAYMENT IN LIEU OF FRINGE BENEFITS	GROSS AMT EARNED	GROSS AMT EARNED FOR **ALL WORK**	TAX WITH-HOLDINGS	FICA	OTHER (MUST SPECIFY, SEE INSTRUCTIONS)	TOTAL DEDUCTIONS	NET PAY TO WORKER FOR **ALL WORK**
							ST																		
							OT																		
							ST																		
							OT																		
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While use of Form WH-347 itself is optional, covered contractors and subcontractors performing work on Federal or federally assisted construction contracts are required by the DBRA regulations and the contract clauses to submit payroll information on a weekly basis. The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federal or federally financed construction contracts to, on a weekly basis, "furnish a statement on the wages paid each employee during the prior week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors and subcontractors to submit weekly certified payrolls to the appropriate Federal agency if the agency is a party to the contract (or, if the agency is not such a party, to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Federal agency). Each certified payroll must be accompanied by a signed "Statement of Compliance" (e.g., page 2 of the WH-347 or another document with identical wording) indicating that the certified payrolls are accurate and complete, and that each laborer or mechanic has been paid not less than the required Davis-Bacon prevailing wage rate(s) (including any fringe benefits) for the work performed. DOL and contracting agencies receiving this information review the information to determine whether workers have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

PROJECT NO. or CONTRACT NO.

I paid or supervised the payment of the laborers or mechanics working on the above project during the stated time period. I certify the following:

☐ The payroll information submitted with this statement is correct and complete for the above project during the above period, and the wage and fringe benefit rates paid to the workers, including credit taken for the reasonably anticipated costs of a bona fide fringe benefit plan, fund or program, are not less than the applicable wage and fringe benefits rates for the

☐ All regular payrolls and all other basic records that the contractor is required to maintain for this payroll period are complete and accurate and will be made available upon request from the

☐ The classifications reported for each laborer or mechanic are the classification(s) of work that each worker actually performed.

☐ Any workers paid as apprentices during the above period are duly registered in a bona fide apprenticeship program registered with the Office of Apprenticeship, Employment and Training Administration, United States Department of Labor ("OA"), or a State Apprenticeship Agency ("SAA") recognized by Department of Labor. I have verified the registered apprenticeship program

	☐ OA	☐ SAA	
	☐ OA	☐ SAA	
	☐ OA	☐ SAA	

☐ Fringe benefits have been paid in cash and/or to bona fide fringe benefit plans, funds, or programs. Where the contractor is claiming an hourly credit for their contributions to or reasonably anticipated costs of a bona fide fringe benefit plan, fund, or program, provide plan information and the hourly credit claimed for each worker listed on the previous page of this form.

If an amount is listed in (6B) on the first page of this certified payroll form, enter the hourly credit claimed under each plan name, type and number for each worker and check whether the plan is funded or unfunded.

	☐ Funded ☐ Unfunded	☐ Funded ☐ Unfunded	☐ Funded ☐ Unfunded	☐ Funded ☐ Unfunded	☐ Funded ☐ Unfunded	☐ Funded ☐ Unfunded	
				Hourly Credit	Hourly Credit	Hourly Credit	
	Hourly Credit			Hourly Credit	Hourly Credit	Hourly Credit	
	Hourly Credit			Hourly Credit	Hourly Credit	Hourly Credit	
	Hourly Credit			Hourly Credit	Hourly Credit	Hourly Credit	
	Hourly Credit			Hourly Credit	Hourly Credit	Hourly Credit	
	Hourly Credit			Hourly Credit	Hourly Credit	Hourly Credit	
	Hourly Credit			Hourly Credit	Hourly Credit	Hourly Credit	
	Hourly Credit			Hourly Credit	Hourly Credit		

☐ All workers on the project have been paid the full weekly wages earned, and no rebates or deductions have been or will be made either directly or indirectly, other than permissible

( ) -

CODE), AS WELL AS DEBARMENT FROM FUTURE FEDERAL AND FEDERALLY-ASSISTED CONTRACTS. INFORMATION REPORTED IN CERTIFIED PAYROLLS MAY BE SUBJECT TO DISCLOSURE IN RESPONSE TO A FREEDOM OF INFORMATION ACT REQUEST.

Attachment 10 – Davis Bacon Wage Poster

EMPLOYEE RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

Attachment 11 – Wage Interview Form (SF-1445)

LABOR STANDARDS INTERVIEW

CONTRACT NUMBER	EMPLOYEE INFORMATION		
	LAST NAME	FIRST NAME	MI
NAME OF PRIME CONTRACTOR	STREET ADDRESS		
NAME OF EMPLOYER	CITY	STATE	ZIP CODE

SUPERVISOR'S NAME				
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION	WAGE RATE

ACTION	CHECK BELOW YES	NO
Do you work over 8 hours per day?	☐	☐
Do you work over 40 hours per week?	☐	☐
Are you paid at least time and a half for overtime hours?	☐	☐
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?	☐	☐

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

	TOOLS YOU USE	
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?		
DATE OF LAST WORK DAY BEFORE INTERVIEW *(YYMMDD)*		
DATE YOU BEGAN WORK ON THIS PROJECT *(YYMMDD)*		

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE			DATE *(YYMMDD)*
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE *(YYMMDD)*

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION *(If explanation is needed, use comments section)*	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?	☐	☐
	ARE WAGE RATES AND POSTERS DISPLAYED?	☐	☐

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

☐ YES ☐ NO

COMMENTS

CHECKER			
LAST NAME	FIRST NAME	MI	JOB TITLE
SIGNATURE			DATE *(YYMMDD)*

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1445 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.222(g)

Attachment 12 – Waste, Fraud, and Abuse Poster

OFFICE OF INSPECTOR GENERAL
U.S ENVIRONMENTAL PROTECTION AGENCY

To file a complaint, go to: epaoig.gov/epa-oig-hotline-information

THEFT AND MISUSE OF GOVERNMENT PROPERTY

MISMANAGEMENT AND WASTE OF FUNDS

PROGRAM FRAUD

REPORT

FRAUD WASTE & ABUSE

HOTLINE COMPLAINT FORM

U.S. EPA OIG
HOTLINE
888.546.8740

LABORATORY FRAUD

CONFLICT OF INTEREST

CONTRACT, PROCUREMENT, AND GRANT FRAUD

ABUSE OF AUTHORITY

EMPLOYEE MISCONDUCT

COMPUTER CRIMES

Visit epaoig.gov for anonymity guidelines and whistleblower information.

ATTACHMENT C: DBDF FAQs

Questions and Answers About the Doing Business Data Form

What is the purpose of the Doing Business Data Form (DBDF)?

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

Why have I received this DBDF?

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. <u>No proposal or application will be considered and no award will be made unless this DBDF is completed</u>. Most transactions valued at more than $5,000 are considered business dealings and require completion of the Doing Business Data Form. Exceptions include transactions awarded on an emergency basis or by "conventional" competitive sealed bid (i.e. bids that do not use a prequalified list or "Best Value" selection criteria.) Other types of transactions that are considered business dealings include real property and land use actions with the City.

What individuals will be included in the Doing Business Database?

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

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

<u>NEW FOR 2018</u>: As of January 2018, the DBDF must report organizations, as well as individuals, that own 10% or more of the entity. A DBDF with such a certification, filed as a full (never filed before) or as a change form, must be submitted before an entity can then file a DBDF that indicates no changes since the previous form. Contact DBA at 212-788-8104 or at doingbusiness@mocs.nyc.gov to inquire if DBA has received such a form.

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

Yes. An organization is required to submit a DBDF each time it enters into a transaction considered a business dealing with the City, including contract, concession and franchise proposals. However, the DBDF has both a Change option, which requires only information that has changed since the last DBDF was filed, and a No Change option. No organization should have to fill out the entire DBDF more than once.

If you have already submitted a DBDF for one transaction type (such as a contract), and this is the first time you are completing a DBDF for a different transaction type (such as a grant), please select the Change option and complete Section 4 (Senior Managers) for the new transaction type.

Will the personal information on the DBDF be available to the public?

No. The names and titles of the officers, owners and senior managers reported on the DBDF will be made available to the public, as will information about the organization itself. <u>However, personal identifying information, such as home address and date of birth, will not be disclosed to the public, and home address will not be used for communication purposes.</u>

I provided some of this information in PASSPort; do I have to provide it again?

Yes. Although a Doing Business Data Form and PASSPort request some of the same information, they serve entirely different purposes. In addition, the DBDF requests information concerning senior managers, which is not in PASSPort.

What organizations will be included in the Doing Business Database?

Organizations that hold $100,000 or more in grants, contracts for goods or services, franchises or concessions ($500,000 for construction contracts), or that hold any economic development agreement or pension fund investment contract, are considered to be doing business with the City for the purposes of LL 34. Because all of the business that an organization does or proposes to do with the City will be added together, the DBDF must be completed for all transactions valued at more than $5,000 even if the organization doesn't currently do enough business with the City to be listed in the Database.

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

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

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

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

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

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

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

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

When an organization stops doing business with the City, the people associated with it are removed from the Database automatically. However, any person who believes that s/he should not be listed may apply for removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the organization. Organizations may also update their database information by submitting an update form. Removal Request and Update forms are available online www.nyc.gov/site/mocs/opportunities/dba.page by calling 212-788-8104.

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

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

The DBDF is to be returned to the City office that issued it.

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

ATTACHMENT D: APPENDIX A

APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” means the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

H. “Days” means calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

J. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.

L. "PPB Rules" means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), §§ 1-01 *et seq*.

M. "SBS" means the New York City Department of Small Business Services.

N. "State" means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq*.). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

Section 2.03 Certification Relating to Fair Practices

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

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Contractor acknowledges that the Department's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.

Section 2.06 Authority to Execute Agreement

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is $20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed $20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal (www.nyc.gov/pip).

2. Approval when subcontract is greater than $20,000.

a. The Contractor shall not enter into any subcontract for an amount greater than $20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than $20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.[1]

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

[1] Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed $25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

C. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

D. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

F. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of $100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 ("Section 6-109"), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than $1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than $750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor‘s account an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of $50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:

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.

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

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 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than $100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq.* No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

c. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

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

e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and

f. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of $100,000.00 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 Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

Section 4.06 Paid Sick Leave Law

A. *Introduction and General Provisions.*

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.[2] Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

[2] Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

B. *Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions*. Notwithstanding the above, the PSLL does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;

5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed $50.00 for each employee who was not given appropriate notice.

F. *Records*. An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500.00 for a first violation, $750.00 for a second violation within two years of the first violation, and $1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Polices and Other Legal Requirements.* Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of

the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of $100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of $100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at $100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

The Contractor agrees to maintain separate and accurate books, records, documents, and other evidence, and to utilize appropriate accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the

Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

Section 5.06 Electronic Records

As used in this Appendix A, the terms "books," "records," "documents," and "other evidence" refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

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

B.

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

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

C.

6. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

7. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

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

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

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

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

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

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

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

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

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

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

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;

2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;

3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;

5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;

6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;

7. Form CE-200 – *Affidavit of Exemption*;

8. Other forms approved by the New York State Workers’ Compensation Board; or

9. Other proof of insurance in a form acceptable to the City.

Section 7.03 Other Insurance

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

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

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;

2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and

3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding $10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by negligence, any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims or judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City, or its officials or employees, of a claim upon demand, the Contractor shall reimburse the City, or its officials or employees as the case may be, for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officials and employees with a defense or reimbursement for attorney's fees.

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

A. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

Section 9.02 Changes Through Fault of Contractor

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq*., or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq*., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the

"EFT Vendor Payment Enrollment Form" available from the Agency or at http://www.nyc.gov/dof in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section 11.02 is applicable to contracts valued at $25,000.00 and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 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 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City

Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

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

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

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

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

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

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's

functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

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

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

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

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

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of

memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on 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.

4. CDRB Determination. Within 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 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.

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

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123*. In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of $50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status*. In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

Section 13.06 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.07 Voter Registration

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section 13.06, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. *Assistance in Completing Voter Registration Forms*. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. *Required Statements*. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

   a. seek to influence an applicant's political preference or party designation;

   b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.08 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 13.09 Religious Activity

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 13.10 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq*., or the regulations of the United States Department of Commerce promulgated thereunder.

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

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.11 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.12 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of $250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.13 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 ("E.O. 150"), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children's Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency's plans developed pursuant to E.O. 150.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

CITY OF NEW YORK

ADDENDUM
TO
APPENDIX A (Architects and Engineers) November 2018 FINAL

This Addendum modifies Appendix A November 2018 Final, General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services ("Appendix A"), as set forth below.

Subsection B of Section 5.08 (Confidentiality) of Appendix A is deleted in its entirety and replaced with the following:

Section 5.08 Confidentiality

*   *   *

B. Where in connection with the services under this Agreement the Contractor, or its employees, subcontractors, or agents, will have access to, acquire, disclose, or use any data that includes private information (as defined in Admin. Code § 10-501(b)), the Contractor shall provide written notice to the Department within three days of the earlier of discovery by the Contractor or notification to Contractor of any breach of security (as defined in Admin. Code § 10-501(c)). Such notice shall inform the Department of the nature and scope of the breach of security.

1. Upon such discovery or notification of such breach of security, the Contractor shall take reasonable steps to determine the cause(s) of such breach and to remediate the cause(s) of such breach, shall provide written notice to the Department of such steps, and shall cooperate with any investigation conducted by the City of such breach. Such cooperation includes, but is not limited to, promptly responding to the City's reasonable inquiries and providing prompt access to in human and machine readable format all evidentiary artifacts associated with such breach of security, such as relevant records, logs, files, data reporting, and other materials.

2. In the event of such breach of security, the Contractor shall cooperate and coordinate with the City regarding any notifications determined by the City to be made to individuals affected by such breach.

3. Without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of such notifications to individuals affected by the breach of security and/or other actions mandated by any Law, or administrative or judicial order, to address such breach of security, and to cover the costs of any fines or disallowances imposed by the State or federal government as a result of such breach. The City shall

also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of identity theft monitoring services for individuals affected by such breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such preventive measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the November 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act ("ESSTA"), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the "Paid Safe and Sick Leave Law," requires covered employees (as defined in Admin. Code § 20-912) in New York City ("City") to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City's Department of Consumer and Worker Protection ("DCWP"), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq*. ("DCWP Rules").

2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP's guidance and must comply with DCWP's subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City's administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.[1] Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

[1] Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

C. *Exemptions and Exceptions*. Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed $50.00 for each employee who was not given appropriate notice.

F. *Records*. An employer must retain records documenting its compliance with the ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed $500.00 for a first violation, $750.00 for a second violation within two years of the first violation, and $1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Polices and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

<u>New York City Mayoral Executive Order No. 39 Rider</u>

<u>City Fleet and Truck Safety Requirements for City Contractors</u>

Version: 11/19/24

[Instruction to Agencies: Please attach this Rider to the following agreements: (1) Procurement Contracts that meet the criteria set forth in Executive Order 39 of February 1, 2024; and (2) to the March 2017 version of the New York City Standard Construction Contract.]

Section 1.01 Background

This rider is included in the Agreement and made a part thereof pursuant to the provisions of Mayoral Executive Order 39 of 2024.

Section 1.02 Definitions

A. Capitalized terms not otherwise defined in this rider shall have the meaning ascribed to them in the Agreement.

B. Agreement: The agreement between the City and the Contractor, to which this rider has been added and made a part.

C. City-contracted Vehicle means a Truck (as hereinafter defined) or any other motor vehicle that the Contractor anticipates providing in accordance with this Agreement or using in performing its obligations under this Agreement on a weekly or more frequent basis[1]. This includes those vehicles anticipated to be provided or used by subcontractors to fulfill the scope of a subcontract for work to be performed under a contract that is subject to the Executive Order, regardless of monetary value of the subcontract, if the vehicle is utilized on a weekly or more frequent basis.

D. Contracting Agency: the City agency or office through which the City of New York has entered into this Agreement.

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[1] The following vehicles are not considered City-contracted vehicles and are thus not subject to Executive Order 39: any motor vehicle or truck that is utilized pursuant to (1) contracts registered prior to July 1, 2024, including the renewal, extension, or modification of such contracts; (2) an agency on-call emergency contract; (3) an emergency procurement made pursuant to section 3-06 of title 9 of the Rules of the City of New York or pursuant to an executive order of the Mayor or Governor issued under section 24 or section 29-A of the New York State Executive Law; (4) intergovernmental contracts; (5) government-to-government contracts between the City and any State or Federal government agency; and (6) a contract for utilities, as identified in subdivision (b) of section 825 of the New York City Charter.

E. Contractor: the entity providing services under this Agreement.

F. Executive Order: Mayoral Executive Order 39 of 2024, as it may be amended.

G. High Vision Truck: A Truck with a cab-over or cab-forward design wherein the driver sits in front of the front axle as opposed to conventional cab design wherein the engine and front axle are in front of the driver. The distance from the forward of the center of the vehicle bumper at which the driver can see the top of a 3-foot cone shall not exceed eight feet and the distance beyond the exterior of the passenger side door at which the driver can first see the top of the 4-foot cone shall not exceed six feet.

H. Registration: Registration of this Agreement pursuant to Section 328 of the New York City Charter.

I. Telematics: Automatic vehicle location systems that track vehicle location and speed and alert the driver and another designated person(s) to such location and speed in real time.

J. Truck: A City-contracted Vehicle with a manufacturer's gross vehicle weight rating exceeding 10,000 pounds. The term does not include off-road construction vehicles.

K. Truck Surround Cameras: A system of cameras, sensors, and alerts placed on a Truck that provides a Truck operator with a full view of all four sides of the Truck.

L. Vehicle Safety Plan: A plan with regard to City-contracted Vehicles, approved by the Contracting Agency, that includes the components listed in Section 2.03(A) through (F) of this rider.

Section 2.01 Vehicle Requirements

All City-contracted Vehicles shall conform to the following requirements:

A. Truck Surround Cameras: All Trucks, other than High Vision Trucks, shall be outfitted with truck surround cameras in accordance with the following schedule:
   a. Contracts involving 10 or fewer Trucks: No later than 12 months from Registration.
   b. Contracts involving more than 10 Trucks: No later than 18 months from Registration.
   c. New or replacement Truck acquired after work under this Agreement has begun: Truck must be outfitted with Truck Surround Cameras within 12 months from the date of first using such Truck.
   d. Contractor must submit to the Contracting Agency photographic and purchase order evidence, that is satisfactory to the Contracting Agency, of compliance with this Paragraph (A).

B. Truck Side-guards: Contractor shall provide side-guards for City-contracted Vehicles as applicable pursuant to Section 6-141 of the New York City Administrative Code.

C. Telematics: All City-contracted Vehicles must be installed with Telematics. Data gathered by Telematics must be made available in a manner that is satisfactory to the Contracting Agency.

Section 2.02 Safety Requirements

Contractor shall provide the following:

A. Licensing: Contractors shall ensure proper licensing for all drivers who operate City-contracted Vehicles. Contractors shall ensure that all drivers operating City-contracted Vehicles are enrolled in the New York State License Notification System (LENS) and that all out-of-state licenses are being monitored by Contractor. Contractor must notify the Contracting Agency of any license suspensions and/or arrests tied to unsafe or illegal vehicle operation by any drivers of City-contracted Vehicles.

B. Training: Contractor must provide the Contracting Agency documentation, satisfactory to the Contracting Agency, showing:
   a. That all drivers of City-contracted Vehicles have taken a New York State approved defensive driving class within six months after Registration; or
   b. That all drivers of City-contracted Vehicles have attended a New York State-approved defensive driving class within 3 years prior to Registration; or
   c. That all drivers of City-contracted Vehicles have received alternative safe driver training acceptable to the Contracting Agency that is documented to the satisfaction of the Contracting agency.

C. Crash tracking: Contractors must notify the Contracting Agency of any and all collisions that take place involving City-contracted Vehicles while performing services under this Agreement.

Section 2.03 Vehicle Safety Plan

Within one month after Registration, the Contractor must submit, for review and approval, to Contracting Agency, at the address set forth in the Agreement for notices to the City, and DCAS Fleet (C/O Chief Fleet Management Officer, 23rd Floor South, Municipal Building, 1 Centre Street, NY, NY 10007) a proposed vehicle safety plan that shall include at the minimum the components listed in Paragraphs (A) through (E) below. If directed by the Contracting Agency, Contractor shall revise said proposed vehicle safety plan in accordance with the directions of the Contracting Agency, and until the Contracting Agency issues its approval thereof, Contractor shall submit a revised proposed vehicle safety plan to the Contracting Agency in each case, within 15 days after receipt by Contractor of directions to that effect from the Contracting Agency. Upon approval of the proposed vehicle safety plan, said proposed plan shall be considered the Vehicle Safety Plan and Contractor shall comply with the terms thereof. Each second anniversary of the approval of the Vehicle Safety Plan the Contractor shall submit an update thereof. The Vehicle Safety Plan shall include at the minimum the following components:

A. Vehicle List: List of City-contracted Vehicles, including the year, make, model, VIN and license plate number of each City-contracted Vehicle;

B. Safety Training: Documentation showing that all drivers of City-contracted Vehicles have completed the training detailed in section 2.02(B) of this Rider;

C. Technology: A list of all relevant technology investments installed on City-contracted vehicles, including but not limited to the technology listed in section 2.01 of this Rider;

D. Crash Tracking: An explanation of Contractor's process of monitoring and reviewing collisions including plans to notify Contracting Agency of collisions that take place while performing services under this Agreement;

E. Corrective Action: A corrective action program for drivers of City-contracted Vehicles that engage in unsafe or dangerous driving behaviors and license monitoring; and

F. Additional Safety Measures: Contractor must indicate if there are any additional safety technologies, safety practices, training, or other procedures that are utilized for City-contracted Vehicles during the term of this Agreement.

Section 3.01 Liquidated Damages

A. Contractor acknowledges that its failure to comply with the provisions of this Vehicle Safety Plan will cause loss and damage to the City, the precise extent of which is difficult to ascertain in monetary terms. For this reason, the parties desire to provide fair and reasonable compensation to the City for such losses, which compensation shall not be construed as a penalty. It is therefore agreed that, in addition to any other liquidated damages that the Contractor shall be required to pay to the City in accordance with the provisions of the Agreement, Contractor shall pay to the City the following:

   a. The sum of $500.00 for each instance of a failure by the Contractor to submit a Vehicle Safety Plan in accordance with the provisions of Section 2.03.

b. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(A) [Licensing].
c. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(B) [Training].
d. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(C) [Crash Tracking].
e. The sum of $500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.01(C) [Telematics].
f. The sum of $3,000 for each instance of a failure by the Contractor to comply with the provisions of Section 2.01(A).
g. The Contracting Agency will provide at least 5 working days of notice to the Contractor and opportunity to rectify before implementing these liquidated damages.

B. Liquidated damages received pursuant to this Agreement are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification, or the Contractor's obligation to indemnify the City, or to any other remedy provided for in this Agreement or by Law. The City may deduct and retain out of the monies which may become due under this Agreement, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except ____.

Full name of Proposer or Bidder *[below]*

____

Address____

City___________________________ State_____________________ Zip Code____________

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

 A - ☐ Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____________________________________

 B - ☐ Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER ___________________________

 C - ☐ Corporation
EMPLOYER IDENTIFICATION NUMBER ___________________________

By_____________________________
Signature

____
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers, or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

SCHEDULE A

Article 7 -- Insurance	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	**Minimum Limits and Special Conditions**
■ Workers' Compensation §7.02 ■ Disability Benefits Insurance §7.02 ■ Employers' Liability §7.02	Statutory amounts.
■ Commercial General Liability §7.03(A)	$1,000,000.00 per occurrence $1,000,000.00 personal & advertising injury (unless waived in writing by the Department) $2,000,000.00 aggregate $0 products/completed operations Additional Insureds: 1. City of New York, including its officials and employees, and 2. ______________________ 3. ______________________
■ Commercial Auto Liability §7.03(B)	$1,000,000.00 per accident combined single limit If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90
■ Professional Liability/Errors & Omissions §7.03(C)	$5,000,000.00 per claim $1,000,000.00 per claim for subconsultants
☐ Crime Insurance §7.03(D)	$____________ Employee Theft/Dishonesty

	$____________ Computer Fraud $____________ Funds Transfer Fraud $____________ Client Coverage $____________Forgery or Alteration $____________Inside the Premises (theft of money and securities) $____________ Inside the Premises (robbery or safe burglary of other property) $____________ Outside the Premises $____________ Money Orders and Counterfeit Money City of New York is a loss payee as its interests may appear
☐ Cyber Liability Insurance §7.03(E)	*[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]*
☐ [OTHER]	*[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]*
☐ [OTHER]	*[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]*
Section 10.07 – Liquidated Damages	
• Violation of Section 3.02(H), reporting subcontractors in the City's Payee Information Portal • ____________________________	**$100 per day** **$__________**
Section 14.04 – Notice	

Department's Mailing Address and Email Address for Notices	
Contractor's Mailing Address and Email Address for Notices	

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

(1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

(2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

____
[Name of broker or agent (typewritten)]

____
[Address of broker or agent (typewritten)]

____
[Email address of broker or agent (typewritten)]

____
[Phone number/Fax number of broker or agent (typewritten)]

____
[Signature of authorized official, broker, or agent]

____
[Name and title of authorized official, broker, or agent (typewritten)]

State of ……………………….)
) ss.:
County of …………………….)

Sworn to before me this _____ day of ___________ 20___

____
NOTARY PUBLIC FOR THE STATE OF ____________________

WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT

RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT
CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959

DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:
New York City Department of
Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:
www.nyc.gov/doi

All communications are confidential

Or scan the QR Code above
to make a complaint

THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law,** an employee must report to DOI − or to certain other specified government officials − information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than $100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

ATTACHMENT E: **NOT USED**