THE CITY OF NEW YORK

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

INVITATION TO BID
ON A CONTRACT FOR ELECTRICAL SYSTEM REPLACEMENT SERVICES
AT:

156 SOUTH 9TH STREET, BROOKLYN

E-PIN: 80626B0039

BOOK 2 OF 2: CONTRACT

CONTRACT
TABLE OF CONTENTS

Article 1	Definitions	1
Article 2	Contract Term And Renewal	4
Article 3	The Work	5
Article 4	Payments	7
Article 5	Payment Procedure	7
Article 6	Limitations On Payment	8
Article 7	Price Escalation	9
Article 8	Insurance	10
Article 9	Indemnification	15
Article 10	Tax Exemption	15
Article 11	Labor And Materials	17
Article 12	Subcontracting	18
Article 13	Records And Audit	20
Article 14	Reports	21
Article 15	Resolution Of Disputes	21
Article 16	Noise Control Code	26
Article 17	Liens	27
Article 18	Default	27
Article 19	Termination	28
Article 20	Independent Contractor	30
Article 21	Liquidated Damages	31
Article 22	Certain Representations, Warranties, And Covenants Of Contractor	32
Article 23	Liabilities	33
Article 24	Estoppel And Waiver	33
Article 25	Notices	34
Article 26	Payment And Performance Bond	35
Article 27	Payment Guarantee	35
Article 28	Contract Changes And Increases	38
Article 29	Non-Discrimination In Employment	39
Article 30	Minimum And Prevailing Wages	43
Article 31	Investigations	43

Article 32	Conflict Of Interest	45
Article 33	Confidentiality And Publications	46
Article 34	Inventions, Patents, And Copyrights	47
Article 35	Claims And Actions Thereon	47
Article 36	Forum: Choice Of Law, Consent To Jurisdiction, And Venue	48
Article 37	Assignment	49
Article 38	Electronic Funds Transfer	49
Article 39	Whistleblower Protection Expansion Act	50
Article 40	Paid Sick Leave Law	51
Article 41	Hiring And Employment Requirements	55
Article 42	Participation In An International Boycott	55
Article 43	MacBride Principles	56
Article 44	Additional Terms And Conditions	57
Article 45	Minority-Owned And Women-Owned Business Enterprises Requirements	60
Article 46	Federal Conditions	61
Article 47	Iran Divestment Act Compliance Rider	61

Rider 1	Iran Divestment Act Compliance Rider
Rider 2	Whistleblower Protection Expansion Act Notice
Rider 3	Minority-Owned And Women-Owned Business Enterprises Requirements
Rider 4	Community Hiring Rider
Exhibit A	Federal Conditions
Exhibit B	Scope Of Work
	Attachment A No Access Procedures
Exhibit C	Payment And Performance Bonds
Exhibit D	Prevailing Wage
Exhibit E	Certification By Broker Or Agent

THE CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

CONTRACT FOR ELEVATOR REPAIR SERVICES

THIS CONTRACT (the "Contract"), effective as of the date of the last signature hereto between the **CITY OF NEW YORK** ("City") acting by and through its Department of Housing Preservation and Development ("Department"), having an office located at 100 Gold Street, New York, New York 10038, and _____, ("Contractor"), a _____ having its principal office located at _____.

WHEREAS, the Department seeks to obtain the goods and/or services described in the Scope of Work, annexed hereto and made a part hereof as Exhibit B and Contractor wishes to provide such goods and/or services; and

WHEREAS, the parties hereto wish to enter into this Contract to establish their respective rights and obligations in connection with the provision of such goods and/or services;

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

ARTICLE 1 DEFINITIONS

1.1 The following words and expressions, or the pronouns used in their stead, shall have the following respective meanings wherever they appear in this Contract:

"ACCO" shall mean the Agency Chief Contracting Officer of the Department.

"Approved Amount" shall mean, with respect to any Requisition, the portion of the Requested Amount which the Department determines that Contractor has earned and approves for payment, subject to allowable deductions, pursuant to Article 5 and the other terms of this Contract.

"Article(s)" shall mean an Article or Articles of this Contract.

"Assistant Commissioner" shall mean the Assistant Commissioner of the Department responsible for administration of this Contract or an authorized representative designated in writing by the Assistant Commissioner.

"Audit" shall mean the audit, analysis, investigation, examination, and duplication of Contractor's Books and Records by the City of New York, including the Department, the Comptroller (as defined herein) or any of their authorized representatives. Audits may include, without limitation, the examination and review of the source and application of all income and funds of Contractor, regardless of their source.

"Audit Term" shall mean the Term plus an additional period of six years following the later to occur of (A) final payment under this Contract, (B) the expiration or termination of this Contract, (C) a period otherwise prescribed by law, or (D) if any litigation, claim or audit concerning this Contract has commenced before the expiration of the six-year period, the date such litigation, claim or audit has been completed or resolved.

"Books and Records" shall mean Contractor's financial records and the supporting documentation therefor.

"Budget" shall mean the schedule of payment set forth in the Bid Schedule that Contractor submitted with its bid package pursuant to the Invitation for Bids in connection with this Contract.

"CDRB" shall mean a Contract Dispute Resolution Board as defined in Section 15.6.

"Commissioner" shall mean the Commissioner of the Department or an authorized representative designated in writing by the Commissioner.

"CCPO" shall mean the City Chief Procurement Officer of the City of New York.

"City" shall have the meaning set forth in the first paragraph of this Contract.

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

"City-Owned Property" shall mean all goods, materials, equipment, and other property at any time furnished to Contractor by the City, including the Department, or acquired by Contractor in whole or in part with funds provided or reimbursed by the City.

"Commencement Date" shall mean _____.

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

"Contractor" shall have the meaning set forth in the first paragraph of this Contract.

"Default" shall mean any of the events described in Section 18.1.

"Default Costs" shall mean the total of (A) all costs and expenses (including, without limitation, the cost of soliciting and entering into new contracts) incurred by the Department, directly or indirectly, in connection with the completion of the Work following a Default, and (B) all consequential costs, expenses, and damages incurred by the Department, directly or indirectly, arising from a Default.

"Default and Termination Notice" shall mean a Notice sent by the Department to Contractor following the Hearing pursuant to Article 18 stating that Contractor is in Default, describing the nature of such Default, and setting forth the Termination Date.

"Deputy Commissioner" shall mean the Deputy Commissioner of the Department responsible for administration of this Contract or an authorized representative designated in writing by the Deputy Commissioner.

"E.O. 50" shall mean Executive Order No. 50 (1980), as revised from time to time, and all rules promulgated thereunder.

"Expiration Date" shall mean the later of (A) _____, or (B) any date to which the Term of this Contract may be extended in accordance with the PPB Rules.

"Federal" shall mean of or from the Federal Government.

"Federal Courts" shall mean collectively the courts of the Federal Government.

"Federal Government" shall mean the government of the United States of America.

"Final Requisition Date" shall mean the date designated by the Department, in accordance with Paragraph 5.1(D), as the last date for submission of Requisitions by Contractor.

"Force Majeure Delay" shall mean a delay in the performance of the obligations of Contractor pursuant to this Contract which is beyond the control of, and without the fault or negligence of, Contractor and which is caused by (A) acts, laws, rules, regulations, or orders of a governmental authority, (B) acts of God or of a public enemy, or (C) fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, material shortage, or weather of unusual severity.

"General Municipal Law" shall mean the General Municipal Law of the State of New York.

"Hearing" shall mean the opportunity to be heard pursuant to Section 18.2.

"Information" shall mean all of the reports, documentation, information, or data furnished to or obtained by Contractor, or gathered, prepared, assembled, or used by Contractor, in connection with this Contract.

"Labor Law" shall mean the Labor Law of the State of New York.

"MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland as further defined in Article 39 hereof.

"Notices" shall mean collectively all notices, approvals, requests, waivers, consents, or other communications given or required to be given pursuant to this Contract.

"Notice of Dispute" shall have the meaning given in Section 15.4.

"OATH" shall mean the Office of Administrative Trials and Hearings of the City of New York.

"Payable Amount" shall mean, with respect to any Requisition, the Approved Amount minus any other amounts which may be withheld by the Department and the City pursuant to the terms of this Contract.

"PPB" shall mean the Procurement Policy Board of the City of New York.

"PPB Rules" shall mean Title 9 of the Rules of the City of New York, as amended from time to time.

"Pre-Termination Work" shall mean all Work satisfactorily completed by Contractor prior to the Termination Date.

"Project Site" shall mean any residential building at which Work is performed under this Contract, as designated in a Work Order issued by the Department.

"Requested Amount" shall mean, with respect to any Requisition, the amount of payment requested by Contractor in such Requisition.

"Requisition" shall mean a written request from Contractor to the Department for payment for Work, which written request shall include, but shall not be limited to, (A) a

written statement of the Work rendered by Contractor for which payment is requested and the amounts of payment requested, identified by Budget category, and such other information as the Department may require, all in such form as the Department may establish or require, and (B) such supporting documentation as may be required by the Department.

"Scope of Work" shall mean the description of the goods to be supplied and/or the work to be performed by Contractor pursuant to this Contract set forth in Exhibit B.

"Section(s)" shall mean a Section or Sections of this Contract.

"Site(s)" shall mean any and all area(s) where Work is to be performed under a Work Order issued by the Department.

"State" shall mean the State of New York.

"State Courts" shall mean collectively the courts of the State.

"Subcontract" shall mean an agreement between Contractor and a Subcontractor for goods and/or services to be provided in connection with the performance of the Work.

"Subcontractor" shall mean any person or entity, other than an employee of Contractor, which contracts with Contractor to furnish, or actually furnishes, goods and/or services in connection with the performance of the Work.

"Term" shall mean the term for the performance of the Work under this Contract.

"Termination Date" shall mean the effective date of any termination of this Contract pursuant to Article 19.

"Termination Notice" shall mean a notice sent by the Department to Contractor which terminates this Contract pursuant to Article 19.

"Total Contract Price" shall mean $_____.

"Unit Prices" shall mean the prices set in the Budget to be paid for any and all items of Work performed under this Contract.

"Work" shall mean all or a portion of the goods and/or services required to be furnished by Contractor under this Contract, as more fully described in the Scope of Work.

"Work Order" shall mean the written direction by the Department to the Contractor to perform Work at a designated Site.

1.2 Unless otherwise indicated, all capitalized terms in this Contract not defined in this Article shall have the meanings ascribed to them in the IFB.

ARTICLE 2 CONTRACT TERM

Contract Term. The term of this Contract shall be for One (1) Year beginning on the Commencement Date and ending on the Expiration Date (the "Term"), unless terminated earlier in accordance with the terms herein.

ARTICLE 3 THE WORK

3.1 Compliance. During the Term, Contractor shall perform the Work in accordance with the terms and subject to the conditions set forth herein.

3.2 Examination of Site. Contractor must, prior to the commencement of any Work under a Work Order, carefully view and examine the site(s) of the proposed Work, as well as all adjacent areas, and all existing conditions on which the Work may in any way be dependent, and shall immediately report to the Agency any condition(s) that may prevent Contractor from performing the Work in a manner acceptable to the Agency. Contractor shall also seek other usual sources of information for it will be conclusively presumed to have full knowledge of any and all conditions and hazards on, about or above the site(s) relating to or affecting in any way the performance of the Work to be done under the Work Order that were or should have been known to a reasonably prudent contractor.

3.3 Changed Conditions. If, during the progress of the Work, Contractor encounter conditions or environmental hazards at the site(s) materially differing from any indicated in the Contract Documents, or such conditions or hazards as could not reasonably have been anticipated by Contractor, which conditions or hazards will materially affect the cost of the Work to be done under a Work Order, the attention of the Commissioner must be called immediately to such conditions or hazards before they are disturbed. The Commissioner shall thereupon promptly investigate the conditions or hazards. If the Commissioner determines that the conditions do so materially differ, and that they could not reasonably have been anticipated by Contractor, the Work Order may be modified with the written approval of the Commissioner.

3.4 Department Records. Where performance of this Contract involves use by Contractor of the Department's papers, files, data or records at the Department's facilities or offices, Contractor shall not remove any such papers, files, data or records without the prior approval of the Department's designated official.

3.5 Ownership. All of the Work performed under this Contract shall become the sole and exclusive property of the City.

3.6 Inspection. The Department may observe the performance of the Work at any location where the Work is being performed. All Work, materials (whether incorporated into the Work or not), and methods shall at all times be subject to the inspection of the Department. If the Department does not approve any Work, material, or method, such Work, material, or method shall be immediately changed, corrected, replaced, and made good without additional cost or expense to the Department. The Department shall be the final judge of the quality and suitability of the Work, materials, and methods. Acceptance of any Work, material, or method shall not relieve Contractor from any of its obligations under this Contract.

3.7 Completion. Contractor shall notify the Department in writing when Contractor believes that the Work of a Work Order is complete. If the Department determines that the Work is incomplete, Contractor shall complete the Work. The Department shall have no liability or obligation as a result of the inspection and Contractor shall not be relieved of any obligations under this Contract as a result of the performance of such inspection or any acceptance thereof. The Work of a Work Order shall be deemed to be complete when the Department issues final payment for Work covered by such Work Order, including the release of any amounts withheld under Section 5.2 hereinbelow.

3.8 Approval. The Work to be performed by Contractor shall at all times be subject to the approval of the Department. The Department shall, in all cases, determine the amount, quality, acceptability, and fitness of the Work. The decision of the Department shall be final, conclusive, and binding upon Contractor.

3.9 Identification: All of Contractor's employees shall wear a photo ID/card during the performance of any Work under this Contract. Contractor shall provide all of its employees with photo identification acceptable to the Department. No employee shall be permitted to enter any the Department Facility unless the employee displays the proper photo identification. The Department reserves the right to deny entrance to the work site to any employee of Contractor not in possession of a photo ID/card acceptable to the Department.

3.10 Employees and Workmanship. Only licensed personnel thoroughly trained and skilled on the task assigned them may be employed on any portion of the work. Any employee of Contractor found to be unskilled or untrained in his or her work shall be removed from the work. Contractor shall provide the Department with a list of personnel who are expected to be assigned on this Contract, to perform maintenance on a year round basis and certify as to their qualifications to do the tasks assigned. Contractor and its employee engaged in providing the designated services shall observe all the Department policies, practices, standards, procedures and directives. Contractor must not at any time sub-contract any or all work to fulfill the requirement of this contract.

3.11 Safety. Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from Contractor's, and/or its Subcontractors' operations under this Contract. Contractor's obligation to protect shall include the duty to provide, place or replace, and adequately maintain at or about any Site suitable and sufficient protection such as lights, barricades, and enclosures.

3.12 Extensions of Time to Perform. Upon written application by Contractor, the ACCO may grant an extension of time for performance of the Work under a Work Order. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total time of delay in days attributable to such cause. The ruling of the ACCO shall be binding as to the allowance of an extension for that Work Order and the number of days allowed.

ARTICLE 4 PAYMENTS

4.1 Budget. Subject to all other terms of this Contract, the City shall pay and Contractor shall accept, as compensation in full for all Work rendered hereunder, the amounts set forth in the Budget.

4.2 Total Contract Price. The aggregate total payment to Contractor pursuant to this Contract shall not exceed the Total Contract Price.

4.3 Registration. The funds registered for this Contract in each fiscal year shall depend upon the performance of Contractor and the availability of funds. The sum of all funds registered for this Contract may be less than the Total Contract Price.

ARTICLE 5 PAYMENT PROCEDURE

5.1 Requisitions.

A. Form. The Department shall establish, and shall communicate to Contractor, requirements regarding the form and content of Requisitions and the financial and other records to be maintained by Contractor. Contractor shall prepare all Requisitions in accordance with the itemized bid prices as per the Budget and the approved Work Order as applicable.

B. Submission. Contractor shall submit a Requisition, along with all attachments thereto, to the Department's Contract Compliance Accounts Payable (CCAP) Unit with an original signature no later than thirty (30) days after completion of the Work under any Work Order (the "Requisition Period"). Requisitions must include copies of all permits and other required documents.

C. Review. The Department shall review each Requisition submitted by Contractor and shall determine the Approved Amount, and Payable Amount with respect thereto. If the Department disapproves part or all of the Requested Amount with respect to any Requisition, the Department shall communicate such disapproval and the reasons therefor to Contractor.

D. Final Requisition Date. The Department shall designate the Final Requisition Date, which date shall be not less than thirty (30) days after the end of the Term, by written Notice to Contractor. If Contractor fails to submit its Final Requisition by the Final Requisition Date, Contractor waives and relinquishes all rights that Contractor may at any time have for payments otherwise due to Contractor hereunder, whether or not for services performed.

5.2 Deductions / Amounts Withheld. Notwithstanding any other provision of this Contract, in addition or as an alternative to any other remedies under this Contract, the Department may, in its sole discretion, withhold any part or all of the payments otherwise payable to Contractor under this Contract until: (A) Contractor fully performs all obligations of Contractor under this Contract through the latest date covered by any Requisition; (B) Contractor delivers to the Department all reports and documents

required to be submitted by Contractor to the Department through the latest date covered by any Requisition; and (C) the Department has completed a final Audit of each Requisition and Contractor's Books and Records upon which each such Requisition is based.

5.3 Payment.

A. Payment. The City shall pay to Contractor, with respect to each Requisition, the Payable Amount minus any amounts withheld pursuant to Section 5.2 or any other provision of this Contract.

B. Prompt Payment. Payments pursuant to any Requisition which Contractor submits in proper form shall be subject to the prompt payment provisions of the PPB Rules. Any determinations of interest due shall be made in accordance with the provisions of the PPB Rules and Section 3-a of the General Municipal Law.

C. No Release. The City shall not be deemed, by virtue of making payments to Contractor, to have released Contractor from any claim or liability, or to have waived any cause of action, arising from any breach of this Contract.

ARTICLE 6 LIMITATIONS ON PAYMENT

6.1 Earliest Payment Date. Notwithstanding any provision of this Contract to the contrary, no payments shall be made to Contractor under this Contract until the later to occur of (A) the Commencement Date or (B) the date on which this Contract is registered under City Charter section 328.

6.2 Source of Funds. Subject to the provisions of Article 19, the City shall pay all amounts owed to Contractor hereunder only from an allocation of funds to the Program, and the obligation of the City, including the Department, to make payments hereunder shall be subject to the availability of such funds. The obligation of the City to make payments under this Contract shall be subject to the eligibility of the activities comprising the Work for such funding and the availability of such funds for the Work. The City shall not be liable under this Contract beyond the amount of moneys available and specifically appropriated for this Contract.

6.3 No Payment for Unauthorized Work. The Department shall not pay Contractor for any Work which is not performed pursuant to and in accordance with all terms of this Contract.

6.4 Payment for Work Funded Through Other Sources.

A. The Department shall not pay Contractor for the performance of Work that is paid for by other sources of funding, including, but not limited to, other City contracts.

B. If, at any time Contractor receives, or has knowledge that it shall receive, funding or income from any source or sources (including the City, the State, the Federal Government, and/or any other public or private sources) in addition to the funds to be received by Contractor under this Contract and Contractor intends to apply

or applies any part of such additional funding or income to Work, related overhead or any building designated under this Contract, then Contractor shall promptly deliver to the Department a written Notice specifying in detail (a) the amount of such additional funding or income received and/or to be received, (b) the identity of the source of such additional funding; and (c) the amounts to be applied for each item.

C. If any such sources of additional funding or income relate or are to be applied to the Work performed or to be performed during the Term, Contractor shall deliver to the Department a written Notice describing any change in the source, amount, or disbursement of income and funds within ten (10) days after learning of each such change.

D. If Contractor receives any funds from any source other than the Department for the payment of costs incurred in connection with the performance of the Work, then, at the Department's option Contractor shall pay to the Department, upon demand, an amount equal to such payment, or the Department shall deduct such amount from the payments to be made to Contractor under this Contract, or the City may elect to set off against payments otherwise due to Contractor by the City, whether under this Contract or otherwise.

E. The obligations of Contractor under Paragraphs 6.4(B), (C), and (D) above shall survive the expiration or earlier termination of this Contract.

6.5 Overpayments and Underpayments. All payments made and to be made under this Contract may be reduced by the amounts of prior overpayment or increased for prior underpayment made against other Requisitions.

6.6 Payments Subject to Audit. All payments made and to be made under this Contract are subject to Audit.

ARTICLE 7 PRICE ESCALATION

7.1 If the term for this Contract is greater than one (1) year, inclusive of any renewals or extensions thereof, the Unit Prices established in the Budget, may, at the Department's discretion, be adjusted in accordance with the following:

A. No sooner than one year after the bid submission date established in the solicitation and no more often than annually thereafter throughout the Contract Term, including any renewal and/or extension thereof, Contractor shall have the right to request a review of the Unit Prices by the Department if Contractor's costs for providing items of Work have increased in excess of five percent (5%) annualized within Contractor's designated Work area. The request for review shall be in writing, in a format acceptable to the Contracting Officer, and shall include supporting data explaining the cause, effective date, the amount of the increase or decrease, and the amount of Contractor's proposed adjustment.

B. The Department shall review Contractor's request and determine if an adjustment to one or more of the Unit Prices is warranted based upon inflation, market conditions, and other relevant information sources. If the Department determines that Contractor's request is valid, the Department and Contractor shall negotiate an adjustment to the relevant Unit Prices and its effective date.

C. Contractor shall continue performance of all Work under any Work Order pending agreement on, or determination of, any adjustment and its effective date.

D. The Department shall have the right, in its own discretion, to initiate a review of the Unit Prices for the Contract subject to the provisions of this Article. This includes the periodic review of any price adjustments made and the Department shall have the right, in its sole discretion, to reverse any adjustment made to Unit Prices, in whole or in part, if the Department determines that the reasons for granting said adjustment are no longer applicable. It is understood that no Unit Price shall decrease below that originally accepted for award of the Contract as a result of any adjustment.

7.2 No upward price adjustment under this Article shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond Contractor's control and without its fault or negligence, within the meaning of the Default clause.

ARTICLE 8 INSURANCE

8.1 During performance of the Work and at any time prior to the Expiration Date or Termination Date, Contractor will maintain the types of insurance (the "Required Insurance") set forth below:

A. Commercial General Liability Insurance. Contractor shall maintain Commercial General Liability ("CGL") Insurance in the amount of $1,000,000 per occurrence, $1,000,000 personal and advertising injury, $2,000,000 aggregate (on a "per project" basis that applies to all operations under this Contract), and $2,000,000 products/completed operations covering the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 00 01. Such insurance shall be "occurrence" based rather than "claims-made." No Commercial Liability Insurance policy shall contain exclusions that are not included in ISO Form CG 00 01 (whether by exception, exclusion, endorsement, script, or other modification) unless approved in writing by the Department, including but not limited to exclusions of any of the following attributes: (i) contractual liability insuring the contractual obligations of the insured; (ii) employer's liability coverage for liability assumed by the Contractor under an "insured contract"; (iii) coverage for claims arising under New York Labor Law; (iv) independent contractors; (v) explosion, collapse and underground (XCU); and (vi) the applicability of CGL Insurance coverage to the City, including its

officials and employees, as Additional Insured in respect of liability arising out of claims against the Additional Insured by employees of Contractor.

I. Such CGL Insurance shall include the City, including its officials and employees, as an Additional Insured. Coverage must be at least as broad as the latest edition of ISO Forms CG 20 10, CG 20 26, and CG 20 37. Completed operations coverage for the City must be maintained for at least one year following the completion of the last Work Order under this Contract.

II. Such CGL Insurance shall name all other entities designated as additional insureds as may be indicated in this Contract but only for claims arising from Contractor's operations under this Contract, with coverage at least as broad as the latest edition of ISO Form CG 20 26.

III. If the Work requires a permit from the Department of Buildings pursuant to 1 RCNY Section 101-08, Contractor shall provide CGL Insurance with limits of at least those required by 1 RCNY Section 101-08 or greater limits required by the Department in this Contract. If the Work does not require such a permit, the minimum limits shall be those provided for in this Contract.

B. Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance. Contractor shall provide, and shall cause its Subcontractors to provide, Workers Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

C. Commercial Automobile Liability Insurance. Contractor shall provide Commercial Automobile Liability Insurance in the amount of $1,000,000 per accident for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of 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.

8.2 General Requirements for Insurance Coverage and Policies.

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/VII or 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 statistic rating organization acceptable to the City Corporation Counsel unless prior written approval is obtained from the City Corporation Counsel.

B. Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

C. The City's limits of coverage for all types of insurance required pursuant to this Contract shall be the greater of (I) the minimum limits set forth in this Contract or (II) the limits provided to Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

D. Contractor may satisfy its insurance obligations under this Contract through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

F. Policies of liability insurance provided pursuant to this Contract shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

8.3 Proof of Insurance.

A. For all types of insurance required by Section 8.1, Contractor shall file proof of insurance in accordance with this Section within ten (10) days of award.

B. For Workers' Compensation Insurance provided pursuant to Paragraph 8.1(B) of this Contract, Contractor shall submit one of the following forms: C-105.2 - Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. For Disability Benefits Insurance provided pursuant to Paragraph 8.1(B), Contractor shall submit DB-120.1 - Certificate Of Insurance Coverage Under The NYS Disability Benefits Law, Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. ACORD forms are not acceptable.

C. For policies provided pursuant to all of Section 8.1 other than Paragraph (B) thereof, Contractor shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall certify:

I. the issuance and effectiveness of such policies of insurance, each with the specified minimum limits;

II. for insurance secured pursuant to Paragraph 8.1(A) that the City, including its officials and employees, and any other entity specified in this Contract is an Additional Insured;

III. the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number).

All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker or Agent" in the form contained in Exhibit E which is

attached to this Contract and made a part hereof or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier and the additional insured endorsement for CGL insurance.

D. Documentation confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Contract. Such proofs of insurance shall comply with the requirements of Paragraphs 8.3(B) and 8.3(C) above.

E. Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Article upon the demand for such policy by the Commissioner or the City Corporation Counsel.

8.4 Operations of Contractor.

A. Contractor shall not commence the Work unless and until all required certificates have been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of a certificate does not excuse Contractor from securing insurance consistent with all provisions of this Article or of any liability arising from its failure to do so.

B. Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Contract and shall be authorized to perform Work only during the effective period of all required coverage.

C. In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Commissioner. The Commissioner may also declare Contractor in default for failure to maintain required insurance.

D. In the event Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall be cancelled or terminated (or has been cancelled or terminated) for any reason, Contractor shall immediately forward a copy of such notice to both the Commissioner and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Article.

E. Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article, Contractor shall promptly notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Contract (including notice to CGL insurance carriers for events relating to Contractor's own employees) in the time required by the applicable policies. For any policy where the City is an Additional Insured, 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 Insured as well as the Named Insured.” Such notice shall also 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, and the identity of the persons or things injured, damaged or lost. 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.

F. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article, Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

8.5 Subcontractor Insurance. In the event Contractor requires any Subcontractor to procure insurance with regard to any operations under this Contract and requires such Subcontractor to name Contractor as an Additional Insured thereunder, Contractor shall ensure that such Subcontractor name the City, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26. Such coverage must be provided without a requirement for privity of contract.

8.6 Wherever reference is made in this Article to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Article 25 of this Contract.

8.7 Apart from damages or losses covered by Disability Benefits Insurance, Contractor waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Contractor and/or its employees, agents, or Subcontractors.

8.8 In the event Contractor utilizes a self-insurance program (including a self-insured retention) to satisfy any of the requirements of this Article, Contractor shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies. Contractor must disclose any self-insured retentions on its CGL insurance or commercial automobile liability insurance and obtain written approval from the Commissioner.

8.9 Materiality/Non-Waiver. Contractor's failure to secure policies in complete conformity with this Article, or to give an insurance company timely notice of any sort required in this Contract or to do anything else required by this Article shall constitute a material

breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

8.10 Pursuant to General Municipal Law Section 108, this Contract shall be void and of no effect unless Contractor maintains Workers' Compensation Insurance for the term of this Contract to the extent required and in compliance with the New York State Workers' Compensation Law.

8.11 Other Remedies. Insurance coverage provided pursuant to this Article or otherwise shall not relieve Contractor of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Contract or law.

ARTICLE 9 INDEMNIFICATION

9.1 Indemnification. To the fullest extent permitted by law, 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 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 Contract 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 Contract. 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.

9.2 Indemnification under Section 9.1 or any other provision of the Contract shall operate whether or not Contractor or its Subcontractors have placed and maintained the insurance specified under Article 8 of this Contract.

9.3 Set-Off. At its option, the Department may deduct the actual and reasonable amount of any claims for which it is indemnified by Contractor pursuant to this Article on a dollar for dollar basis from the outstanding balance due and owing Contractor for the purpose of set-off in an amount sufficient to cover the cost incurred by the City for such claims. Contractor shall also be liable to and shall pay the City upon the City's demand any and all consequential damages attributable to any such Claims including but not limited to, reasonable attorney fees incurred by the City. The rights and remedies of the City provided for in this Article shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity.

ARTICLE 10 TAX EXEMPTION

10.1 The City is exempt from payment of Federal, State, and local taxes, including, without limitation, Sales and Compensating Use Taxes of the State of New York and its cities

and counties on all tangible personal property sold to the City pursuant to the provisions of this Contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to Contractor or a Subcontractor, if any, or to tangible personal property which, even though it is consumed, is not incorporated into the completed Work (consumable supplies) and tangible personal property that the Contractor and/or its Subcontractors, if any, are required to remove from the Site during or upon completion of the Work (removable property). The Contractor and its Subcontractors, if any, shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such consumable supplies and removable property.

10.2 The Contractor agrees to sell and the City agrees to purchase all tangible personal property, other than consumable supplies and other removable property, that is required, necessary or proper for or incidental to the construction of the Project covered by this Contract. The sum paid under this Contract for such tangible personal property shall be in full payment and consideration for the sale of such tangible personal property.

A. The Contractor agrees to construct the Project and to perform all Work, labor and services rendered, necessary, proper or incidental thereto for the sum shown in the bid for the performance of such Work, labor, and services, and the sum so paid pursuant to this Contract for such Work, labor, and services, shall be in full consideration for the performance by the Contractor of all its duties and obligations under this Contract in connection with said Work, labor, and services.

10.3 20 NYCRR Section 541.3(d) provides that a Contractor's purchases of tangible personal property that is either incorporated into real property owned by a governmental entity or purchased for and sold to a governmental entity are exempt from Sales and Use Tax. The City shall not pay Sales Tax for any such tangible personal property that it purchases from the Contractor pursuant to the Contract. With respect to such tangible personal property, the Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by the City, properly executed, acknowledged and delivered assuring to the City title to such tangible personal property, free of liens and/or encumbrances, and the Contractor shall mark or otherwise identify all such tangible personal property as the property of the City.

10.4 Title to all tangible personal property to be sold by the Contractor to the City pursuant to the provisions of the Contract shall immediately vest in and become the sole property of the City upon delivery of such tangible personal property to the Site. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such tangible personal property in accordance with the provisions of this Contract, protect it, maintain it in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional tangible personal property in place of any that may be lost, stolen or rendered unusable, without cost to the City, until such time as the Work covered by the Contract is fully accepted by

the City. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. In the event that, after title has passed to the City, any of the tangible personal property is rejected as being defective or otherwise unsatisfactory, title to all such tangible personal property shall be deemed to have been transferred back to the Contractor.

10.5 The purchase by Subcontractors, if any, of tangible personal property to be sold hereunder shall be a purchase or procurement for resale to the Contractor (either directly or through other Subcontractors) and therefore not subject to the aforesaid sales and compensating use taxes, provided that the subcontracts and purchase agreements provide for the resale of such tangible personal property and that such subcontracts and purchase agreements are in a form similar to this Contract with respect to the separation of the sale of consumable supplies and removable property from the Work and labor, services, and any other matters to be provided, and provided further that the subcontracts and purchase agreements provide separate prices for tangible personal property and all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for tangible personal property from the payments for other Work and labor and other things to be provided.

10.6 The Contractor and its Subcontractors, if any, shall furnish a Contractor Exempt Purchase Certificate to all persons, firms or corporations from which they purchase tangible personal property for the performance of the Work covered by this Contract.

10.7 In the event any of the provisions of this Article shall be deemed to be in conflict with any other provisions of this Contract or create any ambiguity, then the provisions of this Article shall control.

ARTICLE 11 LABOR AND MATERIALS

11.1 Competence. Contractor shall employ or otherwise engage only experienced, qualified and competent persons to perform the Work. Whenever the Department shall inform Contractor, in writing, that any employee is, in its opinion, incompetent, unfaithful, or disobedient, Contractor shall discharge such employee, or cause such employee to be discharged, from the performance of the Work forthwith and shall not again cause or permit such employee to be employed in the performance of the Work.

11.2 No City Employees. Contractor shall not, without the prior written approval of the Department, employ or otherwise engage any person who is an employee of the City to perform any Work.

11.3 Adequate Staff. Contractor shall at all times (A) employ or otherwise engage a sufficient number of persons to perform the Work and to comply with all obligations of Contractor, and (B) cause such persons to devote to the performance of the Work a number of hours which is sufficient to complete the Work in the quantity and quality, and within the time, required hereunder. The Department, in its sole discretion, may at any

time require Contractor to hire additional staff to perform Work or to replace existing staff members engaged in the performance of Work.

11.4 Supervision. Contractor shall be solely responsible for the supervision, compensation, work, and personal conduct of all employees of Contractor while engaged under this Contract. Nothing herein shall impose any liability or duty upon the City for (A) the acts, omissions, liabilities, or obligations of Contractor or of any person, firm, company, agency, association, corporation or organization employed or engaged by Contractor as independent contractor, consultant, expert, specialist, trainee, employee, servant, or agent, or (B) taxes of any nature, including but not limited to unemployment insurance, workers' compensation, disability insurance, Social Security coverage and employee retirement membership or credit.

11.5 Labor And Materials. Contractor shall not employ or utilize on the Work any labor, materials, means or employee whose employment, or utilization during the course of this Contract, may tend to cause or results in strikes, work stoppages, delays, suspension of Work or similar issues by workmen employed by Contractor or Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Contract or by other contractors or their subcontractors pursuant to other contracts, or on any other buildings or premises owned or operated by the City, its agencies, departments, boards or authorities. Any violation by Contractor of this requirement may, upon certification of the Department, be considered as proper and sufficient cause for declaring Contractor to be in Default, and for the City to take such action as the Department may deem proper.

11.6 Parts And Equipment. If the Work involves the purchase and/or installation of parts, equipment, and/or other products, Contractor warrants that (A) such parts, equipment, and/or other products are standard new current model of regular stock with all components regularly used with the type of equipment serviced, and (B) no part or attachment has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

ARTICLE 12 SUBCONTRACTING

12.1 Subcontracting:

A. Contractor shall not enter into any Subcontract or otherwise engage any Subcontractor to perform any Work or any other obligations of Contractor hereunder without the prior written approval of the Department.

B. Any Subcontracts made by Contractor shall be in writing; no Work may be performed by a Subcontractor prior to Contractor entering into a written subcontract with Subcontractor and complying with the provisions of this Article.

C. Contractor shall, upon request, promptly deliver to the Department a true, accurate, and complete copy of each proposed or approved Subcontract.

D. Approval of any Subcontract by the Department shall not relieve Contractor any of the responsibilities, duties, and liabilities of Contractor hereunder. Contractor shall remain fully responsible for all responsibilities, duties, and liabilities of Contractor hereunder and Contractor shall be as fully responsible to the Department and the City for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them as Contractor is for the acts and omissions of persons directly employed by Contractor.

E. Nothing herein shall create any contractual relationship between any Subcontractor and the Department.

12.2 Subcontracts. Contractor shall cause each Subcontract to provide that

A. Subcontractor shall comply with, and perform all work in accordance with, all applicable provisions of this Contract,

B. nothing therein shall impair the rights of the Department,

C. nothing contained therein or herein shall create any contractual relationship between the Subcontractor and the Department,

D. Subcontractor is not a third party beneficiary of this Contract, and

E. Subcontractor shall be bound by any confidentiality provisions of this Contract.

12.3 Insurance. Contractor shall not cause or permit any Subcontractor to perform any Work until such Subcontractor has furnished satisfactory evidence of insurance coverage in the same amounts and to the same extent as is required to be maintained by Contractor for performance of such Work.

12.4 Payment.

A. Contractor shall pay all Subcontractors for and on account of Work performed by such Subcontractors in accordance with the terms of their respective Subcontracts. If and when required by the Department, Contractor shall submit satisfactory evidence that Contractor has made such payment.

B. Notwithstanding any provision of this Contract to the contrary, the Department may directly pay to any Subcontractor any amounts that the Department, in its sole discretion, determines are due and owing to such Subcontractor in accordance with the terms of the applicable Subcontract.

C. Contractor shall not make, cause or permit any payment to any Subcontractor unless the invoice submitted by such Subcontractor includes a written certification that the employees performing the work described in such invoice have been paid the wages required by any applicable laws.

D. The Comptroller may, upon recommendation by the Department, deduct from the amounts certified under this Contract to be due to Contractor, the sum or sums due and owing from Contractor to any Subcontractors according to the terms of any Subcontracts. In case of dispute between Contractor and any

Subcontractors as to the amount due and owing, the Comptroller may deduct and withhold from the amounts certified under this Contract to be due to Contractor such sum or sums as may be claimed by any Subcontractor in a sworn affidavit to be due and owing, until such time as all claims shall have been finally resolved.

12.5 Warranties and Guaranties. Contractor shall obtain from each Subcontractor and deliver to the Department all manufacturer's warranties and guaranties required hereunder, or as otherwise requested by the Department, relating to equipment, appliances, and fixtures procured and installed in connection with the performance of the Work. All such warranties and guaranties shall be in the name of the City.

ARTICLE 13 RECORDS AND AUDIT

13.1 Maintenance of Books and Records. During the Audit Term, Contractor shall maintain the following Books and Records in such form as the Department may require:

A. separate, true, accurate, and complete books of account, together with payment Requisitions and supporting documentation (including without limitation, vouchers, invoices, receipts, canceled checks, and other documents relating to the business and financial affairs of Contractor), and other records and reports showing in detail all receipts and all expenses and charges incurred in the performance of the Work under this Contract.

B. payrolls for all employees of Contractor whose salaries are funded in whole or in part with funds received by Contractor under this Contract and records relating thereto, setting forth the name and address of each employee and his or her correct job classification, rate of pay (including rates of contribution for or costs assumed to provide fringe benefits), daily or weekly number of hours worked, nature of work performed, deductions made, actual wages paid, together with such other information as may be requested by the Department.

13.2 Access to Books and Records. During the Audit Term, Contractor shall maintain its Books and Records at the offices of Contractor located at Contractor's address first set forth above, or at such other location as may be approved by the Department in writing. Contractor shall make such Books and Records available for inspection and Audit in accordance with the following Section 13.3. The City, including the Department, shall have the right at all times to inspect the operations and records of Contractor relating to the subject matter covered by this Contract.

13.3 Right to Audit. During the Audit Term, the City, including the Department, the Comptroller, and any of their duly authorized representatives shall have access to Contractor's Books and Records during normal working hours for the purpose of performing Audits. Contractor shall promptly cooperate in good faith with the City, including the Department, the Comptroller, and any of their duly authorized representatives so that all Audits can be timely completed.

13.4 Fiscal And Accounting Requirements. Contractor shall adhere to any fiscal and accounting requirements established by the Department for all moneys received or disbursed by Contractor in connection with this Contract, including, without limitation, submitting to the Department upon request, in such form as the Department may require, a report setting forth information with regard to the internal control procedures established by Contractor for handling funds received by Contractor under this Contract.

ARTICLE 14 REPORTS

14.1 General. Contractor shall submit to the Department, within the time and in the manner specified by the Department, all reports and documents required under this Contract, including, but not limited to, any reports and documents specified in this Article.

14.2 Status Reports. At the request of the Department, and upon a regular schedule to be determined by the Department, Contractor shall submit to the Department written status reports setting forth, in such detail as the Department may require, (A) a description of and the results of the Work performed by Contractor in connection with this Contract during the preceding month and cumulatively during the Term, and (B) such other issues and information as the Department shall require.

14.3 Payroll Reports. Contractor shall, and shall cause each Subcontractor to, furnish to the Department upon demand a verified copy of its payroll records, time records, and any other information required by the Department to satisfy the Department to verify compliance with any and all applicable statutes or regulations.

ARTICLE 15 RESOLUTION OF DISPUTES

15.1 Except as provided in Paragraphs 15.1(A) and 15.1(B) below, all disputes between the City and Contractor that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this Article and Section 4-09 of the PPB Rules. This procedure shall be the exclusive means of resolving any such disputes.

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

B. For construction and construction-related services this Article shall apply only to disputes about the Scope of Work attached to this Contract, the interpretation of Contract Documents, the amount to be paid for extra Work or disputed Work performed in connection with this Contract, the conformity of Contractor's Work to this Contract, and the acceptability and quality of Contractor's Work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which Contractor disagrees.

15.2 All determinations required by this Article 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 Article shall be deemed a non-determination without prejudice that will allow application to the next level.

15.3 During such time as any dispute is being presented, heard, and considered pursuant to this Article, the terms of this Contract shall remain in full force and effect and Contractor shall continue to perform work in accordance with this Contract and as directed by the ACCO or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of Contractor to continue the Work as directed shall constitute a waiver by Contractor of any and all claims being presented pursuant to this Article and a material breach of Contract.

15.4 Presentation of Dispute to Agency Head.

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

B. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with Contractor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and

require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract related to the Work of this Contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the contractor initiating the dispute.

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

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

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

A. Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Agency Head, 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 (A) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) Contractor contends the dispute was wrongly decided by the Agency Head; (B) a copy of the decision of the Agency Head, and (C) a copy of all materials submitted by Contractor to the agency, including the Notice of Dispute. Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

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

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

D. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in Paragraph 15.5(C) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

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

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

B. the CCPO or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and

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

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

A. Form and Content of Petition by Contractor. Contractor shall present its dispute to the CDRB in the form of a Petition, which shall include (A) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) Contractor contends that the dispute was wrongly decided by the Agency Head; (B) a copy of the decision of the Agency Head; (C) copies of all materials submitted by Contractor to the Agency; (D) a copy of the decision of the Comptroller, if any, and (E) copies of all correspondence with, and material submitted by Contractor to, the Comptroller's Office. Contractor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attention: 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, Contractor shall submit a copy of the statement of the substance of the dispute, cited in (A) above, to both the Agency Head and the Comptroller.

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

C. Further Proceedings. The CDRB shall permit 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 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 Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

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

resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

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

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

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

ARTICLE 16 NOISE CONTROL CODE

16.1 In accordance with the noise abatement provisions of Section 24-216(b) of the Administrative Code:

A. Devices and activities which will be operated, conducted, constructed, or manufactured pursuant to this Contract and which are subject to the provisions of the New York City Noise Control Code (the “Noise Control Code”) shall be operated, conducted, constructed, or manufactured without causing a violation of such Noise Control Code.

B. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the City’s Department of Environmental Protection. Regulations promulgated pursuant to Section 24-216(b) of the Administrative Code after the bid openings for this Contract shall not alter its terms, conditions and specifications.

ARTICLE 17 LIENS

If at any time before or within thirty (30) days after the Work herein agreed to be performed is completed and accepted by the City, any person claiming to have performed any labor or furnished any material toward the performance or completion of this Contract shall file with the Department, the Comptroller, or the office of any county court or clerk, any notice of the sort described in the Lien Law of the State of New York or any similar act of the Legislature of the State of New York, the City shall retain, from the moneys due or to become due under this Contract, so much of such money as shall be sufficient to pay the amount claimed in said notice, together with the reasonable costs of any actions brought or that may be brought to enforce such lien. The moneys so retained shall be held by the City until the lien thereon shall be discharged pursuant to law.

ARTICLE 18 DEFAULT

18.1 Event of Default. In addition to those instances referred to in other Articles of this Contract, the Commissioner shall have the power to declare Contractor in Default of this Contract if:

A. Contractor for any reason violates or fails to perform any term, covenant, or condition required to be performed by Contractor under this Contract; or

B. Contractor becomes insolvent; or

C. Contractor makes an assignment for the benefit of creditors pursuant to the laws of the State of New York; or

D. A voluntary or involuntary petition in bankruptcy is filed by or against Contractor; or

E. Contractor fails to commence Work when notified to do so by the Department; or

F. Contractor abandons the Work; or

G. Contractor refuses to proceed with the Work when and as directed by the Department; or

H. Contractor reduces the working force of Contractor to a number which would be insufficient to perform the Work in accordance with this Contract, and fails or refuses to sufficiently increase such working force when ordered to do so by the Department; or

I. Contractor assigns, transfers, conveys or otherwise disposes of this Contract other than as herein permitted; or

J. A receiver is appointed to take charge of Contractor's property or affairs; or

K. Contractor unnecessarily or unreasonably or willfully delays the performance and completion of the Work, or the award of necessary Subcontracts, or the placing of necessary material and equipment orders; or

L. Contractor fails to perform this Contract in good faith and in accordance with its terms; or

M. The Work cannot be completed, or is not completed, within the time required hereby or within the time to which such completion may have been extended.

N. Contractor or any of its officers, directors, partners, five percent (5%) shareholders, principals, or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the PPB Rules.

18.2 Before the Commissioner exercises the power to declare Contractor in Default, the Commissioner shall give Contractor an opportunity to be heard upon not less than two (2) days' notice.

18.3 Force Majeure. Notwithstanding any provision of this Contract to the contrary, in the event of any Force Majeure Delay, then the time for performance of such obligations by Contractor shall be extended for such period as the Department shall find in writing to be the period of such delay or delays, but in no event more than sixty (60) days without the prior written consent of the Department. Contractor shall deliver written Notice to the Department of any Force Majeure Delay and the cause or causes thereof promptly after the beginning of such Force Majeure Delay. Contractor shall proceed in accordance with this Contract with those obligations the performance of which is not prevented by such Force Majeure Delay unless the Department, in writing, shall excuse Contractor from proceeding with all or part of such obligations.

ARTICLE 19 TERMINATION

19.1 Termination by the City Without Cause. The Department may postpone, delay, suspend, or terminate this Contract without cause.

A. If the Department elects to terminate this Contract pursuant to this Section, the Department shall deliver to Contractor a Termination Notice specifying (A) that the Contract is being terminated pursuant to this Section, and (B) the Termination Date, which Termination Date shall be not less than thirty (30) days from the date of such Termination Notice.

B. If the Department terminates this Contract pursuant to this Section, Contractor shall be entitled to payment for all Pre-Termination Work for which (A) Contractor submits a Requisition within thirty (30) days after the Termination Date, and (B) payment is otherwise due and payable in accordance with this Contract.

C. The postponement, delay, suspension, or termination of this Contract pursuant to this Section shall not (A) give rise to any cause of action for damages against the City, or (B) constitute a waiver of any claims that the City might otherwise have against Contractor.

19.2 Termination Due to Default of Contractor. The Department may terminate this Contract at any time in whole or in part if the Department declares Contractor is in Default following the Hearing as set forth in Article 18 or as specified in other Articles of

this Contract. The Department shall deliver to Contractor a Default and Termination Notice specifying (A) the basis for such termination, and (B) the Termination Date.

A. If this Contract has been terminated pursuant to this Section, the Department shall provide to Contractor a written certification of the Default Costs, which certification shall be binding and conclusive upon Contractor, any surety, and any other person claiming under this Contract as to the amount of such Default Costs.

B. The Department may deduct the Default Costs from such moneys as would have been payable to Contractor for the Pre-Termination Work. The balance of such moneys as would have been payable to Contractor for the Pre-Termination Work, if any, shall be paid to Contractor, subject to the other provisions of this Contract, without interest after completion of the Work. If the Default Costs, as so certified by the Department, exceed such moneys as would have been payable to Contractor for the Pre-Termination Work, Contractor shall pay any such excess to the Department upon demand.

C. The Commissioner's determination that Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude Contractor from commencing a plenary action for any damages relating to this Contract. If Contractor protests the determination of the Commissioner, Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the Civil Practice Law and Rules of the State of New York.

19.3 Close-Out Procedures. Within thirty (30) days after the Termination Date, except as set forth in Paragraph 19.3(D) below, Contractor shall comply with all the Department and City close-out procedures, including but not limited to:

A. stopping Work on the date and to the extent specified in the Default and Termination Notice or the Termination Notice, as the case may be;

B. not incurring any further obligations or making any further payments pursuant to this Contract beyond the Termination Date;

C. submitting all reports and other documents in the form required pursuant to this Contract;

D. furnishing to the Department and the City within sixty (60) days of the effective date of such termination an inventory of all the Department or City-Owned Property, including, without limitation, all equipment, appurtenances and property (if any) purchased through or otherwise provided under this Contract, and carrying out any and all the Department or City directives concerning the disposition thereof;

E. cooperating fully with the Department in order to effectuate the orderly transfer of all or any part of the Work in progress to the Department or its designee, including, without limitation, promptly (I) assigning to the Department or its

designee such Subcontracts or other commitments as the Department may direct, and (II) taking such steps and executing and delivering such instruments and documents as may be necessary to allow the Department or its designee to complete the Work; and

F. complying with any and all the Department or City directive(s) deemed necessary by the Department or the City concerning the termination of this Contract.

19.4 Completion of Work. The Department may complete the Work or cause the Work to be completed by such means and in such manner as the Department shall determine, including, but not limited to, (A) procuring one or more new contracts with or without public letting, (B) departing from, changing, or varying the terms and provisions of this Contract, and (C) accepting a lesser or differing standard of performance. Such departure, change or variation, shall not affect the conclusiveness of the Department's certification of Default Costs, nor shall it constitute a defense to an action to recover the amount by which such Default Costs exceed the amount which would have been payable to Contractor. The Department may remove, dispose of, or utilize any materials and supplies of Contractor remaining on the site of any Work.

19.5 No Release. Notwithstanding any provision of this Contract to the contrary, termination of this Contract pursuant to this Article shall not release Contractor from any liability to the City, and the City may withhold payments to Contractor until such time as the exact amount of damages due to the City from Contractor shall be determined.

19.6 Additional Rights. In addition to or as an alternative to the right to terminate this Contract as set forth in this Article, the City retains all the rights and remedies to which it may be entitled at law or in equity.

19.7 Partial Termination. Following any partial termination of this Contract, Contractor will continue to perform the remainder of this Contract in conformity with the terms of this Contract.

ARTICLE 20 INDEPENDENT CONTRACTOR

20.1 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 Contract or any performance pursuant to or in connection with this Contract, 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.

20.2 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 Contract 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 Contract. Nothing in this Contract, and no entity or person's performance pursuant to or in connection with this Contract, 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 Contract or any performance pursuant to or in connection with this Contract, (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 Contract, nothing in the Contract and no performance pursuant to or in connection with the Contract shall impose any liability or duty on the City to any person or entity whatsoever.

ARTICLE 21 LIQUIDATED DAMAGES

21.1 Schedule of Liquidated Damages. Any failure by Contractor to perform Work within the time and in the manner specified in this Contract, or any violation of any of the terms and conditions of this Contract, may adversely affect the City, including the Department. In view of the difficulty of accurately ascertaining the damages that the City, including the Department, shall suffer by reason of such failure or violation, the Department and Contractor have agreed to the following schedule of liquidated damages: (I) $500.00 per day, per occurrence, for any Work not timely completed, and (II) $1,000.00 per day, per occurrence, for failure to perform any Work, as specified in a Work Order.

21.2 Assessment of Liquidated Damages:

A. Liquidated damages shall be assessed as follows:

I. If Contractor fails to perform or cause to be performed any Work within the time and in the manner specified in this Contract, or violates or fails to perform any of the terms and conditions of this Contract, the Department shall deliver written Notice to Contractor specifying the failure or violation

and setting forth a reasonable period, determined in the Department's sole discretion, within which Contractor may cure such failure or violation.

II. If Contractor fails to timely cure such failure or violation, then upon the delivery by the Department to Contractor of a second Notice, Contractor shall pay to the Department liquidated damages in the amounts set forth above, from the date of the first Notice until the earlier to occur of either the completion of the cure or termination of this Contract.

B. Assessment of liquidated damages shall be at the Department's sole discretion. The Department, in its sole discretion, shall deduct and retain the amount of any such liquidated damages from any moneys which may become due to Contractor hereunder. If the liquidated damage amount assessed by the Department in accordance with this Section shall be greater than the total amount of moneys available under this Contract, then Contractor shall be liable to pay the difference upon demand by the Department.

21.3 No Waiver of Other Remedies. Liquidated damages assessed in accordance with this Article are not intended to be, nor shall they be treated as being, a partial or full waiver or discharge of either Contractor's obligation to indemnify the City or of any other remedy provided for by this Contract or by law.

ARTICLE 22 CERTAIN REPRESENTATIONS, WARRANTIES, AND COVENANTS OF CONTRACTOR

22.1 Legal Authority. Contractor represents and warrants that (A) Contractor is duly organized, validly existing, and in good standing, and authorized to do business in the State of New York, (B) Contractor has full power, authority, and legal right to execute, deliver, and perform this Contract, and (C) this Contract has been duly authorized, executed, and delivered by Contractor and constitutes the legal, valid, and binding obligation of Contractor, enforceable in accordance with its terms.

22.2 Suitability to do Business with the City. Contractor represents and warrants that (A) all statements, information, and materials provided by Contractor in connection with the selection of Contractor for performance of the Work, including, but not limited to, any information included in Contractor's Procurement and Sourcing Solutions Portal (PASSPort) disclosure (formerly the VENDEX Questionnaire or Certificate of No change), were true, accurate, complete, and not in any way misleading when submitted and remain true, accurate, complete, and not in any way misleading as of the date of this Contract, and (B) Contractor is not in arrears or default upon any debt, contract, or other obligation to the City.

22.3 No Inducement. Contractor represents, warrants, and covenants that (A) no person or selling agency has been employed or retained to solicit or secure this Contract, and (B) Contractor has not made and shall not make any payment of, or any agreement or understanding for the payment of, any commission, percentage, brokerage fee,

contingency fee, or any other compensation, payment, gift, or thing of value in connection with the procurement of this Contract.

22.4 Breach. The representations or warranties of Contractor contained in this Article and in the remainder of this Contract are made for the express purpose of inducing the City to enter into this Contract, and the City has executed this Contract in reliance upon such representations and warranties. If the Department becomes aware of any breach or violation of any of the representations and warranties contained in this Contract, the Department may annul this Contract without liability, entitling the Department to recover all monies paid hereunder and Contractor shall not then make claim for, or be entitled to recover, any sum or sums due under this Contract. This remedy, if effected, shall not constitute the sole remedy afforded the Department for the falsity or breach, nor shall it constitute a waiver of the Department's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Contract.

ARTICLE 23 LIABILITIES

23.1 Exclusive Liability to Contractor. The liability of the City, including the Department, to Contractor under this Contract shall be limited to the funds appropriated by the City for this Contract. The City, including the Department, shall not be liable to any other person or entity for the satisfaction of any remedy of Contractor for failure of the Department to perform any of the Department's obligations hereunder. The City shall not have any liability or duty to any person, firm, corporation, or governmental body for any act (of omission or commission), liability, or obligation of Contractor, whether arising from Contractor's actions under this Contract or otherwise.

23.2 Continuing Liability of Contractor. Notwithstanding any other provision of this Contract, Contractor shall not be relieved of liability to the City for damages sustained by the Department by virtue of Contractor's breach of this Contract and Contractor's liability therefor shall survive the expiration or earlier termination of this Contract. The Department may withhold payments to Contractor for the purpose of set-off against such damages until such time as the exact amount of damages due to the Department or the City from Contractor is determined.

23.3 No Damages for Delay. Contractor shall not make any claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives and agrees that all it may be entitled to on account of any such delay is an extension of time to complete performance of a Work Order as provided herein.

ARTICLE 24 ESTOPPEL AND WAIVER

24.1 No Estoppel. Neither the City nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment, or certification made or given under or in connection with this Contract by the City, the Commissioner, or any officer, agent, or employee of the City: (A) from

showing the true and correct classification, amount, quantity, or character of the Work actually performed, or that any such determination, decision, order, letter, payment, or certification was untrue, incorrect, or improperly made in any particular way, or that the Work or any part thereof does not in fact conform to the requirements of this Contract, or (B) from demanding and recovering from Contractor any overpayments made to Contractor, or such damages as the City may sustain by reason of Contractor's failure to perform each and every part of this Contract in strict accordance with its terms, or (C) both (A) and (B).

24.2 No Waiver.

A. The failure or delay by the City, including the Department, to insist in any one or more cases upon the strict performance of any of Contractor's obligations hereunder or to exercise or enforce any right or remedy herein contained shall not constitute and shall not be construed as a waiver or a relinquishment for the future of such obligation, right, or remedy.

B. No waiver shall be construed to be a modification of the Contract unless and until the same is agreed to in writing by the parties as set forth in Article 28.

C. The waiver by the City, including the Department, of a breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach.

ARTICLE 25 NOTICES

25.1 Notices. All Notices given or required to be given under this Contract shall be in writing and shall be transmitted by (A) hand delivery, (B) certified or registered U.S. mail, return receipt requested, (C) reputable overnight courier, or (D) facsimile.

A. Notices to Contractor shall be delivered, sent, or transmitted to the business address specified in Contractor's bid.

B. Notices to the Department shall be delivered, sent, or transmitted to:

Department of Housing Preservation and Development
100 Gold Street
New York, New York 10038
Attention: Associate Commissioner, Division of Emergency Operations and Enhanced Enforcement
Facsimile: 212-863-7777

with a copy to:

Department of Housing Preservation and Development
100 Gold Street
New York, New York 10038
Attention: General Counsel
Facsimile: (212) 863-8377

25.2 Delivery. Notices transmitted by hand delivery shall be deemed to have been given upon actual delivery or refusal of receipt. Notices transmitted by certified or registered U.S. mail, return receipt requested shall be deemed to have been given upon the third (3rd) day after such Notice has been deposited in the United States mail, postage prepaid. Notices transmitted by overnight courier shall be deemed to have been given upon actual delivery or refusal of receipt. Notices transmitted by facsimile shall be deemed to have been given upon confirmed receipt. Any notice of a change in address shall only be deemed to have been given when received by the other party.

25.3 Change of Address. Either Contractor or the Department may, by written notice to the other, given as provided in this Article, change the address to which Notices are to be sent.

ARTICLE 26 PAYMENT AND PERFORMANCE BOND

26.1 Performance and payment security will be required per individual Work Order, for one hundred percent (100%) of the total price of the Work Order, when that total price exceeds either $350,000.00 if the Work Order is federally funded; or $1,500,000.00 if the Work Order is other than federally funded.

26.2 For each Work Order where such security is required, Contractor must deliver to the City (1) an executed bond in the value of such Work Order to secure the faithful performance of such Work Order, and (2) an executed bond in the value of such Work Order to secure the payment of all persons performing labor or furnishing materials in connection with such Work Order.

26.3 The executed bonds shall be prepared on the bond forms attached hereto as Exhibit C, and have as surety thereunder a surety company approved by the City and authorized to do business in the State of New York.

26.4 In lieu of the required bonds, Contractor may deposit with the Comptroller cash, obligations of the City or other security which the Comptroller shall approve as being of a value equal to the amount of such bonds.

26.5 Obligations of the City deposited by Contractor in lieu of the required bonds may be sold by the Comptroller and the proceeds used for any purpose for which the principal or surety on such bonds would be liable under the terms of this Contract. Contractor shall not be entitled to receive interest on any cash or other security deposited.

ARTICLE 27 PAYMENT GUARANTEE

27.1 In the event the terms of this Contract do not require Contractor to provide a payment bond or where the Contract does not require a payment bond for one hundred percent (100%) of the Contract price, the City shall, in accordance with the terms of this Article, guarantee payment of all lawful claims for:

A. Wages and compensation for labor performed and/or services rendered; and

B. Materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with the City as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of the City or Contractor.

27.2 The provisions of Section 27.1 are subject to the following limitations and conditions:

A. The guarantee is made for the benefit of all beneficiaries as defined in Section 27.1 provided that those beneficiaries strictly adhere to the terms and conditions of the following Paragraphs 27.2(B) and 27.2(C).

B. Nothing in this Article shall prevent a beneficiary providing labor, services or material for the Work from suing Contractor for any amounts due and owing the beneficiary by Contractor.

C. Every person who has furnished labor or material, to Contractor or to a Subcontractor of Contractor, in the prosecution of the Work and who has not been paid in full therefor before the expiration of a period of ninety (90) Days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action; provided, however, that a person having a direct contractual relationship with a Subcontractor of Contractor but no contractual relationship express or implied with Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to Contractor within one hundred twenty (120) days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by Contractor by other means, such notice shall be deemed sufficient.

D. Except as provided in Labor Law Section 220-g, no action on this payment guarantee shall be commenced after the expiration of the one-year limitations period set forth in Section 137(4)(b) of the State Finance Law.

E. Contractor shall promptly forward to the City any notice or demand received pursuant to Paragraph 27.2(C) above. Contractor shall inform the City of any defenses to the notice or demand and shall forward to the City any documents the City requests concerning the notice or demand.

F. All demands made against the City by a beneficiary of this payment guarantee shall be presented to the Assistant Commissioner along with all written documentation concerning the demand which the Assistant Commissioner deems reasonably appropriate or necessary, which may include, but shall not be limited to: the subcontract; any invoices presented to Contractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of Contractor and that the demand has not been paid by Contractor within the time allowed for such payment by the subcontract; and copies of any correspondence between the beneficiary and Contractor concerning such demand. The City shall notify Contractor that a demand has been made. Contractor shall inform the City of any defenses to the demand and shall forward to the City any documents the City requests concerning the demand.

G. The City shall make payment only if, after considering all defenses presented by Contractor, it determines that the payment is due and owing to the beneficiary making the demand.

H. No beneficiary shall be entitled to interest from the City, or to any other costs, including, but not limited to, attorneys' fees, except to the extent required by State Finance Law Section 137.

27.3 Upon the receipt by the City of a demand pursuant to this Article, the City may withhold from any payment otherwise due and owing to Contractor under this Contract an amount sufficient to satisfy the demand.

A. In the event the City determines that the demand is valid, the City shall notify Contractor of such determination and the amount thereof and direct Contractor to immediately pay such amount to the beneficiary. In the event Contractor, within seven (7) days of receipt of such notification from the City, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by Contractor to the beneficiary for the amount of the demand determined by the City to be valid. Contractor, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the City, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.

B. In the event that the amount otherwise due and owing to Contractor by the City is insufficient to satisfy such demand, the City may, at its option, require payment from Contractor of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the City may have under law or Contract.

C. In the event the City determines that the demand is invalid, any amount withheld pending the City's review of such demand shall be paid to Contractor; provided, however, no lien has been filed. In the event a claim or an action has been filed, the terms and conditions set forth in Section 9.3 shall apply. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York and terms of this Contract.

27.4 The provisions of this Article shall not prevent the City and Contractor from resolving disputes in accordance with the PPB Rules, where applicable.

27.5 In the event the City determines that the beneficiary is entitled to payment pursuant to this Article, such determination and any defenses and counterclaims raised by Contractor shall be taken into account in evaluating Contractor's performance.

27.6 Nothing in this Article shall relieve Contractor of the obligation to pay the claims of all persons with valid and lawful claims against Contractor relating to the Work.

27.7 Contractor shall not require any performance, payment or other bonds of any Subcontractor if this Contract does not require such bonds of Contractor.

27.8 The payment guarantee made pursuant to this Article shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to Contractor or its Subcontractors in the prosecution of the Work under this Contract all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the City on the payment guarantee provided by this Article within the one-year limitations period set forth in Section 137(4)(b).

ARTICLE 28 CONTRACT CHANGES AND INCREASES

28.1 Changes may be made to this Contract only as duly authorized in writing by the ACCO or the ACCO's designee. Contractors deviating from the requirements of an original Work Order without a duly approved change order, do so at their own risk. All such changes, modifications and amendments will become a part of the original Contract.

28.2 Contract changes will be made only for (A) work necessary to complete the Work included in the Scope of Work of a Work Order, (B) non-material changes thereto, and (C) any Contract revision deemed necessary by the ACCO. Changes are not permitted for any material alteration in the Scope of Work of this Contract.

28.3 Changes may include any one or more of the following:

A. Specification changes to account for design errors or omissions;

B. Changes in contract amount due to authorized additional or omitted Work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts,

all changes that cumulatively exceed the greater of ten per cent of the original contract amount or $100,000.00 shall be approved by the CCPO (for non-construction contracts) or the Director of the Office of Construction (for construction and construction-related contracts).

C. Extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of the current contract. Requirements contracts shall be subject to this limitation;

D. Changes in delivery location;

E. Changes in shipment method;

F. Any other change not inconsistent with the PPB Rules.

28.4 Contractor may be entitled to a price adjustment for extra Work performed or to be performed pursuant to a written change order.

A. If any part of the Work is necessarily delayed by a change order, Contractor may be entitled to an extension of time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

B. Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification by post-audit. If such post-audit reveals that Contractor's costs for the change order Work were inaccurately stated during negotiations, the agency shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price under the change order. This remedy is not exclusive but is in addition to all other rights and remedies of the City.

ARTICLE 29 NON-DISCRIMINATION IN EMPLOYMENT

29.1 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.

29.2 N.Y. Labor Law § 220-e: If this Contract 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:

A. In the hiring of employees for the performance of work under this Contract 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;

B. 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 Contract on account of race, creed, color, disability, sex or national origin;

C. There may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of $50 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and

D. This Contract 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 29.2.

The provisions of this Section 29.2 shall be limited to operations performed within the territorial limits of the State of New York.

29.3 Admin. Code § 6-108: If this Contract 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:

A. 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.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph 29.3(A) 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 Contract.

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 29.3 shall, upon conviction thereof, be punished by a fine of not more than $100.00 or by imprisonment for not more than thirty (30) days, or both.

29.4 E.O. 50 -- Equal Employment Opportunity:

A. This Contract 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:

I. 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;

II. 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;

III. 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;

IV. 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;

V. Will furnish before this Contract 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 Department of Small Business Services ("SBS"), Division of Labor Services ("DLS"); and

VI. 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.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Contract 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:

I. Disapproval of the Contractor; and/or

II. Suspension or termination of the Contract; and/or

III. Declaring the Contractor in default; and/or

IV. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. 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.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs 29.4(A)-(C) in every subcontract or purchase order in excess of $100,000 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 29.4.

E. 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 Paragraph.

F. Nothing contained in this Section 29.4 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.

ARTICLE 30 MINIMUM AND PREVAILING WAGES

30.1 Minimum Wage. All persons employed by Contractor or any Subcontractor in the manufacture or furnishing of supplies, materials or equipment, or the furnishing of Work, labor, or services used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the amount then specified as the minimum wage by the Federal Fair Labor Standards Act.

30.2 Prevailing Wage. All persons employed by Contractor or any Subcontractor in the manufacture or furnishing of supplies, materials or equipment, or the furnishing of Work, labor or services, used in the performance of this Contract whose wage is required to be fixed pursuant to Labor Law Article 8 or to the Federal Davis-Bacon Act, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the amount then specified as the prevailing wage by the applicable provisions of Labor Law Article 8 or of the Federal Davis-Bacon Act, as set forth in Exhibit D attached hereto and made a part hereof.

ARTICLE 31 INVESTIGATIONS

31.1 Contractor shall cooperate fully and faithfully with any investigation, audit, or inquiry conducted by the State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

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

B. 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 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 Department, that is seeking testimony concerning the award of, or performance under this Contract; then

31.3 A. The Commissioner 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.

B. If any non-governmental party to the hearing requests an adjournment, the Commissioner may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 31.5 without the City incurring any penalty or damages for delay or otherwise.

31.4 The penalties which may attach after a final determination by the Commissioner may include but shall not exceed:

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

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

31.5 The Commissioner shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in the following Paragraphs 31.5(A) and 31.5(B). He or she may also consider, if relevant and appropriate, the criteria established in the following Paragraphs 31.5(C) and 30.5(D) in addition to any other information which may be relevant and appropriate.

A. 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.

B. 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.

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

D. 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 Section 31.4, provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in Paragraph

31.3(A) 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.

31.6 A. The term “license” or “permit” as used in this Article shall be defined as a license, permit, franchise or concession not granted as a matter of right.

B. The term “person” as used in this Article 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.

C. The term “entity” as used in this Article 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.

D. The term “member” as used in this Article shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

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

ARTICLE 32 CONFLICT OF INTEREST

32.1 Contractor represents, warrants, and covenants that:

A. Contractor and the directors, officers, members, partners, and employees of Contractor do not currently have and shall not during the Term of this Contract acquire any direct or indirect interest which would or could directly or indirectly conflict in any manner or degree with the performance of the Work.

B. Contractor and the directors, officers, members, partners, and employees of Contractor do not currently have and shall not during the Term of this Contract enter into or become subject to any direct or indirect obligation or duty which would or could directly or indirectly conflict in any manner or degree with the performance of the Work.

C. Contractor and the directors, officers, members, partners, and employees of Contractor are not currently engaged in, and shall not during the Term of this Contract undertake, any activities which would or could directly or indirectly conflict in any manner or degree with the performance of the Work.

D. With respect to securing or soliciting this Contract, Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a et seq.).

32.2 Consistent with City Charter § 2604 and other related provisions of the City Charter, the Administrative 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 Contract that 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 Contract. This Section shall not prevent directors, officers, members, partners, or employees of Contractor from participating in decisions relating to this Contract where their sole personal interest is in Contractor.

32.3 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 Contractor if such employment or service would violate Chapter 68 of the City Charter.

ARTICLE 33 CONFIDENTIALITY AND PUBLICATIONS

33.1 All of the Information is confidential and is the sole and exclusive property of the City.

33.2 Contractor shall neither cause nor permit any of the Information to be communicated, revealed, released, disseminated, distributed, published, or otherwise made available in any written or non-written form to any person or entity other than the Department without the prior written consent of the Department. Contractor shall (A) use the Information only for the performance of Work and not for any other purpose, (B) exercise extreme care to take all measures which are necessary in order to maintain and protect the confidentiality of the Information, and (C) upon the conclusion of the Term or at such earlier date as may be directed by the Department, either destroy or return to the Department, as directed by the Department, all copies in any form of any Information which are then in Contractor’s possession.

33.3 If Contractor publishes any work concerning any Information, any aspect of performance under this Contract, or any the results and accomplishments attained in such performance, then the City shall have an irrevocable license to (A) reproduce, publish, and otherwise use such publication, and (B) authorize others to reproduce, publish, and otherwise use such publication. If Contractor receives compensation as a result of the publication of such work, the Department shall receive a reasonable royalty fee. Nothing in this Section shall be deemed to authorize any such publication by Contractor without the prior written consent of the Department.

33.4 All obligations of Contractor pursuant to this Article shall remain in full force and effect following the expiration or earlier termination of this Contract. The provisions of this Article shall survive the expiration or earlier termination of this Contract.

ARTICLE 34 INVENTIONS, PATENTS, AND COPYRIGHTS

34.1 Contractor shall be promptly and fully report any discovery or invention arising out of or developed in the course of the performance of this Contract to the Department and, if such Work is paid for with Federal funds, to the Federal Government for determination as to whether patent protection thereon shall be sought and how the rights therein, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

34.2 Contractor shall not copyright, or register any notice of copyright in connection with, any report, document, or other data produced or developed in whole or in part in connection with the Work and/or or with funds received under this Contract.

34.3 The foregoing Sections 34.1 and 34.2 shall not apply to, or prevent Contractor from asserting or protecting its rights in, any discovery, invention, report, document, or data which existed prior to, or was developed or discovered independently from, any activities directly related to this Contract.

34.4. Contractor shall be solely responsible for and shall defend, indemnify, and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) and judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by Contractor and/or its Subcontractors in the performance or completion of the Work. Insofar as the facts or any applicable laws, rules, and/or regulations relating to any claim would preclude the City from being completely indemnified by Contractor, the City shall be partially indemnified by Contractor to the fullest extent permitted by law.

ARTICLE 35 CLAIMS AND ACTIONS THEREON

35.1 Notice. Any claim, that is not subject to dispute resolution under the PPB Rules or this Contract, 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 herein before provided.

35.2 Limitation of Time of Action. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the earlier to occur of (A) the date the claim arises, (B) the completion of the Work under the Work Order which is the source of the claim, or (C) the expiration or termination of this Contract.

35.3 Cooperation in Defense of Claims or Actions Against the City. If a party other than the City or Contractor makes any claim or commences any action in any way relating to this Contract or any Work performed hereunder, Contractor shall, at no expense to the City,

diligently render to the City, without additional compensation, any and all assistance which the City may require.

35.4 Notice of Legal Action or Proceeding. Within three (3) working days following the initiation of any legal action or proceeding by or against Contractor in connection with or relating to this Contract, Contractor shall deliver to the Department written Notice of such legal action or proceeding.

35.5 No Claims Against Officers, Agents, or Employees. Contractor shall not make any claim against any officer, agent, or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

ARTICLE 36 FORUM: CHOICE OF LAW, CONSENT TO JURISDICTION, AND VENUE

36.1 This Contract shall be deemed to have been executed in the City and State of New York, regardless of the domicile of Contractor, and shall be governed by and construed in accordance with the laws of the State. Contractor shall bring any actions, claims, or legal proceedings in any way pertaining to this Contract in the State Courts or Federal Courts physically situated in New York City and in no other court or tribunal whatsoever. Any and all claims asserted by or against the City arising pursuant to this Contract or related thereto shall be heard and determined either in Federal Courts located in New York City or in State Courts located in New York County.

36.2 If the City initiates any action against Contractor in Federal Court or in State Court, service of process may be made on Contractor either in person, wherever Contractor may be found, or by registered mail addressed to Contractor at the address of Contractor first set forth above, or to such other address as Contractor may provide to the Department by written Notice.

36.3 With respect to any action between the City and Contractor in State Court, Contractor expressly waives and relinquishes any rights it might otherwise have (A) to move to dismiss on grounds of *forum non conveniens*, (B) to remove to Federal Court, and (C) to move for a change of venue to a State Court outside New York County.

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

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

36.6 If any provision of this Article is held unenforceable for any reason, each and every other provision of this Article shall nevertheless remain in full force and effect.

ARTICLE 37 ASSIGNMENT

37.1 Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract or any of the rights, obligations, or duties of Contractor pursuant to this Contract, in whole or in part, including, but not limited to, the right of Contractor to execute this Contract, or the right, title, or interest of Contractor in this Contract or any part thereof, or assign, by power of attorney or otherwise, any of the moneys due or to become due pursuant to this Contract, without the prior written consent of the Department, in its sole discretion.

37.2 Any purported assignment, transfer, conveyance, or other disposition of this Contract or of any of the rights, obligations, or duties of Contractor pursuant to this Contract without the prior written consent of the Department shall be deemed null and void and of no force and effect and shall be cause for termination of this Contract, at the election of the Department. Upon any such termination, the City, including the Department, shall be relieved and discharged from any and all liability and obligation arising from this Contract to Contractor, its assignees, or transferees, and Contractor shall forfeit to the City all moneys theretofore earned and unpaid pursuant to this Contract, except so much thereof as may be necessary to pay Contractor's employees.

37.3 The provisions of this Article shall not hinder, prevent, or affect an assignment by Contractor for the benefit of creditors made pursuant to any applicable law.

37.4 The City may assign this Contract to any person or entity having authority to accept such assignment.

37.5 The consent of the Department to a particular assignment, transfer, conveyance, or disposition shall not dispense with the necessity of such consent to any other or future assignments.

ARTICLE 38 ELECTRONIC FUNDS TRANSFER

38.1 In accordance with Section 6-107.1 of the New York City Administrative Code, Contractor agrees to accept payments under this Contract 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 Contract, Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" through the City's Payee Information Portal, available at **www.nyc.gov/pip** in order to provide the Commissioner of Finance with information necessary for 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 Contractor shall constitute full satisfaction by the City for the amount of the payment under this Contract. The account information supplied by Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

38.2. The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances:

A. for individuals or classes of individuals for whom compliance imposes a hardship;

B. for classifications or types of checks; or

C. in other circumstances as may be necessary in the interest of the City.

ARTICLE 39 WHISTLEBLOWER PROTECTION EXPANSION ACT

39.1 In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively, 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 Contract to (A) the Commissioner of the Department of Investigation, (B) a member of the New York City Council, the Public Advocate, or the Comptroller, or (C) the City Chief Procurement Officer, the Agency Chief Contracting Officer, the Agency head, or Commissioner.

39.2 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 Section 39.1 above, 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: (A) an injunction to restrain continued retaliation, (B) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (C) reinstatement of full fringe benefits and seniority rights, (D) payment of two times back pay, plus interest, and (E) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

39.3 Contractor shall post a notice, attached hereto and made a part hereof as Rider 2, in a prominent and accessible place on any site where work pursuant to the Contract 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 Contract; and

B. the rights and remedies afforded to its employees under New York City Administrative Code sections 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 Contract.

39.4 For the purposes of this Article, "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.

39.5 This Article is applicable to all of Contractor's Subcontractors having subcontracts with a value in excess of $100,000.00; accordingly, Contractor shall include this language and Rider 2 in all subcontracts with a value in excess of $100,000.00.

ARTICLE 40 PAID SICK LEAVE LAW

40.1 Introduction and General Provisions:

A. 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.[1] Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

B. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative 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").

C. Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Contract. Contractor further acknowledges that such compliance is a material term of this Contract and that failure to comply with the PSLL in performance of this Contract may result in its termination.

D. Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Contract. Additionally, Contractor must cooperate with DCA's

1 Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

E. The PSLL is summarized below for the convenience of Contractor. 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 Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

40.2 Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use:

A. 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 thirty (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 forty hours of sick time to an employee in any Year.

B. 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 forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty 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.

C. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

I. 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;

II. 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;

III. closure of such employee's place of business by order of a public official due to a public health emergency; or

IV. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

D. 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.

E. 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.

F. 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.

40.3 Exemptions and Exceptions: Notwithstanding the above, the PSLL does not apply to any of the following:

A. an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;

B. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;

C. 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;

D. 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;

E. 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;

F. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

G. 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

H. a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

40.4 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.

40.5 Notice of Rights:

A. 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 **www.nyc.gov/PaidSickLeave**.

B. 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.

40.6 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.

40.7 Enforcement and Penalties:

A. 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 thirty (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.

B. DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative 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 for a

first violation, $750 for a second violation within two years of the first violation, and $1,000 for each succeeding violation within two years of the previous violation.

40.8 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.

ARTICLE 41 HIRING AND EMPLOYMENT REQUIREMENTS

41.1 Community Hiring: If the value of this Contract exceeds three million dollars ($3,000,000.00) Contractor shall comply with all the requirements of the Community Hiring Rider attached hereto.

41.2 Federal Hiring Requirements: If this Contract is federally funded (as indicated elsewhere in this Contract), Contractor shall comply with all federal hiring requirements as may be set forth in this Contract, including, as applicable: (a) Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for thirty percent (30%) of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing and Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any construction trade.

ARTICLE 42 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

42.1 Contractor warrants and represents that neither Contractor nor any substantially owned affiliated company of Contractor is participating or shall participate in an international boycott in violation of the provisions of the Federal Export Administration Act of 1979, as amended (the “Export Act”), or the regulations of the Federal Department of Commerce promulgated pursuant thereto.

42.2 Upon the final determination or conviction by the Federal Department of Commerce, any other Federal agency, or any Federal Court that Contractor or a substantially owned affiliated company of Contractor has participated in or is participating in an international boycott in violation of the provisions of the Export Act, the Comptroller may, at his or her option, terminate this Contract or render this Contract forfeit and void.

42.3 Contractor shall comply in all respects with the provisions of Section 6-114 of the Administrative Code and the rules issued by the Comptroller pursuant thereto.

ARTICLE 43 MACBRIDE PRINCIPLES

43.1 MacBride Principles. In accordance with Section 6-115.1 of the Administrative Code, Contractor represents, warrants, and covenants that Contractor, any individual or legal entity in which Contractor holds a ten percent (10%) or greater ownership interest, and any individual or legal entity which holds a ten percent (10%) or greater ownership interest in 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 as hereinafter defined, and shall permit independent monitoring of their compliance with such principles.

43.2 The representations, warranties, and covenants set forth in the foregoing Section 43.1 are material conditions to this Contract. If the Department receives information regarding any violation thereof, the Department shall review such information and give Contractor an opportunity to respond. If the Department finds that a violation has occurred, the Department may declare Contractor in Default and procure the Work from another source in any manner the Department deems proper. In the event of such Default, Contractor shall pay to the City, or the City, in its sole discretion, may withhold from any amounts otherwise payable to Contractor, the difference between the Total Contract Price for the uncompleted portion of this Contract and the cost to the Department of completing performance of this Contract either itself or by engaging another contractor or contractors. The Department may also hold Contractor in partial or total Default in accordance with Article 18 and/or may seek debarment or suspension of Contractor. The rights and remedies of the Department pursuant to this Article shall be in addition to, and not in lieu of any rights and remedies the Department has pursuant to this Contract or by operation of law.

43.3 “MacBride Principles” shall mean those principles relating to nondiscrimination in employment and freedom of work-place opportunity which require employers doing business in Northern Ireland to:

A. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

B. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

C. ban provocative religious or political emblems from the workplace:

D. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups:

E. establish layoff, recall and termination procedures which do not in practice favor a particular religious group:

F. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion:

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

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

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

ARTICLE 44 ADDITIONAL TERMS AND CONDITIONS

44.1 Contract. This Contract shall be deemed to be comprised of (A) the text hereof, (B) the exhibits annexed hereto, (C) the documents distributed by the Department and the documents submitted by Contractor in connection with the selection of Contractor for performance of the Work, to the extent that such documents or portions thereof are not specifically excluded and are not inconsistent with any of the other documents described in this Section, including, but not limited to, any Invitation to Bid, Information for Bidders, Bid, Notice of Award, and/or Notice to Proceed with Work, (D) the PPB Rules, to which this Contract is subject and which shall prevail over any other part of this Contract in the event of any conflict; and (E) all provisions required by law to be inserted in this Contract, whether actually inserted or not.

44.2 Headings. Notwithstanding any provision of this Contract to the contrary, the titles and headings contained in this Contract are for reference only and shall not be deemed to affect in any way the meaning or interpretation of this Contract.

44.3 Conditions Precedent. Notwithstanding any provision of this Contract to the contrary, this Contract shall not become binding and effective unless and until:

A. the Comptroller certifies by endorsement of his or her certificate hereon that there remains unexpended and unapplied a balance of the appropriation or fund applicable hereto sufficient to pay the estimated expenses of executing this Contract;

B. the Mayor approves this Contract pursuant to the provisions of Executive Order No. 41 dated October 9, 1975, if such Executive Order requires such approval,

C. the Mayor’s Fiscal Committee created pursuant to Executive Order No. 42, dated October 14, 1975, certifies that performance of this Contract is in accordance

with the City's financial plan, if such Executive Order requires such certification; and,

D. the Financial Control Board of the State of New York (FCB) approves this Contract pursuant to the New York State Financial Emergency Act for the City of New York (FEA), if the regulations of FCB pursuant to the FEA require such approval.

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

44.4 Survival. The terms of Articles 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 42, 43 and any other provisions of this Contract which, by their terms, expressly provide that they shall survive the expiration or other termination of this Contract, shall remain in effect beyond the Expiration Date or Termination Date.

44.5 No Third-Party Beneficiaries. This Contract is intended to inure solely to the benefit of the undersigned parties, and there are no intended third-party beneficiaries hereof.

44.6 Counterparts. This Contract may be executed simultaneously in several counterparts, each of which will be deemed to be an original, but all of which together shall be deemed one and the same instrument, and it will not be necessary in making proof of this Contract to produce or account for more than one counterpart.

44.7 City-Owned Property.

A. All City-Owned Property shall be the sole property of the City. With respect to any City-Owned Property in the custody, possession, or control of Contractor, Contractor shall:

I. clearly mark or identify such City-Owned Property as City-Owned Property;

II. maintain such City-Owned Property in first class condition;

III. bear all risk of loss and damage with respect to such City-Owned Property, normal wear and tear excepted;

IV. insure such City-Owned Property against all risks of loss or damage in an amount equal to the full replacement value with loss payable to the City, and Contractor shall forward proper evidence of such insurance to the Department upon request; and

V. promptly deliver all City-Owned Property to the Department upon the Department's demand or at the conclusion of the Term of this Contract.

B. Contractor shall immediately notify the Department of

I. any loss or damage to City-Owned Property while in the custody, possession, or control of Contractor; and

II. any loss or damage to City-Owned Property of which Contractor has knowledge.

44.8 Anti-Trust. Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and claims of action arising under the anti-trust laws of the State or of the United States relating to the particular goods or services purchased or procured by the City pursuant to this Contract.

44.9 General Release by Acceptance of Final Payment.

A. The acceptance by Contractor, any assignee of Contractor, or any other person claiming by or through Contractor, of any final payment under any Work Order issued under this Contract, whether such payment be made pursuant to a voucher, judgment of any court of competent jurisdiction, or any other administrative means, shall constitute and operate as a general release of the City from any and all claims, demands, and causes of action whatsoever which Contractor, its successors, legal representatives and assigns has or may have against the City in connection with this Contract, excepting only a claim against the City for the amounts deducted or withheld in accordance with the terms and provisions of this Contract or by Law, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures brought under Article 14.

B. The Contractor is warned that the execution by it of a release in connection with Contractor's acceptance of the final payment under any Work Order containing language purporting to reserve claims against the City other than those specifically exempted in Paragraph 44.9(A) shall not be effective to reserve any such claims.

C. Any refusal by Contractor to accept the final payment as tendered by the Department shall constitute a waiver by Contractor of all claims to interest thereon.

D. Contractor, however, shall not be barred by this Article from commencing an action for breach of Contract to the extent permitted by Law and by the terms of the Contract for any claims that that have been filed in accordance with Article 14 or that arose after submission of any payment requisition, provided that a detailed and verified statement of claim is served upon the Department and the Comptroller not later than forty (40) days after the making of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

44.10 Political Activity. There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office as part of or in connection with this Contract, nor shall any of the funds provided under this Contract be utilized for such purposes.

44.11 Merger. This Contract contains all of the terms and conditions agreed upon by the parties. No other oral or written, express or implied promises, agreements, or understandings regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties, or to vary any of the terms set forth herein.

44.12 All Legal Provisions Deemed Included. Each and every provision of law required to be inserted in this Contract will be and is hereby deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law.

44.13 Severability. If this Contract contains any unlawful provision which is not an essential part of this Contract and which shall not appear to have been a controlling or material inducement to the making hereof, the same shall be deemed of no force or effect and shall, upon notice by either party, be deemed stricken from this Contract without affecting the binding force of the remainder of this Contract.

44.14 Remedies. In addition to the other remedies herein provided, the Department shall be entitled to restrain by injunction the violation or threatened violation of the obligations of Contractor under this Contract and to obtain specific performance by Contractor of its obligations under this Contract.

44.15 Successors And Assigns. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, their successors and assigns.

44.16 Compliance With Laws. Contractor shall comply, and shall cause all Subcontractors to comply, with the provisions of all Federal, State and local laws, rules, regulations, orders and ordinances applicable to this Contract and the Work.

44.17 Sole Discretion. Any determination to be made by the Department pursuant to this Contract shall be in the sole discretion of the Department and shall be final and binding upon Contractor.

ARTICLE 45 MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES REQUIREMENTS

This Contract, if so required by the Agency as indicated in Attachment 1 of the Information for Bidders, the Bid Information Summary Sheet, is subject to the Minority-Owned and Women-Owned Business Enterprises (“M/WBE”) requirements contained in Rider 3 attached hereto and

made a part hereof, inclusive of Contractor's M/WBE Utilization Plan incorporated therein as Schedule B.

ARTICLE 46 FEDERAL CONDITIONS

This Contract is funded in whole or in part under a program providing direct financial assistance of the Federal Government to the City. This Contract is therefore subject to, and Contractor will comply with, the requirements of all applicable Federal laws and regulations, including, but not limited to, those set forth in Exhibit A annexed hereto and made a part hereof. Contractor shall cause Exhibit A to be annexed to and made a part of each Subcontract. In the event of any conflict or inconsistency between the provisions contained in the body of this Contract and the applicable Federal laws and regulations, the applicable Federal laws and regulations shall control.

ARTICLE 47 IRAN DIVESTMENT ACT COMPLIANCE RIDER

Contractor shall comply with the terms set forth in the Iran Divestment Compliance Rider attached hereto and made a part hereof as Rider 1.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have duly executed this Contract on the date of the last signature hereto.

CITY OF NEW YORK
By the Department of Housing Preservation and Development

CONTRACTOR

E-PIN: 80626B0052

RIDER 1

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR
NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) the person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. 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 which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

E-PIN: 80626B0052

IRAN DIVESTMENT ACT COMPLIANCE CERTIFICATION FORM

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[*Please Check One*]

BIDDER'S CERTIFICATION

☐ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

☐ I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York

_____, 20___

_____
SIGNATURE

_____
PRINTED NAME

_____
TITLE

Sworn to before me this
_____ day of _____, 20___

_____
Notary Public

Dated: _____

E-PIN: 80626B0052

RIDER 2

WHISTLEBLOWER PROTECTION EXPANSION ACT NOTICE

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT RELATING TO A NYC FUNDED CONTRACT OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATIONS

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

E-Pin: 80626B0052

RIDER 3

MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES REQUIREMENTS

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes the program for participation in City procurement ("M/WBE Program") by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan") which can be found in PASSPort.

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

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

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

PART A

PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, ("**Participation Goals**"), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non- responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B - M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

C. **THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.**

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6- 129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or $500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**.

A. A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.

B. To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at **contracts@hpd.nyc.gov**. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

C. If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

D. Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE** Utilization Plan.

A. A Contractor may request a modification of its **M/WBE** Utilization Plan after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's **M/WBE** Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

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

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

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

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

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

(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

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

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

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

B. The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE** Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE** Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B
MISCELLANEOUS

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

2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

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

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby

agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

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

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

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

A. entering into an agreement with the Contractor allowing the Contractor to cure the violation;

B. revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

C. making a finding that the Contractor is in default of the Contract;

D. terminating the Contract;

E. declaring the Contractor to be in breach of Contract;

F. withholding payment or reimbursement;

G. determining not to renew the Contract;

H. assessing actual and consequential damages;

I. assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

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

K. taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

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

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

E-Pin: 80626B0052

RIDER 4

COMMUNITY HIRING RIDER

Community Hiring Rider
For Construction 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 a 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. Article 35.6 of this 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(b), the Contractor shall make best efforts to meet the applicable Community Hiring Goal to employ Residence-Based Community Hires as defined in 74 RCNY § 2-01(a) for contracts involving construction work.

For each Contract involving Construction Work that is not subject to a Project Labor Agreement, the Contractor shall agree to make best efforts to meet the Community Hiring Goal of 30 percent of cumulative labor hours of construction work to be performed by Residence-Based Community Hires as established in 74 RCNY § 4-02(b)(1). For contracts involving Construction Work that are subject to a Project Labor Agreement, the Contractor shall agree to make best efforts to meet the numerical goal(s) regarding Residence-Based Community Hires and Apprentices established in such Project Labor Agreement.

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 applicable Community Hiring Goal.

B. Advertising Employment Opportunities

The Contractor, except those performing Construction Work pursuant to a Project Labor Agreement, 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 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, upon request 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 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 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.

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

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).

EXHIBIT A

FEDERAL CONDITIONS

UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS AND CDBG RIDER

EPIN: 80626B0052

INSERT CURRENT VERSIONS HERE

EPIN: 80626B0052

EXHIBIT B

SCOPE OF WORK

ALTERNATIVE ENFORCEMENT PROGRAM SCOPE OF WORK

FULL BUILDING ELECTRICAL SYSTEM REPLACEMENT AND REWIRING INDIVIDUAL APARTMENTS AT 156 SOUTH 9TH STREET, BROOKLYN

Contractor has been retained under the Department's Alternative Enforcement Program ("AEP") to provide all work and/or services necessary in order to perform the complete replacement of the electrical system for the entire building known as and located at 156 South 9th Street, Brooklyn including the complete rewiring of seven (7) apartments therein (the "Work"), all in accordance with the following:

I. Building-wide Replacement:

1) Provide and install new electrical service from street to meter pans and electrical service distribution panels. The size of the service shall be determined by load calculations performed by a licensed electrician.

2) 60 meters are required: 59 apartments; and 1 public utility; to provide and distribute adequate 220V, 100A service for each apartment.

3) Provide and install one new PLP CB panel. Connect boiler, elevator and public part circuits to new PLP CB panel.

4) Provide and install adequate light fixtures, with new wiring and switches, at electrical meter rooms and gas meter rooms.

5) Remove and discard unused existing electrical service equipment; eliminate all illegal electrical tapping; seal all exposed electrical wires and the open junction box at cellar.

6) Connect 52 apartments' existing circuits to new services and meters.

II. Individual Apartment Rewiring: In apartments 1AB; 3H; 4G; 4J; 4K; 5J; and 5K Contractor shall:

1) Provide and install all necessary new risers with wiring.

2) Provide and install new 7 CB panels with 220V 100A service.

3) Rewire entire apartments, and install GFCI at bathrooms, kitchens and wet areas.

4) Provide and install one 220V 40A (or adequate) outlet for electrical stove/cook top in each of 7 apartments.

5) Provide and install new outlets, new light fixtures and light switches in each room, up to current NYC and National Electrical Codes.

III. General Requirements:

1) AEP Program contacts for this contract shall be:

CPM Contact: Mern Ting Moy at 212-863-8217 or 917-428-9242.
tingmoym@hpd.nyc.gov . Fax: 212-863-6959

Supervisor Contact: Delliturri Pasquale at 212-863-5111

2) Contractor shall apply for and obtain any and all permits necessary for the Work, and shall post them at the job site.

3) Contractor shall document all Work by taking pictures before starting, during actual performance and following completion. All pictures shall be sent via email to CPM Contact along with the affidavit and invoice, upon the completion of the Work.

4) Contractor shall restore all areas where Work is performed, and repair any damage resulting from the performance of the Work, including painting all surfaces to match existing color.

5) Contractor shall remove all work-related debris and leave all completed work in proper working and/or standing order.

6) Contractor shall comply with all City, State and Federal laws, rules and regulations governing the Work, including, without limitation, all applicable Occupational Safety and Health Administration and the City's Department of Buildings regulations.

7) Following registration of the Contract Contractor shall contact CPM Contact or Supervisor Contact by phone to inform of the starting date for the Work, as well as the dates and times of the different stages of the Work, and shall provide a copy of drawings.

8) AII Work must be performed using safe work practices, occupant protection, training, and certifications pursuant to, Environmental Protection Agency's ("EPA") Renovation, Repair and Painting ("RRP") rule under 40 CFR Part 745 Subpart E and New York City Administrative Code §27-2056.11. AII workers assigned must individually be EPA-certified Renovators. In addition, the contractor must comply with the tenant notification and record-keeping requirements pursuant to RRP and perform a cleaning verification. HPD may audit the cleaning verification and tenant notification records. HPD will conduct a dust wipe clearance test at the conclusion of the work to confirm proper cleaning has been completed.

9) Upon completion of all Work, Contractor shall fax an Affidavit of Completion to the CPM Contact Fax.

IV. Building Access: Contractor shall contact CPM Contact to arrange access to the Building. If the landlord refuses access, an affidavit to that effect must be faxed to the CPM Contact Fax.

V. Individual Apartment Access: Contractor shall contact the following tenants to arrange access for the Individual apartment rewiring:

1AB – Evelin Rios – 347-336-7337

3H – Yesenia Johnson – 347-301-6205

4G – Maryanna Lopez – 917-583-6802

4J – Mairelys Lopez – 631-805-6786

4K – Gladys Garcia – 646-385-0418

5J – Maria Mendez – 718-775-4849

5K – Juan Soto – 718-384-5962

Building Superintendent: 347-303-7725

ATTACHMENT A

NO ACCESS PROCEDURES

Department of Housing Preservation & Development
nyc.gov/hpd

LOUISE CARROLL
Commissioner

ANNMARIE SANTIAGO
Deputy Commissioner

JOSH CUCCHIARO
Assistant Commissioner

Office of Enforcement & Neighborhood Services
Emergency Operations Division
100 Gold Street
New York, N.Y. 10038

NO ACCESS PROCEDURES

Dear Contractor:

This letter is to formally notify you of procedures to be followed in the event you have "No Access" to the job site to make an evaluation for a bid request or to perform an awarded job. If you cannot gain access to:

1. Any Occupied or Vacant City-Owned ("K" OMOs) or Privately-Owned ("E" OMOs) Buildings (Except Commercial Units)

   a) Contractor must first call the designated Vendor Tracking Person for the appropriate site office informing him/her about the details. (See attached list of Phone #s / fax #s / email address and names). You MUST also follow up with a fax copy of "No Access Notification" slip to the Vendor Tracking Person (see Attached).

   b) If you cannot reach the Vendor Tracking Person or they did not respond to your request you must speak to the respective Area Director at the site office (See Attached List).

   c) If you still have not received a response, you must notify the Procurement Specialist in the Bureau of Maintenance and Procurement who invited you to bid, and whose name is listed on the Invitation to Bid Sheet. The Procurement Specialist will in turn coordinate access with appropriate staff.

2. Commercial Units

   a) Please contact Jim Edgeworth, Urban Renewal and Property Management Services, at 212-694-3977 for further information.

3. Vacant Lots

   a) Please contact Chester Ricketts, Urban Renewal and Property Management Services for Vacant Lots and other properties, at 212 863-8890 for further information.

4. 'K' Open Market Orders (OMO) for HPSC (boiler) Jobs (See OMO)

   a) In addition to step 1(a), fax another copy of the No Access Notification slip to Procurement Specialist and call to confirm receipt.

If you have any questions regarding the above, please contact Barbara Schechter at 212-863- 7815.

Printed on paper containing 30% post-consumer material.

NO ACCESS NOTIFICATION

'K' OMOs for HPSC (Boiler) for <u>Manhattan, Bronx</u> fax to: 212 410-4938 or 212 423-5055

'K' OMOs for HPSC (Boiler) for <u>Brooklyn, Queens, Staten Island</u> fax to: 718 623-9910 or 5845

ALL other OMOs follow phone/fax/email address written on OMO or see attached contact list.

DATE: _____

FROM: _____
Print Company Name

PHONE #: _____ CELL #: _____

NO ACCESS
JOB ADDRESS: _____

_____
Borough

LOCATION(s): _____

OMO #: _____ DATE ACCESS NEEDED BY: _____

COMMENTS: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Printed on paper containing 30% post-consumer material.

SITE OFFICE NO ACCESS CONTACTS

'K' OMOs that are HSPC (boiler) for Manhattan/Bronx fax to: 212 410-4938 or 212 423-5055
All other 'K' OMOs contact the Brooklyn, Queens, Staten Island Area Office.

'E' OMOs for Manhattan, Bronx, contact the individuals below:

AREA OFFICE FOR EMERGENCY REPAIR
105 East 106th Street 5th Floor
New York, NY 10029 **Fax #:** 212 423-5055

Manhattan, Bronx		Telephone	Fax
1. Mr. Mehta	Supervisor	212 863-5531	
2. Ms. Shen	Vendor Tracking	212 863-5547	212 423-5051
3. Ms. Betance	Vendor Tracking	212 863-5431	212 410-4938
4. Ms. Khadan	Vendor Tracking	212 863-5558	212 423-5055
5. Ms. Dennis	Vendor Tracking	212 863-5478	
6. Ms. Neal-Terry	Vendor Tracking	212 863-5533	

'K' OMOs that are HSPC (boiler) for Brooklyn, Queens, Staten Island fax to: 718 623-9910

K' OMOs that are HSPC (boiler) for Manhattan, Bronx fax to: 212 410-4938 or 212 423-5055

OMOs starting with 'E' & 'K' for Manhattan, Bronx, Brooklyn, Queens, Staten Island, contact the individuals below:

AREA OFFICE FOR EMERGENCY REPAIR
516 Bergen Street, 2nd Floor
Brooklyn, NY 11217-2490

Brooklyn, Queens, Staten Island		Telephone	Fax
1. Mr. Nettles	Supervisor	212 863-6124	
2. Mr. Sutchen	Heat Coordinator	212 863-6046	
3. Mr. Catania	'K' OMOs Heat Coordinator	212 863-6115	
4. Ms. Ram	Vendor Tracking	212 863-6175	718 623-9910
5. Ms. Lopez	Vendor Tracking	212 863-6231	
6. Ms. Joseph	Vendor Tracking	212 863-6161	
7. Mr. Lesure	Vendor Tracking	212 863-6135	

Printed on paper containing 30% post-consumer material.

ALL Alternative Enforcement Program (AEP) Open Market Orders (OMO) contact the individuals below:

Special Enforcement **Alternative Enforcement Program (AEP)** 100 Gold Street, 5th Floor, Section M New York, NY 10038 **Manhattan, Bronx, Brooklyn, Queens, Staten Island**		
	Telephone	**Fax**
1. Ms. Grace DeFina	212 863-8713	212 863-8617
2. Mr. Nick Demarco	212 863-8711	
3. Mr. Frederick Clarke	212 863-8798	
4. Mr. Gerard Salmon	212 863-5262	
5. Mr. Hector Osorio Jr.	212 863-7769	

DO NOT USE
NO ACCESS NOTIFICATION FORM

ALL OMOs starting with 'D' contact the following individuals by EMAIL or FAX and by PHONE: Note: The message must include company name and cell #, building address, OMO # and detailed description of problem.

Division of Operations And Support Services **Demolition** 100 Gold Street, 6th Floor, Section G New York, NY 10038		**FAX #: 212 863-8886**
Manhattan, Bronx, Brooklyn, Queens, Staten Island	**Telephone**	**Cell**
Eugene McArdle, Director Field Administration **email:** demolition@hpd.nyc.gov	212 863-7870	917 559-4303
Michael Murphy, Deputy Director **email:** demolition@hpd.nyc.gov	212 863-7076	917 975-0808

Printed on paper containing 30% post-consumer material.

EXHIBIT C

PAYMENT AND PERFORMANCE BONDS

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we,

_____

_____

_____

hereinafter referred to as the "Principal" and

_____

_____

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns, in the penal sum of:

_____

$_____.

lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with the City for:

_____

_____

_____

_____

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full.

PAYMENT BOND

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns and other Subcontractors to whom Work under this Contract is sublet and his or their successors and assigns shall promptly pay or cause to be paid all lawful claims for:

a. Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the Work under said Contract, and any amendment or extension thereof or addition thereto, whether such persons be agents, servants or employees of the Principal or of any such Subcontractors, including all persons so engaged who perform the work of laborers or mechanics at or in the vicinity of the site of the Project regardless of any Contractual relationship between the Principal or such Subcontractors, or his or their successors or assigns, on the one hand and such laborers or mechanics on the other, but not including office employees not regularly stationed at the site of the Project, and

b. Materials and supplies (whether incorporated in the permanent (construction or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any Subcontractors at or in the vicinity of the site of the Project in the prosecution of the Work under said Contract and any amendment or extension thereof or addition thereto; then this obligation shall be null and void; otherwise to remain in full force and effect. This bond is subject to the following additional conditions, limitations and agreements:

c. The Principal and Surety (Sureties) agree that this bond shall be for the benefit of any materialman or laborer having a just claim, as well as the City itself.

d. All persons who have performed labor, rendered services or furnished materials and supplies, as aforesaid, shall have a direct right of action against the Principal and his, its or their successors and assigns, and the Surety (Sureties) herein, or against either or both or any of them and their successors and assigns. Such persons may sue in their own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other person as party plaintiff.

e. The Principal and Surety (Sureties) agree that neither of them will hold the City liable for any judgment for costs or otherwise, obtained against either or both of them by a laborer or materialman in a suit brought by either a laborer or materialman under this bond for moneys allegedly due for performing work or furnishing material.

f. The Surety (Sureties) or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workmen's Compensation Law.

g. In no event shall the Surety (Sureties), or its successors or assigns, be liable for a greater sum than the penalty of this bond or be subject to any suit, action or proceeding hereon that is instituted by any person, firm, or corporation hereunder later than two years after the complete performance of said Contract and final settlement thereof.

PAYMENT BOND

The Principal, for himself/herself and his successors and assigns, and the Surety (Sureties), for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of the City to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought hereon by any person, firm or corporation, including Subcontractors, MATERIALMAN and third persons, for work, labor, services, supplies or material performed, rendered, or furnished as aforesaid upon the ground that there is no law authorizing the City to require the foregoing provisions to be placed in this bond.

And the Surety (Sureties) for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, Subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

PAYMENT BOND

IN WITNESS WHEREOF, the Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this _____ day of _____, _____.

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

BOND PREMIUM RATE: _____

BOND PREMIUM COST: _____

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners. If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact. There should be executed an appropriate member of counterparts of the bond corresponding to the number of counterparts of the Contract.

PAYMENT BOND

ACKNOWLEDGMENT OF PRINCIPAL - IF A CORPORATION

State of _____ County of _____ ss:

On this _____ day of _____, 20__ before me personally came _____ to me known, who, affirms or being by me duly sworn did depose and say that he/she resides at _____ that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he/she signed his name thereto by like order.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL - IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, before me personally appeared _____ to me known, and known to me to be one of the members of the firm of: _____ described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for the act and deed of said firm.

_____
Notary Public or Commissioner of Deeds

PAYMENT BOND

ACKNOWLEDGMENT OF PRINCIPAL - IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____day of _____, 20_____ before me

personally appeared _____

to me known, and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

_____

Notary Public or Commissioner of Deeds

Each executed bond should be accompanied by:

a. appropriate acknowledgments of the respective parties;

b. appropriate duly certified copy of Power of Attorney or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety;

c. a duly certified extract from By-Laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued; and

d. duly certified copy of latest published financial statement of assets and liabilities of Surety.

****

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATIONS OF SURETIES

PERFORMANCE BOND

KNOW ALL PEOPLE BY THESE PRESENTS:,

That we, _____

_____

hereinafter referred to as the "Principal",

and, _____

_____

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns in the penal sum of _____

_____

($_____) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal is about to enter, or has entered, into a Contract in writing with the City for _____

_____

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of the Principal's default of the Contract, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal's default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the City that the City has determined that the Principal is in default of the Contract, to (1) pay the City the cost to complete the contract as determined by the City in excess of the balance of the Contract held by the City, plus any damages or costs to which the City is entitled, up to the full amount of the above penal sum, (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof, or (3) tender a completion contractor that is acceptable to the City. The Surety (Sureties) further agrees, at its option, either to notify the City that it elects to pay the city the cost of completion plus any applicable damages and costs under option (1) above, or to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and, if the Surety elects to fully perform and complete the Work, then to complete all Work within the time set forth in the Contract or such other time as agreed to between the City and Surety in accordance with the Contract. If the Surety elects to tender payment pursuant to (1) above, then the Surety shall tender such amount within fifteen (15) business days notification from the City of the cost of completion. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to pay the City the cost of completion, to commence and complete all Work as provided herein, or to tender a completion contractor.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, and waivers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to subcontractors shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal. Notwithstanding the above, if the City makes payments to the Principal before the time required by the contract that in the aggregate exceed $100,000 or 10% of the Contract price, whichever is less, and that have not become earned prior to the Principal being found to be in default, then all payments made to the Principal before the time required by the Contract shall be added to the remaining contract value available to be paid for the completion of the Contract as if such sums had not been paid to the Principal, but shall not provide a basis for non-performance of its obligation to pay the City the cost of completion, to commence and to complete all Work as provided herein, or to tender a completion contractor

IN WITNESS WHEREOF, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this _____ day of _____. 20__.

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

Bond Premium Rate_____.

Bond Premium Cost_____.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

ACKNOWLEDGMENT OF PRINCIPAL - IF A CORPORATION

State of _____ County of _____ ss:

On this _____ day of _____, 20___ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____ that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he signed his name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL - IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____ that he/she is _____ partner of _____ a limited / general partnership existing under the laws of the State of _____ the partnership described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said partnership.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL - IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____day of _____, 20_____ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____

and that he/she is the individual whose name is subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument, said individual executed the instrument.

_____
Notary Public or Commissioner of Deeds

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATIONS OF SURETIES

PERFORMANCE BOND

KNOW ALL PEOPLE BY THESE PRESENTS:,

That we, _____

_____

hereinafter referred to as the "Principal",

and, _____

_____

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns in the penal sum of _____

_____

($_____) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal is about to enter, or has entered, into a Contract in writing with the City for _____

_____

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of the Principal's default of the Contract, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal's default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the City that the City has determined that the Principal is in default of the Contract, to either (1) pay the full amount of the above penal sum in complete discharge and exoneration of this bond and of all the liabilities of the Surety relating to this bond, or (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof. The Surety (Sureties) further agrees, at its option, either to tender the penal sum or to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and to complete all Work within the time set forth in the Contract or such other time as agreed to between the City and Surety in accordance with the Contract. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to commence and to complete all Work as provided herein.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any Work to be performed or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

IN WITNESS WHEREOF, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this _____ day of _____. 20__.

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

SEAL. _____ (L.S.)
Principal

By: _____

Bond Premium Rate_____.

Bond Premium Cost_____.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

ACKNOWLEDGMENT OF PRINCIPAL - IF A CORPORATION

State of _____ County of _____ ss:

On this _____ day of _____, 20___ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____ that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he signed his name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL - IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____ that he/she is _____ partner of _____ a limited / general partnership existing under the laws of the State of _____ the partnership described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said partnership.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL - IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____day of _____, 20_____ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____ and that he/she is the individual whose name is subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument, said individual executed the instrument.

_____
Notary Public or Commissioner of Deeds

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATIONS OF SURETIES

E-PIN: 80626B0052

EXHIBIT D

PREVAILING WAGE

SEE PREVAILING WAGE SCHEDULES UPLOADED TO PASSPORT,
INCORPORATED HERETO BY REFERENCE

`

E-PIN: 80626B0052

EXHIBIT E

CERTIFICATION BY BROKER OR AGENT

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Worker's 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 _____