

**THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
CONSTRUCTION TECHNICAL SERVICES**

BID BOOKLET

**COMPETITIVE SEALED BID FOR ELEVATOR
MODERNIZATION REBID AT 198 EAST 161 STREET, BRONX,
NEW YORK 10451**

E-PIN: 85626B0010

**THE CITY OF NEW YORK DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES CONSTRUCTION TECHNICAL
SERVICES**

Important Information for Bidders

- Bids must be submitted through PASSPort.
- Be sure to read the bid solicitation document and all attachments carefully.
- Be sure to find the correct Bid Sheet and Minimum Qualification Questionnaire section in PASSPort
- Be sure to submit Bid price and ALL required documents mentioned in the Minimum Qualifications Questionnaire section by the due date and time indicated in PASSPort
- Bid Security must be submitted in a form of Bid Bond (form located in PASSPort) or Certified Check. Bid Bond form must be completed and submitted through PASSPort. Certified Check must be hand delivered or by mail before Bid Due date and time.
- If you use any mail service to submit your Bid Security (Certified Check), please ensure that your Bid Security (Certified Check) arrives at least one (1) business day prior to the scheduled bid opening date to accommodate mail processing.
- If you use any mail service, please use the Return Label form and place it on top of the envelope. The Return Label form includes the EPIN # and Contract Title.
- If you plan to deliver your Bid Security in a form of a Certified Check in person, please allow ample time for entry through security. Bring two (2) forms of identification (one with a photo).
- If any documents required to be submitted at the time of Bid Opening that arrives at the Bid Room after the time and date specified in PASSPort shall be deemed late and will not be considered.

Return Label

E-PIN #: 85626B0010	Submission Date: / /	Time:
Title/Description: CSB for 198 E 161st Elevator Modernization Rebid		
Authorized Agency Contact Person: Justine Woo		Phone: 212-386-0431

**THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OFFICE OF CITYWIDE PROCUREMENT/ VENDOR RELATIONS
1 CENTRE STREET, 18TH FLOOR
NEW YORK, NY 10007-1614**

ATTN: 18th FLOOR BID ROOM

PART F – INFORMATION FOR BIDDERS
ARTICLE G INFORMATION FOR BIDDERS

GENERAL

- G.1. Bidders must examine the Contract Documents carefully. Prior to submission of the Bid, Bidders must notify the Authorized Agency Contact Person, in writing, if pages or information is missing or otherwise deficient or defective in order for DCAS to rectify the noted error.
- G.2. It is the Bidder's responsibility to assure that the Bid is received on or before the date and time of the Bid Opening and that the Bid and all other documents requiring signature are signed and notarized.
- G.3. Failure to comply with the instructions in this Article G may result in rejection of the Bid.

PPB RULES

- G.4. All Bids and the Contract Documents are subject to the Rules of the PPB (the "PPB Rules") effective September 1, 1990, as currently amended. The PPB Rules may be amended from time to time. In the event of a conflict between the PPB Rules and a provision of any of the Contract Documents, then the PPB Rules shall take precedence. A copy of the PPB Rules may be obtained by contacting the Authorized Agency Contact Person or at:
<http://www.nyc.gov/html/mocs/ppb/html/rules/rules.shtml>
- G.5. The definitions set forth in the PPB Rules shall apply to the Contract Documents.

CONTRACT DOCUMENTS

- G.6. Bidders may obtain a copy of the Contract Documents, or a portion thereof, by complying with the conditions set forth in the Advertisement for Bids. If required, the fee for the Contract Documents must be in the form of a money order or a certified check, made payable to the order of the City of New York, and drawn upon a state or national bank or trust company, or a check of such bank or trust company signed by a duly authorized officer thereof.
- G.7. A Pre-bid Conference may be held subject to Article A herein.
 - G.7.1. Nothing stated at the Pre-bid Conference shall change the terms and conditions of the Contract Documents unless a change is made by Addendum as provided in this Article G and in accordance with the PPB Rules.
 - G.7.2. At least five (5) Days prior to the Pre-bid Conference, a Bidder should notify the Authorized Agency Contact Person of the number of representatives that will attend.
- G.8. Bidders must examine the Contract Documents carefully and before submission of a Bid must request from the ACCO an interpretation or correction, in writing, of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction, as well as any additional Contract provisions the ACCO may decide to include, will be issued in writing by the ACCO as an addendum to the Contract, which will be sent by mail or email or delivered to each person recorded as having received a copy of the Contract Documents from the ACCO, and which also will be available at the place where the Contract Documents are available for the inspection by Bidders. Upon

such mailing, emailing or delivery and posting, such addendum shall become a part of the Contract Documents, and binding on all Bidders, whether or not actual notice of such addendum is shown.

- G.9. Only the written interpretation or correction given by the ACCO shall be binding, and Bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the Contract Documents.
- G.10. Should any conflict occur in or between the Contract Drawings and the Specifications, the Bidder shall be deemed to have estimated the most expensive way of doing the Work, unless the Bidder shall have asked for and obtained a decision in writing from the ACCO before the submission of its Bid.

FORM OF BID

- G.11. Bidder must fully complete and submit all Contract Documents and provide all required information as set forth in herein.
- G.12. The Bid shall be properly signed by an authorized representative of the Bidder and shall be verified by the written oath of the authorized representative who signed the Bid that the several matters stated and information furnished therein are in all aspects true.
- G.13. A materially false statement willfully or fraudulently made in connection with the Bid or any of the forms completed and submitted with the Bid may result in the termination of any contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.
- G.14. Where applicable and upon request, the Bidder shall provide all information required of Section 312 of the City Charter.

SITE VISIT

- G.15. All Bidders are urged and expected to inspect the Site and to satisfy themselves as to all general and local conditions that may affect the cost or performance of the Project. In no event will a failure to inspect the Site constitute grounds for withdrawal of a Bid after opening or for a claim after award of the Contract.
- G.16. A Scheduled Site Visit may be held subject to Article A herein.

G.16.1. Nothing stated at the Scheduled Site Visit shall change the terms and conditions of the Contract Documents unless a change is made by Addenda as provided herein above and in accordance with the PPB Rules.

G.16.2. At least five (5) Days prior to the Scheduled Site Visit, a Bidder should notify the Authorized Agency Contact Person of the number of representatives that will attend.

G.16.3. All representatives of the Bidder may be required to submit executed releases in order to participate in the Scheduled Site Visit.

IRREVOCABILITY OF BID

- G.17. The prices set forth in the Bid cannot be revoked and shall be effective until the award of the Contract, unless the Bid is withdrawn as provided for herein.

ACKNOWLEDGMENT OF ADDENDA

- G.18. The receipt of any Addenda shall be acknowledged by the Bidder in its Bid.

BID SAMPLES AND DESCRIPTIVE LITERATURE

- G.19. Bid samples and descriptive literature shall not be submitted by the Bidder, unless expressly requested in the Contract Documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of the Contract.

PROPRIETARY INFORMATION/TRADE SECRETS

- G.20. The Bidder shall identify those portions of its Bid that it deems to be confidential, proprietary information or trade secrets, and shall provide justification why such materials should not be disclosed by the City. The Bidder shall clearly indicate all materials the Bidder desires to remain confidential by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential." Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the Bid.
- G.21. All such materials so indicated shall be reviewed by the NYCDCAS and any decision not to honor a request for confidentiality shall be communicated in writing to the Bidder. For those Bids which are unsuccessful, all such confidential materials may be returned upon written

request by the Bidder. Prices, makes, models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after Bid Opening regardless of any designation of confidentiality made by the Bidder.

PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

- G.22. If a Bid is withdrawn in accordance with this Article G, the bid security, if any, shall be returned to the Bidder.

BID EVALUATION AND AWARD

- G.23. The responsible Bidder whose Bid meets the requirements and evaluation criteria set forth in the Contract Documents, and whose Bid price is the lowest responsive and responsible Bid price or, if the Contract Documents has so stated, the lowest responsive and responsible evaluated Bid price, shall be selected for the Contract. A Bid shall not be evaluated for any requirement or criterion that is not disclosed in the Contract Documents.
- G.24. Upon determination of the apparent lowest responsive and responsible Bidder and prior to award, NYCDCAS may elect to open negotiations with such Bidder in an effort to improve the Bid to the City with respect to the price only. In the event such Bidder declines to negotiate, NYCDCAS may elect to either award the contract to such Bidder or may, upon written approval by the ACCO, reject all Bids in accordance with the Contract Documents. The result of negotiations, if any, shall be documented in the Recommendation for Award.

- G.25. Upon the determination of the lowest responsive and responsible Bidder, a Recommendation for Award shall be approved by the ACCO and the Contract shall be awarded to that Bidder.

LATE BIDS, LATE WITHDRAWAL AND LATE MODIFICATIONS

- G.26. The exception to this provision is that a late modification of a successful Bid that makes the Bid terms more favorable to the City shall be considered at any time it is received and may be accepted upon written approval of the ACCO.

WITHDRAWAL OF BIDS

- G.27. Except as provided for herein a Bidder may not withdraw its Bid before the expiration of forty-five (45) Days after the Bid Opening; thereafter, a Bidder may withdraw its Bid only in writing and in advance of an actual award.
- G.28. If within sixty (60) Days after the execution of the Contract, the Commissioner fails to fix the date for commencement of work by written notice to the Bidder, the Bidder, at its option, may ask to be relieved of its obligation to perform the work called for by written notice to the Commissioner. If such notice is given, and the request to withdraw is granted, the Bidder waives all claims in connection with this Contract.

MISTAKES IN BIDS

- G.29. If a mistake in the Bid is attributable to an error in judgment, the Bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible, but only to the extent that it is not contrary to the interest of the City or the fair treatment of other Bidders.
- G.30. A Bidder may correct mistakes discovered before the Bid Opening by withdrawing or correcting the Bid.
- G.31. If a Bidder alleges a mistake in its Bid after Bid Opening and before award, the Bid may be corrected or withdrawn upon written approval of the ACCO if the following conditions are met:

G.31.1 Minor informalities are matters of form, rather than substance, evident from the Contract Documents or insignificant mistakes that can be waived or corrected without prejudice to other Bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the Bidder to correct them depending on which is in the best interest of the City;

G.31.2. If the mistake and the intended correct Bid are clearly evident on the face of the Contract Documents, the Bid shall be corrected to the intended correct Bid and may not be withdrawn.

G.31.3. A Bidder may be permitted to withdraw a low Bid where a unilateral error or mistake has been discovered in the Bid and the Contracting Officer makes the following determination, which shall be approved by the ACCO:

G.31.3.1. The mistake was known or made known to NYCDCAS prior to Bidder selection or within three (3) Days after the Bid Opening, whichever period is shorter;

G.31.3.2. The Bid price was based on an error of such magnitude that

enforcement would be unconscionable.

G.31.3.3. The Bid was submitted in good faith and the Bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;

G.31.3.4.

In the compilation of the Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the Bid sought to be withdrawn; and

G.31.3.5. It is possible to place the City in the same condition that had existed prior to the receipt of the Bid.

G.31.4. Upon the approval of the ACCO, the Bid may be withdrawn, and the bid bond or other security returned to the Bidder. The Contract shall either be awarded to the next lowest Bidder or resolicited pursuant to the PPB Rules. Under no circumstances shall a Bid be amended or revised to rectify the error or mistake.

- G.32. Mistakes shall not be corrected after Bidder selection except where the ACCO, subject to the approval of the CCPO, makes a determination that it would be unconscionable not to allow the mistake to be corrected.
- G.33. When a Bid is corrected or withdrawn, or correction or withdrawal is denied, the ACCO shall prepare a determination showing that the relief was granted or denied in accordance with the PPB Rules.

LOW TIE BIDS

- G.34. Low tie Bids are low responsive bids from responsible Bidders that are identical in price, meeting all the requirements and criteria set forth in the Contract Documents. In the case of low tie Bids, the ACCO shall break the tie in the following order of priority:
- G.34.1. Select a certified New York City minority owned, woman-owned or emerging business entity Bidder;
- G.34.2. Select a New York City Bidder;
- G.34.3. Select a certified New York State small, minority or woman-owned business Bidder;
- G.34.4. Select a New York State Bidder; and
- G.34.5. Conduct a drawing. Tie Bidders shall be invited to witness the drawing. A witness shall be present to verify the drawing and shall certify the results on the Bid tabulation sheet.

REJECTION OF BIDS

- G.35. The ACCO may reject a Bid if:
- G.35.1. The Bidder is determined to be not responsible pursuant to the PPB Rules; or if

G.35.2. The Bid is determined to be non-responsive pursuant to the PPB Rules; or if

G.35.3. Any of the Bid prices for lump sum or unit items are significantly unbalanced to the potential detriment of NYCDCAS. An unbalanced Bid is considered to be a Bid containing lump sum or unit item prices which do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs and other indirect costs anticipated for the performance of the item in question.

G.36. The ACCO may reject all Bids and may elect to re-solicit by bid or by other method authorized by the PPB Rules.

RIGHT TO APPEAL OR PROTEST

G.37. The Bidder has the right to appeal a determination of non-responsiveness or non-responsibility and it has the right to protest a solicitation and award of the Contract, pursuant to the PPB Rules.

AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

G.38. If applicable, the Contract is subject to Section 6-129 of the Administrative Code (M/WBE and EBE program), as well as to applicable provisions of federal, State, and other local laws and executive orders requiring affirmative action and equal employment opportunity. If the Contract is not subject to Section 6-129 of the Administrative Code, the award of this Contract is subject to the provisions of Section 6-108.1 of the Administrative Code relating to the Locally Based Business Enterprise program and its implementing rules.

UNFAIRNESS, FAVORITISM OR IMPROPRIETY

G.39. The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007, (212) 669-2323.

BID, PERFORMANCE AND PAYMENT SECURITY

G.40. Bid security, performance security and/or payment security may be required as part of the Contract as specified in Schedule A herein.

G.41. If a Bid does not comply with the bid security requirements, it shall be rejected as non-responsive.

G.42. Bid security will be returned to Bidders as follows:

G.42.1. Within a reasonable time after the Bid Opening, the Comptroller will be notified to return the bid securities of all but the three (3) lowest Bidders. Within a reasonable time after the award, the Comptroller will be notified to return the bid securities of the remaining two (2) unsuccessful Bidders;

G.42.2. Within a reasonable time after the execution of the Contract and acceptance of the Contractor's bonds, the Comptroller will be notified to return the bid security of the successful Bidder or, if no Performance and Payment bonds are required, the Comptroller will be notified to return the bid security only after

the sum retained under applicable provisions of the contract equals the bid security;

G.42.3. Where all bids are rejected, the Comptroller will be notified to return the bid security of all Bidders at the time of rejection;

G.43. The performance and payment security, if required in the Contract Documents and in the amounts specified in Schedule A, shall be delivered by the Contractor to the City within ten (10) Days after the receipt of a Notice of Award. If a Contractor fails to deliver the required performance and payment security, then the award shall be rescinded, its bid security shall be enforced and the award of the Contract may be made to the next lowest responsive and responsible Bidder or the Contract may be rebid.

G.44. Acceptable security for bids, performance and payment shall be limited to:

G.44.1. A one-time bond in a form satisfactory to the City;

G.44.2. A bank-certified check or money order; or

G.44.3. City bonds; or

G.44.4. Other financial instruments as determined by the City's Office of Construction in consultation with the Comptroller.

G.45. Security provided in the form of bonds must be prepared on the form of bonds authorized by the City. Forms for bid, performance and payment bonds are included in the Contract Documents as Attachments. Such bonds must have as surety thereunder, such surety company or companies as are approved by the City and authorized to do business in the State of New York.

G.46. Attorneys-in-fact who sign bid, performance or payment bonds must file with each bond a certified copy of their power of attorney to sign said bond.

INSURANCE

G.47. The Contractor shall effect and maintain the types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A).

FAILURE TO EXECUTE CONTRACT AND FURNISH SECURITY

G.48. If the successful Bidder fails to execute the Contract and furnish any required security, within (10) Days after notice of the award of the Contract, the bid security of the successful Bidder or so much thereof as shall be applicable to the amount of the award made, shall be forfeited and retained by the City, and the successful Bidder shall be liable for and hereby agrees to pay on demand the difference between the Bid price and the price for which such Contract shall be subsequently awarded, including the cost of any reletting less the amount of such bid security. No plea of mistake in such accepted Bid shall be available to the Bidder for the recovery of the bid security or as a defense to any action based upon such accepted Bid. Further, should the Bidder's failure to comply with this Article G cause any funding agency, body or group (Federal, State, City, public, private, etc.) to terminate, cancel or reduce the funding on this Project, the Bidder in such event shall be liable also to the City for the amount of actual funding withdrawn by such agency, body or group on this Project, less the amount of the

forfeited bid security.

SALES, EXCISE AND FEDERAL TRANSPORTATION TAXES

- G.49. Unless this Contract indicates otherwise, the City is exempt from the payment of any sales, excise or Federal transportation taxes. The Bid price must be exclusive of such taxes and shall be so construed.

EVIDENCE OF ABILITY AND FINANCIAL QUALIFICATIONS

- G.50. Before or after Contract award, the City reserves the right to inspect the premises where services are to be performed.
- G.51. A Bidder shall, upon request by NYCDCAS, promptly submit evidence that will prove to the satisfaction of NYCDCAS that such Bidder is qualified and able to furnish the Work in the manner and time specified in the Contract Documents. At all times, a Bidder shall, upon request by NYCDCAS, promptly submit evidence that it has secured the necessary licenses, permits or certificates, required by any legislative or regulatory body having jurisdiction, to perform the Work.
- G.52. A Bidder shall, upon request by NYCDCAS, promptly submit all books of account, records, vouchers, statements or other information concerning a Bidder's financial status for examination by NYCDCAS to ascertain a Bidder's responsibility and capability to perform the Contract.
- G.53. NYCDCAS may request a Bidder to submit a sworn statement or submit to an oral examination setting forth such information as may be deemed necessary by NYCDCAS to determine a Bidder's ability and responsibility to perform the Work in accordance with the Contract Documents.

DEPARTMENT OF BUSINESS SERVICES, DIVISION OF LABOR SERVICES (EMPLOYMENT REPORT)

- G.54. In accordance with Executive Order No. 50 (1980) and its implementing regulations, a Bidder shall file, if applicable, a completed Employment Report issued by the City's Department of Business Services, Division of Labor Services.

PERFORMANCE EVALUATIONS

- G.55. The Contractor is subject to an annual performance evaluation to be conducted by NYCDCAS pursuant to the PPB Rules.

BIDDER REPRESENTATIONS AND WARRANTIES

- G.56. The Bidder represents that:
- G.56.1. The individual signing on behalf of the Bidder is of lawful age and the only one interested in this Bid and that no person, corporation or organization other than the Bidder has any interest in this Bid or in the Contract.
- G.56.2. The Bid price has been arrived at independently without collusion, consultation,

communication or agreement for the purpose of restricting competition, as to any matter relating to such Bid price with any other Bidder or with any competitor or potential competitor.

G.56.3. Unless otherwise required by law, the prices quoted in this Bid shall not be knowingly disclosed by the Bidder prior to the Bid Opening, directly or indirectly, to any other Bidder or to any competitor.

G.56.4. The Bidder shall not attempt to induce any other person, partnership, corporation or organization to submit or not to submit a Bid for any purpose, including but not limited to restricting competition.

G.56.5. The Bidder shall ensure that no member of the City Council, or other officer, employee or person whose salary is payable in whole or in part from the City Treasury shall be directly or indirectly interested in this Bid or in the supplies, materials, equipment, work or labor to which it relates or in any of the profits thereof.

G.56.6. The Bidder shall not be in arrears to the City upon any debt, contract or taxes. The Bidder shall not be in default, as surety or otherwise, upon any obligations to the City. The Bidder shall not have been declared not responsible, or disqualified by any agency of the City or the State of New York. There is no proceeding pending relating to the responsibility or qualification of this Bidder to receive public contracts except as disclosed by the Bidder in writing as part of and at time of its Bid.

G.56.7. The Bidder shall examine all parts of the Contract Documents and if its Bid is accepted as submitted, this Bidder shall have executed the Contract as set forth herein.

G.56.8. The Bidder shall be duly licensed to do business in the City and the State of New York and the Bidder shall at all times hold or obtain all necessary permits and other authorizations required by law or regulation for performance of the Contract.

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NOTICE TO ALL PROSPECTIVE CONTRACTORS
PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS
ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Section 6-129 of the Administrative Code of the City of New York (“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”) and are detailed below.

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.

References to MBEs or WBEs shall also include such businesses certified pursuant to the executive law where credit is required by section 311 of the New York City Charter or other provision of law.

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 1 to this Contract (see Page 1, Line 1 Total Participation Goals) or will be set forth on Schedule B, Part 1 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 DSBS 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 2 (see Pages1-2) 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; (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; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. 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 2 (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 2 (see Pages 1-2) 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; (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; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor’s required certification and affirmations. 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 2). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART 3). 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 city-certified 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) 513-6451, or by visiting or writing DSBS at One Liberty Plaza, New York, New York, 10006, 11th 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 3 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 Contact Person listed in Schedule B, Part 1. Full or partial waiver requests that are received later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due may be rejected as untimely. Bidders, proposers, or contractors, as applicable, who have submitted timely 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 the Contractor was required to identify in its bid or proposal the MBEs and/or WBEs they intended to use in connection with the performance of the Contract or Task Order, substitutions to the identified firms may only be made with the approval of the Agency, which shall only be given when the Contractor has proposed to use a firm that would satisfy the **Participation Goals** to the same extent as the firm previously identified, unless the Agency determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such determination, the Agency shall require evidence of the efforts listed in Section 11(a) above, as applicable, along with any other relevant factors.

13. 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.

14. 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.

15. 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.

SCHEDULE B – M/WBE Utilization Plan & PASSPort

Modified July 2022

The M/WBE Requirements tab along with the information provided in the Subcontractors and Joint Ventures tab of the RfX encompasses a Prime Vendor's M/WBE Utilization Plan.

Part 1: M/WBE Participation Goals

The M/WBE Participation Goals are found in the M/WBE Requirements tab of your RfX (Solicitation) response in PASSPort. Please follow the instructions below to **review** an RfX's M/WBE Participation Goals in PASSPort. Please refer to the Local Law 1 Notice to All Prospective Contractors for additional information about the M/WBE program related to this solicitation.

1. Log in to [PASSPort](#) and click the **pencil icon** to access the RfX.
2. Click the **Manage Responses** tab of the RfX and click the **pencil icon** to access your in progress response.
3. Click the **M/WBE Requirements** tab. The M/WBE Requirements section will outline the goals for the RfX. The Your M/WBE Subcontracts section will list all subcontracting work that you've identified for certified M/WBEs. (Please see Part 2 for instructions on how to add subcontracting information in PASSPort.)

The screenshot displays the PASSPort interface for the M/WBE Requirements tab. On the left is a dark blue sidebar with navigation links: 'Your Proposal Info', 'Questionnaire', '\$ Item', 'Subcontractors and Joint Ventures', 'LL34 Compliance', and 'M/WBE Requirements' (which is highlighted). The main content area is white and divided into two sections. The top section, titled 'M/WBE REQUIREMENTS' with a dropdown arrow, contains a table with participation goals. The bottom section, titled 'YOUR M/WBE SUBCONTRACTS' with a dropdown arrow, shows '0 Result(s)'. Two red arrows point to the dropdown arrows in the section titles.

Group	Percentage
Black American	5
Hispanic American	5
Asian American	5
Native American Women	
Unspecified	15
Total Participation Goals	30

Part 2: M/WBE Participation Plan

The M/WBE Participation Goals are found in both the M/WBE Requirements tab and the Subcontractors and Joint Ventures tab of your RFx (Solicitation) response in PASSPort. Please follow the instructions below to review an RFx's M/WBE Participation Goals and **enter** information in PASSPort to meet these goals. Please refer to the Local Law 1 Notice to All Prospective Contractors for additional information about the M/WBE program related to this solicitation.

1. Log in to [PASSPort](#) and click the **pencil icon** to access the RFx.
2. Click the **Manage Responses** tab of the RFx and click the **pencil icon** to access your in progress response.
3. Complete all the required sections in the Your Proposal Info, Questionnaire, Item, LL34 Compliance (if required) and all other relevant tabs in your Response.
4. Be sure to complete the **Item** tab before the Subcontractors and Joint Ventures tab. Enter the **Proposal Amount** (or Bid Amount) and click **Save**.

The screenshot shows the 'Item' tab in the PASSPort system. On the left is a sidebar with navigation links: 'Subcontractors and Joint Ventures', 'LL34 Compliance', and 'M/WBE Requirements'. The main area is titled 'Item' and contains a 'Response' section. At the top of the 'Response' section is a table with the following data:

Items code	Item types	Label	Total Proposal Amount
I1_1	Required Item	Total Proposal Amount	10,000,000

The value '10,000,000' in the 'Total Proposal Amount' column is highlighted with a red rectangular box. Above the table, there is a search bar with 'Keywords :', a 'Not answered items' checkbox, and 'Search' and 'Reset' buttons. The 'Currency' is set to 'USD' and the 'Proposal Amount' is displayed as '10,000,000.00'. At the bottom of the table, it says '1 Result(s)'.

5. To identify your M/WBE subcontractors and joint ventures, click the **Subcontractors and Joint Ventures** tab and click the white box with the Subcontractors and Joint Venture text.

Test Vendor PASSPort Organization's proposal

Save Save and Close Cancel this response Close Duplicate Response

Your Proposal Info

Questionnaire

\$ Item

Subcontractors and Joint Ventures

LL34 Compliance

M/WBE Requirements

Subcontractors and Joint Ventures

6. Read the instructions in the M/WBE Requirements section of this tab.

Test Vendor PASSPort Organization's proposal

Save Save and Close Cancel this response Close Duplicate Response

✓ Data has been saved

Your Proposal Info

Questionnaire

\$ Item

Subcontractors and Joint Ventures

LL34 Compliance

M/WBE Requirements

M/WBE REQUIREMENTS

INSTRUCTIONS

This tab outlines the M/WBE Participation Goals for this solicitation. You can meet the goals either through self-performance (your own certifications will automatically count towards the goals) or by identifying subcontractors or joint ventures within this tab. Progress towards meeting each disaggregated goal is tracked in the table showing group participation. Blocking alerts display next to the table identifying which M/WBE requirements are not met. To submit your response, all M/WBE requirements alerts must clear. Please note that your organization's certifications will count towards the specific disaggregated goal as well as the Unspecified goal if required. Please complete the Item tab before you proceed with completing this tab. PASSPort will calculate M/WBE participation goals based on the subcontractor or joint ventures information added and the total proposal or bid amount in the Item tab. For detailed instructions, please click [here](#).

Prime Vendor M/WBE Certification :

Group	Percentage
Black American	10
Hispanic American	8
Asian American	
Native American	
Unspecified	12
Women	
Total Participation Goals	30

Black American M/WBE Requirements are not yet met.

Hispanic American M/WBE Requirements are not yet met.

Unspecified M/WBE Requirements are not yet met.

SUBCONTRACTOR INFORMATION

Add Subcontractor

0 Result(s)

JOINT VENTURE

Add Joint Venture

- Your own organization's M/WBE certifications count towards the Total Participation Goals and automatically display in the field directly below the Instructions labeled as **Prime Vendor M/WBE Certification**. Any M/WBE participation goals that remain unmet are highlighted with red text alerts displaying to the right of the M/WBE Participation Goals table.

In this example, the Prime Vendor does not have any M/WBE Certifications displaying (the field is blank) and thus still needs to meet the requirements as indicated.

Test Vendor PASSPort Organization's proposal

Save Save and Close Cancel this response Close

✓ Data has been saved

Questionnaire

Item

Subcontractors and Joint Ventures

LL34 Compliance

M/WBE Requirements

M/WBE REQUIREMENTS

INSTRUCTIONS

This tab outlines the M/WBE Participation Goals for this solicitation. You can meet the goals either through self-performance (your own company) or by identifying subcontractors and/or joint ventures with the required certifications in the Subcontractor Information and Joint Venture sections of the Subcontractors and Joint Ventures tab.

Progress towards meeting each disaggregated goal is tracked in the table showing group participation. Blocking alerts display next to the table. Please note that your organization's certifications will count towards the specific disaggregated goal as well as the Unspecified goal if red text is displayed.

Please complete the Item tab before you proceed with completing this tab. PASSPort will calculate M/WBE participation goals based on the information provided.

For detailed instructions, please click [here](#).

Prime Vendor M/WBE Certification :

Group	Percentage
Black American	10
Hispanic American	8
Asian American	
Native American	
Unspecified	12
Women	
Total Participation Goals	30

Black American M/WBE Requirements are not yet met.

Hispanic American M/WBE Requirements are not yet met.

Unspecified M/WBE Requirements are not yet met.

- Any participation goal(s) your organization cannot meet through its own certification(s), must be met by identifying subcontractors and/or joint ventures with the required certifications in the **Subcontractor Information** and **Joint Venture** sections of the Subcontractors and Joint Ventures tab.

Prime Vendor M/WBE Certification :

Group	Percentage
Black American	10
Hispanic American	8
Asian American	
Native American	
Unspecified	12
Women	
Total Participation Goals	30

Black American M/WBE Requirements are not yet met.

Hispanic American M/WBE Requirements are not yet met.

Unspecified M/WBE Requirements are not yet met.

SUBCONTRACTOR INFORMATION

Add Subcontractor

0 Result(s)

JOINT VENTURE

Add Joint Venture

- To add a subcontractor, click the **Add Subcontractor** button.

10. In the Add Subcontract window, complete all the fields in both the **Subcontract Information** and **Vendor Information** sections.

Note, the **Subcontractor Dollar Amount** value entered will be calculated against the total Proposal Amount in the Item tab to determine the percentage towards your M/WBE Goal Participation for this RFx.

In this example, \$1 million is allocated to the **Subcontractor Dollar Amount** which is 10% of the Proposal Amount (in the Item tab) and can count towards a Participation Goal if the subcontractor is M/WBE Certified in one of the specified goals.

The screenshot shows the 'Add Subcontract' window with two main sections: 'SUBCONTRACT INFORMATION' and 'VENDOR INFORMATION'. The 'SUBCONTRACT INFORMATION' section includes fields for 'Subcontractor Dollar Amount' (set to 1,000,000), 'Purpose' (set to HVAC), 'Estimated Start Date' (08/01/2022), 'Estimated End Date' (08/31/2022), and 'M/WBE Certification'. The 'VENDOR INFORMATION' section includes a checkbox for 'Subcontractor not filed in PASSPort or not yet identified', a dropdown for 'Select PASSPort Vendor' (set to Subcontractor Vendor), and fields for 'EIN' and 'Subcontractor Name'. A red arrow points to the 'Subcontractor Dollar Amount' field.

11. To identify a specific M/WBE certified PASSPort Vendor, type the subcontracting vendor name in the **Select PASSPort Vendor** field or click the ellipsis to search for and select the vendor. Click **Save**.

This close-up screenshot focuses on the 'VENDOR INFORMATION' section. It shows the 'Select PASSPort Vendor' dropdown menu with 'Subcontractor Vendor' selected and an ellipsis button to the right. Above this is a checkbox for 'Subcontractor not filed in PASSPort or not yet identified'. Below are fields for 'EIN' and 'Subcontractor Name'.

12. Choose the relevant **M/WBE Certification** from the drop-down in the Subcontract Information section of the Add Subcontract screen. Click **Save** and then click **Close** to return to the Subcontractors and Joint Ventures tab.

The screenshot shows the 'Add Subcontract' form. At the top right are 'Save' and 'Close' buttons. Below them is the 'Proposal ID' field with 'Proposal # 1'. The form is divided into two main sections: 'SUBCONTRACT INFORMATION' and 'VENDOR INFORMATION'. In the 'SUBCONTRACT INFORMATION' section, the following fields are visible: 'Subcontractor Dollar Amount' (1,000,000), 'Purpose' (HVAC), 'Estimated Start Date' (08/01/2022), 'Estimated End Date' (08/31/2022), and 'M/WBE Certification' (a dropdown menu). The 'M/WBE Certification' dropdown is highlighted with a red box. The 'VENDOR INFORMATION' section is partially visible on the right, showing a red message: 'To change the PASSPort V'.

13. If the **Subcontractor is not Filed in PASSPort or not yet identified** (to be determined), click the corresponding checkbox in the Add Subcontract pop-up window. Be sure to complete all relevant fields in each section and click **Save**. The example below reflects scenarios 1 or 2.

Scenarios to click this checkbox:

- 1: If the subcontractor has a PASSPort account, but their PASSPort Vendor Status is not Filed.
- 2: If the subcontractor does not have a PASSPort account.
- 3: A specific subcontractor was not yet identified by your organization, and this serves as a placeholder to meet a specific participation goal.

The screenshot shows the 'Add Subcontract' form. At the top right are 'Save' and 'Close' buttons. Below them is the 'Proposal ID' field with 'Proposal # 1'. The form is divided into two main sections: 'SUBCONTRACT INFORMATION' and 'VENDOR INFORMATION'. In the 'SUBCONTRACT INFORMATION' section, the following fields are visible: 'Subcontractor Dollar Amount' (1000000), 'Purpose' (HVAC), 'Estimated Start Date' (10/01/2022), 'Estimated End Date' (10/30/2022), and 'M/WBE Certification'. In the 'VENDOR INFORMATION' section, the checkbox 'Subcontractor not filed in PASSPort or not yet identified' is checked and highlighted with a red box. Other fields in this section include 'EIN' (123456789), 'Subcontractor Name' (HVAC City), 'Subcontractor Address' (12 Greenwich Ave), and 'Subcontractor Phone' (212-123-4567).

14. Choose the applicable **M/WBE Certification** from the drop-down to meet the corresponding Participation Goal for the subcontractor. Click **Save** and then **Close** to return to the Subcontractors and Joint Ventures tab.

Add Subcontract

✓ Data has been saved

Proposal ID: Proposal # 1

SUBCONTRACT INFORMATION

Subcontractor Dollar Amount: 1,000,000.

Purpose: HVAC

Estimated Start Date: 10/01/2022

Estimated End Date: 10/30/2022

M/WBE Certification: **Asian American**

VENDOR INFORMATION

To change the PASSPort Vendor, please delete this record and add a new subcontract

Subcontractor not filed in PASSPort or not yet identified: ☒

EIN: 123456789

Subcontractor Name: HVAC City

Subcontractor Address: 12 Greenwich Ave

Subcontractor Phone: 212-123-4567

15. If you are submitting on behalf of a joint venture, click **Add Joint Venture** in the Subcontractors and Joint Ventures tab.
16. To identify a specific M/WBE certified PASSPort Vendor, type the vendor name of the joint venture partner entity in the **Select PASSPort Vendor** field or click the **ellipsis** to search for and select the vendor. Click **Save**.

Joint Venture

Save Save and Close Close

ADD VENDOR

Proposal ID: Proposal # 1

Select PASSPort vendor: **...**

Ownership %:

M/WBE Certification:

Status: Valid

Total:

17. Complete the **remaining fields** in the Add Vendor section of the Joint Venture pop-up and click **Save**.

Joint Venture

Save Save and Close Close

✓ Data has been saved

ADD VENDOR

To change the PASSport Vendor, please delete this record and add a new joint venture

Proposal ID : Proposal # 1

Select PASSport vendor : Fancy HVAC

Ownership % : 60

M/WBE Certification : Black American

Status : Valid

Total :

18. PASSPort automatically populates the **Total** amount covered by the joint venture based on the Ownership % entered compared to the Proposal Amount (see Item tab).

In this example, the joint venture partner entity selected has 60% ownership which calculates here to equal \$6 million in total of the full \$10 million Proposal Amount.

Joint Venture

Save Save and Close Close

✓ Data has been saved

ADD VENDOR

To change the PASSport Vendor, please delete this record and add a new joint venture

Proposal ID : Proposal # 1

Select PASSport vendor : Fancy HVAC

Ownership % : 60.00

M/WBE Certification : Black American

Status : Valid

Total : 6,000,000.00

19. Once participation goals are met and all alerts are addressed, the alerts will disappear from the tab.

Group	Percentage
Black American	10
Hispanic American	8
Asian American	
Native American	
Unspecified	12
Women	
Total Participation Goals	30



For vendors with **multiple M/WBE certifications**, please note that only one certification can be entered at a time. To add an additional certification, please repeat the Add Subcontractor or Add Joint Venture steps to meet additional participation goals.

If any information entered requires updating in an added Subcontractor or Joint Venture record, delete the record by clicking the **trash icon** and add it again with the updated information.

Part 3: Submitting a Request for Waiver of M/WBE Participation Requirement

Please review the instructions to submit a request for waiver of the M/WBE participation requirement. A copy of the blank form (3 pages) can be found at the end of this document with the linked [Vendor Contract History Excel template](#) on the first page of the form.

Follow these steps to submit a Waiver Request to the Agency:

1. Log in to [PASSPort](#) and click the **pencil icon** to access the RFx.
2. From the View RFx tab, download the Schedule B form and complete Part 3.
3. Navigate to the **Discussion with Buyer** tab and click the Compose button to start a draft message to the Agency.

Note: Be sure to Acknowledge the RFx prior to completing step 9.

4. Click the **Type** drop-down and select **Clarification**.
5. Type a subject in the **Subject** field such as "Schedule B Waiver Submission".
6. Select Agency Contact from the **To** field drop-down.
7. Type your message in the **text area**.
8. Attach the completed Schedule B – Part 3 form and the completed Vendor Contract History Excel document by clicking the **Click or Drag to add files** button.

9. Click the **Send** button to submit your message and its attachments to the Agency Contact.
10. The Agency will review the waiver and the result of the Agency's waiver determination will be reflected in PASSPort in both the M/WBE Requirements tab and the Subcontractor and Joint Ventures tab of your RFx response. For additional information, refer to the **Local Law 1 Notice to All Prospective Contractors**.

84122P0019-RFx MWBE Requirements Enhancement (009333) : Lot 1 / Round 2

Search ...

Save | Other Actions

Remaining time :26d 15h 34min 05s

RESPONSE ACTIVITY

Keywords : Search Reset
Advanced search

Compose Message history

0 Result(s)

Type: Clarification

From: Contact Test F

Subject: Schedule B Waiver Submission

To: Agency Contact

Hello,

Please see attached completed Schedule B Waiver and Vendor Contract History Excel document.

Best,
Vendor Contact

Click or Drag to add files

ScheduleB Waiver.pdf

Vendor_Contracting_History.xlsx

Send Cancel

SCHEDULE B – Part 3

Request for Waiver of M/WBE Participation Requirement

Contract Overview

Tax ID# _____ FMS Vendor ID# _____
 Business Name _____ Contact Name _____
 Email _____ Telephone _____
 Contracting Agency _____
 PASSPort PIN# _____ Bid/Proposal Due Date _____

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

- ☐ Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- ☐ Vendor subcontracts some of this type of work but at a lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. Identify your subcontracting plan in the vendor certification section below.
- ☐ Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal requested here. Explain under separate cover.

Vendor Contract History

Using the [linked Excel template](#), list all contracts (for City and Non-City work) performed within the last 3 years and provide the requested information for each contract.

From the list of all contracts, provide reference information below for the 5 most relevant contracts in size, scale and scope (performed for New York City or any other entity) to the bid or proposal for which you are submitting this waiver request. Provide the requested information for each subcontract awarded during the life of the listed reference contract.

Please make sure to highlight the 5 reference contracts provided below among the comprehensive list of all your contract awards within the attached Excel template.

Reference 1

Agency/Organization _____ Contract # _____
 Reference Contact _____ Telephone _____ Email _____
 Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? ☐ Prime Contractor ☐ Subcontractor
 Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals
 Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Percentage of total contract value subcontracted to other vendors	_____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ \$ _____

M/WBE Participation Goals for Services

Defined by AGENCY in bid/solicitation documents

Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified _____ %
 Black American _____ %
 Hispanic American _____ %
 Native American _____ %
 Asian American _____ %
 Women _____ %

Total Participation Goals _____ %

Proposed by VENDOR seeking waiver

Percent of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted to M/WBE businesses for services. Or if M/WBE Qualified Joint Venture, percent of total contract value anticipated to be credited to M/WBE vendor(s).

Unspecified _____ %
 Black American _____ %
 Hispanic American _____ %
 Native American _____ %
 Asian American _____ %
 Women _____ %

Total Participation Goals _____ %

Reference 2

Agency/Organization_____Contract #_____

Reference Contact_____Telephone_____Email_____

Contract Start Date_____Contract End Date_____Total Contract Value \$_____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor?

☐ Prime Contractor☐ Subcontractor

Was the Prime Contract subject to any Goals?

☐ City M/WBE Goals☐ State Goals☐ Federal Goals☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements?

☐ Yes☐ No☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

Percentage of total contract value subcontracted to other vendors%

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

\$

Reference 3

Agency/Organization_____Contract #_____

Reference Contact_____Telephone_____Email_____

Contract Start Date_____Contract End Date_____Total Contract Value \$_____

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor?

☐ Prime Contractor☐ Subcontractor

Was the Prime Contract subject to any Goals?

☐ City M/WBE Goals☐ State Goals☐ Federal Goals☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements?

☐ Yes☐ No☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

Percentage of total contract value subcontracted to other vendors%

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

\$

06/2021

For information or assistance, please contact your contracting City Agency

Reference 4

Agency/Organization

Contract #

Reference Contact

Telephone

Email

Contract Start Date

Contract End Date

Total Contract Value \$

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor?

☐ Prime Contractor☐ Subcontractor

Was the Prime Contract subject to any Goals?

☐ City M/WBE Goals☐ State Goals☐ Federal Goals☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements?

☐ Yes☐ No☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

\$

\$

\$

\$

\$

\$

Percentage of total contract value subcontracted to other vendors

%

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

\$

Reference 5

Agency/Organization

Contract #

Reference Contact

Telephone

Email

Contract Start Date

Contract End Date

Total Contract Value \$

Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor?

☐ Prime Contractor☐ Subcontractor

Was the Prime Contract subject to any Goals?

☐ City M/WBE Goals☐ State Goals☐ Federal Goals☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements?

☐ Yes☐ No☐ N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

\$

\$

\$

\$

\$

\$

Percentage of total contract value subcontracted to other vendors

%

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

\$

Vendor Certification

Identify/list all the work areas you intend on subcontracting on the current anticipated contract for which you are submitting this waiver request.

I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith. I further affirm that the work that I did not list as work that will be subcontracted on this contract for which I am submitting this waiver request is work that I have performed on past contracts and will not subcontract if awarded this contract.

Signature

Date

Print Name

Title

☐ Partial Waiver Approved with Revised Participation Goals

Unspecified

%

Black American

%

Hispanic American

%

Native American

%

Asian American

%

Women

%

Total Revised Goals

%

Approvals (for Agency completion only)

ACCO Signature

Date

CCPO Signature

Date

Waiver Determination

☐ Full Waiver Approved

☐ Waiver Denied

NOTICE TO BIDDERS

Please note that, effective January 1, 2008, payments from the City of New York will be made by electronic funds transfer (EFT) as per the attached Electronic Funds Transfer memo. You are to complete the bottom section of the memo and return it with your bid response. The EFT Vendor Payment Enrollment Form is to be sent to:

NYC Department of Finance, Treasury Division,
66 John Street, 12th Floor
New York, NY 10038
Attention: EFT

or

Fax to: EFT at 212-361-7063.

Do **NOT** return the EFT Vendor Payment Enrollment Form with your bid response.

ELECTRONIC FUNDS TRANSFER MEMO

In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. And 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 first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" 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 the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

☐ I agree to accept EFT and have forwarded a completed EFT Vendor Payment Enrollment Form to the Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 – Attention EFT.

Please Note: EFT Vendor Payment Enrollment Forms are **NOT** to be submitted with your bid.

☐ I already receive payments via EFT.

Name of Firm: _____

Print Name: _____

Signature: _____

Title & Date: _____

**DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)
VENDOR PAYMENT ENROLLMENT FORM**

Mail to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or
Fax to: EFT at 646-500-7152

☐

ENROLLMENT

☐

MODIFICATION

IMPORTANT: You must provide ONE of the four following items!!!

VOIDED CHECK

ENCODED DEPOSIT SLIP

CURRENT BANK STATEMENT

LETTER FROM YOUR BANK*

*The bank letter should identify your name (or company name) entire bank account and routing number AND MUST HAVE the signature of a bank representative along with his/her printed name and contact number. Please note your application for EFT will not be processed without one of the four forms of account verification.

SECTION I - VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER:
(AS IT APPEARS ON W-9 FORM)

2. VENDOR NAME (AS IT APPEARS ON W-9 FORM):

3. VENDOR'S ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. VENDOR'S TELEPHONE NUMBER:

SECTION II - BANK INFORMATION

1. BANK ACCOUNT NUMBER:

2. NAME AS IT APPEARS ON ACCOUNT:

3. BANK NAME:

4. BANK 9-DIGIT ROUTING NUMBER:
(LOCATED AT THE BOTTOM OF CHECK)

5. ACCOUNT TYPE - MUST BE EITHER CHECKING OR SAVINGS:
(CHECK ONE BOX ONLY)

☐

CHECKING

☐

SAVINGS

6. BANK REPRESENTATIVE'S NAME:

7. TELEPHONE NUMBER:

SECTION III - VENDOR SIGNATURE AND AUTHORIZATION

I, hereby confirm my authority, as an authorized signer of the above-referenced bank account ("Account"), to issue this instruction to credit and debit, via the Automated Clearinghouse, the Account. I authorize the City of New York to deposit, via Automated Clearinghouse credit entry, all entitled payments to the Account and to initiate, as necessary, Automated Clearinghouse debit entries to adjust any Automated Clearinghouse credit (i) made in error (ii) deposited for an incorrect amount, or (iii) that is a duplicate of a correct payment. The City of New York will make a reasonable effort to communicate with me to notify me of a debit entry that will be made to the Account.

I understand that this authorization will remain in effect until a written instruction, properly executed by me, authorizing cancellation is submitted to the fax number(s) above.

1. VENDOR OR AUTHORIZED PERSON'S SIGNATURE

2. PLEASE PRINT NAME

3. DATE - MM/DD/YYYY

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

Complete the EFT application form online along with one of the four types of account documentation.
Fax the form and backup to 646-500-7152 or mail them directly to:

NYC Department of Finance
Treasury Division
66 John Street, 12th Floor
New York, NY 10038
Attention: EFT

Please type this form and save to your computer to retain a copy for your records.

SECTION I - VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's email address, if it has one.
5. Provide the vendor's telephone number.

SECTION II - BANK INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Bank name
4. Indicate 9-digit routing (ABA) transit number (located at the bottom of vendor's check).
5. Indicate type of account. Account must be designated as either checking or savings.
(Check one box only).
6. List name and telephone number of the bank's representative.

SECTION III - VENDOR SIGNATURE AND AUTHORIZATION

Sign and print vendor or authorized person's name and indicate the date.



ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT THE NEW YORK CITY DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) FOR CITY VENDORS

1. WHAT ARE THE BENEFITS OF DIRECT DEPOSIT?

There are several advantages to direct deposit:

- Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your account is more secure.
- Payments arrive sooner – You don't have to wait for a check to arrive in the mail. Electronic payments are deposited directly into your bank account, saving days of waiting for checks to clear.
- You save time – Money deposited into your bank account is automatic. You save the time you used to spend at the bank depositing the check.

2. WHO SHOULD ENROLL?

In accordance of Local Law 43 enacted by City Council in 2007, all vendors with City contracts over \$25,000 are required to enroll in the payment Direct Deposit program. In addition, vendors who choose **not** to enroll, may be assessed a \$3.50 per check fee. All vendors are encouraged to enroll in the program.

3. CAN FOREIGN COMPANIES ENROLL?

Yes, however foreign vendors *must enroll with a U.S. based bank*.

4. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?

Payments are deposited two business days after the date of issuance.

5. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT?

The Payee Information Portal (PIP) is a service that allows you, as a payee/vendor for the City of New York, to manage your own account information, view your financial transactions with the City of New York, and much more. You may enroll in PIP by going to nyc.gov/eft and clicking on the payee information portal hyperlink.

In addition, you may contact your bank directly or use online banking, mobile applications, and regular bank statements to confirm the deposit.

6. HOW WILL I KNOW WHAT THE PAYMENT IS FOR?

All payment information is transferred electronically to your bank account from Citibank. The City of New York now offers vendor access to the Payee Information Portal (PIP), which permits you to track up to three years of issued payments, as well as all scheduled payments. Direct deposits may reflect several invoices from one or more agencies, but the Payee Information Portal will provide information about each and every payment.

7. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT WE REQUESTED AND THE AMOUNT WE RECEIVED?

Please contact your agency representative.

8. CAN DIRECT DEPOSITS BE CREDITED TO THE WRONG ACCOUNT? IF THAT HAPPENS, WHO IS RESPONSIBLE?

The vendor is responsible for submitting to the Department of Finance correct information for the proper bank account to which it wishes to receive payments. The Department of Finance will not be able to ascertain if the vendor has supplied information for the wrong bank account.

However, if the bank account information that has been submitted is inconsistent and/or incorrect, the receiving bank will reject the payment and the Department of Finance will be notified. Finance will notify the agency and/or vendor and together we will do whatever is necessary to correct the problem. In order not to delay your payment, we will issue check(s) for your payment until the problem is resolved.

9. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?

Whenever you change any information, you must submit a new EFT Enrollment Form to the Finance Treasury Division indicating the type of change you are requesting. A copy of an imprinted voided check, imprinted encoded deposit slip, bank statement or bank letter with the new account information must be included with your EFT Enrollment Form. Mail correspondence to: Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, New York 10038, Att: Direct Deposit/EFT or fax to 646-500-7152.

It is important that you do not close the account that is linked to your direct deposits until the new account has been established and payments are being credited to your new account. When the change is complete, you may then close the old account.

10. CAN I CANCEL MY DIRECT DEPOSIT ENROLLMENT?

If you have a contract with the City for more than \$25,000 the law requires that you receive your payments by direct deposit. Vendors may request a cancellation by clicking the "Contact us" hyperlink at nyc.gov/eft. Vendors that are **not** enrolled in EFT will be subject to the \$3.50 per check fee.

11. DO I NEED TO SEND SEPARATE DIRECT DEPOSIT ENROLLMENT FORMS FOR EACH CITY AGENCY WITH WHICH I DO BUSINESS?

No. One enrollment form is sufficient.

12. WHAT IF MY NAME, ADDRESS OR TAX ID # CHANGES? HOW DOES THIS AFFECT MY DIRECT DEPOSIT? WHO SHOULD BE NOTIFIED?

If your name, address or Tax ID # change, you must contact your paying agency and work with them to correct this information in the City's Financial Management System (FMS).

If only your address needs changing, you do **not** need to submit a new EFT Enrollment Form. You **will** need to submit a new form if your name or Tax ID # change.

GENERAL INSTRUCTIONS

1. Pursuant to Schedule A, the Bidder may be required to provide either a Bid Security or a Bid Bond.

BID SECURITY INSTRUCTIONS

1. If the Bidder elects to submit a Bid Security, the Bid Security shall be in the amount required pursuant to Schedule A and shall be provided in a form consistent with the Articles referenced therein.

BID BOND INSTRUCTIONS

1. If the Bidder elects to submit a Bid Bond, the Bid Bond shall be in the amount required pursuant to Schedule A and shall be provided in a form consistent with this Attachment.
2. Each executed Bid Bond shall be accompanied by:
 - a) Appropriate acknowledgments of the respective parties; and
 - b) An appropriate duly certified copy of the Power of Attorney or other certificate of authority where the bond is executed by agent, officer or other representative of the Principal and Surety; and
 - c) A duly certified extract from the by-laws or resolution of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued; and
 - d) A duly certified copy of the latest published financial statement of assets and liabilities of the Surety.
3. Acknowledgments and Justification of Sureties shall be affixed to the Bid Bond.

BID BOND**FORM**

WE _____
 hereinafter referred to as the "Principal," and _____
 hereinafter referred to as the "Surety" 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 of America, 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 submit (or has submitted) to the City the accompanying
 bid, hereby made a part hereof, to enter into, a contract in writing for

 _____.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall not
 withdraw said bid without the consent of the City for a period of forty-five (45) days after the
 opening of bids and, in the event of acceptance of the Principal's bid by the City the Principal
 shall:

- A.** Within ten (10) days after notification by the City, execute in triplicate and deliver
 to the City all the executed counterparts of the Contract in the form set forth in the
 Contract Documents, in accordance with the bid as accepted, and
- B.** Furnish a Performance Bond and a Payment Bond, as may be required by the City
 for the faithful performance and proper fulfillment of the Contract, which bonds
 shall be satisfactory in all respects to the City and shall be executed by good and
 sufficient Sureties, and
- C.** In all respects perform the Contract created by the acceptance of the bid as
 provided in the Information for Bidders, which is incorporated herein by reference
 or if the City shall reject the aforesaid bid then this obligation shall be null and
 void; otherwise it remains in full force and effect and the Surety shall fulfill its
 obligations under this Bid Bond.

In the event that the Principal's bid shall be accepted by the City and the Contract awarded to
 him, then the Surety hereunder agrees, subject only to the payment by the Principal of the
 premium therefore, if requested by the City, to write the aforementioned performance and
 payment bonds in the form set forth in the Contract documents.

It is expressly understood and agreed that the liability of the Surety for any and all claims under
 this Bid Bond shall in no event exceed the penal amount of this bid as stated herein.

In the event that the City accepts the Principal's bid, and either a Performance Bond, Payment Bond or both will not be required by the City on or before the thirtieth day after the date on which the City signs the Contract, there shall be no liability under the Bid Bond as to such Performance Bond or Payment Bond.

The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and its bond shall in no way be impaired or affected by any postponements of the date upon which the City will receive or open bids, or by any extensions of the time within which the City may accept the Principal's bid, or by any waiver by the City of any of the requirements in the bid documents. The Surety hereby waives notice of any such postponements, extensions, or waivers.

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

Principal (LS)

(Seal)

By: _____

Surety

(Seal)

By: _____

ACKNOWLEDGMENT OF CONTRACTOR—IF A CORPORATION

State of _____ County of _____ ss:

On this _____ day of _____, 20____, before me personally appeared _____ 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; that he/she knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF CONTRACTOR—IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, 20____, before me personally appeared _____ to me known and known to me to be a member of the firm of _____ the firm 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

ACKNOWLEDGMENT OF CONTRACTOR—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 he/she acknowledged to me that he/she executed same for the purpose herein mentioned.

Notary Public

PAYMENT BOND FORM

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 of America 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 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 Subcontractor, 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/or

- b)** Materials and supplies (*where incorporated in the permanent structure or not*), as well as fuels, oils, implements or machinery furnished, used or consumed by said Principal or any Subcontractor 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 void; otherwise to remain in full force and effect and the Surety shall fulfill its obligations under this Payment Bond.

This bond is subject to the following additional conditions, limitations and agreements:

- a)** 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.
- b)** 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 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.
- c)** The Principal and Surety (Sureties) agree that neither of them will hold the City liable for any judgment for costs or otherwise, obtained by either or both of them against 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.
- d)** The Surety (Sureties) or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workers' Compensation Law.

- e) 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 (2) years after the complete performance of said Contract and final settlement thereof.

The Principal, for himself 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, materialmen 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 Payment Bond.

And the Surety (Sureties) for values received, for itself and its successors and assigns hereby stipulate(s) and agree(s) that the obligation of said Surety (Sureties), and its bonds 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.

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 hereto affixed and these presents to be signed by their proper officers this ____ day of _____, 20__.

Principal

(Seal)

By: _____

Surety

(Seal)

By: _____

Surety

(Seal)

By: _____

Surety

(Seal)

By: _____

ACKNOWLEDGMENT OF CONTRACTOR—IF A CORPORATION

State of _____ County of _____ ss:

On this _____ day of _____, 20____, before me personally appeared _____ 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; that he/she knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF CONTRACTOR—IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, 20____, before me personally appeared _____ to me known and known to me to be a member of the firm of _____ the firm 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

ACKNOWLEDGMENT OF CONTRACTOR—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 he/she acknowledged to me that he/she executed same for the purpose herein mentioned.

Notary Public

Performance Bond
for Bids \$5 Million or Less (SBA Approved)

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

Performance Bond
for Bids \$5 Million or Less (SBA Approved)

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

Performance Bond
for Bids \$5 Million or Less (SBA Approved)

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)

Principal (L.S.)

(Seal) By _____
Surety

(Seal) By _____
Surety

(Seal) By _____
Surety

(Seal) By _____
Surety

(Seal) By _____
Surety

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.

Performance Bond
for Bids \$5 Million or Less (SBA Approved)

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 _____ 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 _____ 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.

Performance Bond
for Bids \$5 Million or Less (SBA Approved)

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 justification of Sureties

Performance Bond
for Bids Greater than \$5 Million

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

Performance Bond
for Bids Greater than \$5 Million

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.

Performance Bond
for Bids Greater than \$5 Million

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)

Principal (L.S.)

(Seal) By _____
Surety

(Seal) By _____
Surety

(Seal) By _____
Surety

(Seal) By _____
Surety

(Seal) By _____
Surety

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.

Performance Bond
for Bids Greater than \$5 Million

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 _____ 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 _____ 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.

Performance Bond
for Bids Greater than \$5 Million

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 justification of Sureties

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)
County of) ss.:
.....)

Sworn to before me this _____ day of _____ 20____

NOTARY PUBLIC FOR THE STATE OF _____

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligations to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to received public contracts except:

Full name of Proposer or Bidder:

Address:

City State Zip Code:

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER

☐

B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

☐

C - Corporation
EMPLOYER IDENTIFICATION NUMBER

☐

By:

Signature

Name

Title (must be signed by an officer or duly authorized representative).

If a Corporation, place seal here:

* Under the Federal Privacy Act the furnishing of Social Security numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.

**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.

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT**

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
____ da y of _____, 20__

Notary Public

Dated:

MACBRIDE PRINCIPLES PROVISIONS FOR NEW YORK CITY CONTRACTORS RIDER

ARTICLE I: NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

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

Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 31 3(b)(2) of the City Charter.

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

PART A

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

PART B

For purposes of this section, the following terms shall have the following meanings:

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

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

- (2) 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;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II: ENFORCEMENT OF ARTICLE I

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

Division of Labor Services Contract Compliance

The Division of Labor Services (DLS) enforces Executive Order No. 50, which requires City contractors comply with federal, state, and local equal employment opportunity (EEO) laws and regulations. Prior to the award of a City contract or ICIP/ICAP benefit, a contractor must submit an Employment Report containing information on their employment policies and practices and workforce composition. DLS will analyze the report to determine if the contractor maintains nondiscriminatory hiring and employment practices.

Please visit this website for DLS compliance requirements:

[Contract Compliance \(nyc.gov\)](#)

PASSPORT

Contract Award. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite Procurement and Sourcing Solutions Portal (PASSPort) online disclosure process and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules. Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)

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

Vendor Account Creation

This document is a quick-start guide for vendors who need to create a PASSPort vendor account. For more detailed step-by-step instructions on the PASSPort Vendor Account Creation process, please refer to the PASSPort Vendor Account Creation User Manual. If you have any questions or need assistance, please reach out to the Mayor's Office of Contract Services (MOCS) at help@mocs.nyc.gov.

Establishing a PASSPort vendor account is a two-step process that requires you to 1) create a NYC.ID using a valid email address, and 2) request an account using your NYC.ID credentials. The person requesting an account should be a principal or designee who is officially authorized to conduct business with the City on behalf of your organization. Once your PASSPort vendor account is approved, you are able to enter additional business information and begin the Vendor Enrollment process.

Creating a NYC.ID

1. Navigate to the PASSPort homepage: <http://www.nyc.gov/passport>
2. Click the **"Login"** button.
3. Click the **"Create Account"** link.
4. Fill in the required information and then select/answer three security questions.
5. Agree to the Terms and Conditions.
6. Click the **"Create Account"** button.
7. Once submitted, check the email inbox (or Spam folder) associated with your NYC.ID for an automated validation email.
8. To activate your account, click the validation link within 24 hours of receiving the email, which will direct you to the NYC.ID login screen.

Requesting a Vendor Account

1. Navigate and log in to PASSPort using your NYC.ID credentials: <http://www.nyc.gov/passport>
2. Click the **"Create Account"** button.
3. Enter the required information to complete the account request including your business information, primary place of business, CEO information, and primary contact information. Fields that are required are indicated with a red bar.
4. Click the **"Submit"** button.
5. Your request will be assigned to a member of the MOCS Team for further processing and you will receive an email notification regarding next steps within one to two business days.

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

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,

- (a) 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 (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) 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 subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) 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
 - (ii) 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.
- (d) For the purposes of this rider, "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.

- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT

RELATING TO A NYC-FUNDED CONTRACT

OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959



DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:

New York City Department of Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:

www.nyc.gov/doi

All communications are confidential

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



← Scan the QR Code at Left to File a Complaint

7815L

COVERAGE UNDER THE NEW YORK STATE WORKERS' COMPENSATION LAW

Pursuant to Section 57 of the New York State Workers' Compensation Law, the bidder must submit proof of workers' compensation and disability benefits coverage to the agency prior to the execution of any contract resulting from this solicitation.

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* (“DCWP Rules”).

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

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

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

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

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

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

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. *Records.* An employer must retain records documenting its compliance with the ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

Compliance with HireNYC and Reporting Requirements

The Hiring and Employment Rider shall apply to contracts valued at \$1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the Hire NYC process and obligations, including reporting requirements throughout the life of the contract. The Hire NYC process requires contractors to enroll with the Hire NYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC.

HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York ("the City") found within the Department of Small Business Services's ("SBS") website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor's representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process,

and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- 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.

SPECIAL NOTICE TO BIDDERS

The New York City Department of Small Business Services (SBS), in conjunction with the New York Business Development Corporation (NYBDC), have established a **NYC Construction Loan** pilot program to provide prime contractors and subcontractors financing for mobilization costs on certain City construction projects.

Under this initiative, loans are available for early stage mobilization needs such as insurance, labor, supplies and equipment. Bidders are strongly encouraged to visit “[Growing Your Business](http://www.nyc.gov/nycbusiness)” at www.nyc.gov/nycbusiness to learn more about the loan or contact constructionloan@sbs.nyc.gov / (212) 513-6444 to obtain details and to determine preliminary eligibility.

A successful loan applicant will be required to make an assignment of its contract (or subcontract) payments to the lender NYBDC until the loan is repaid. If the loan is to a subcontractor, a prime contractor must honor the terms of such an assignment.

A prime contractor may not discriminate against a subcontractor or potential subcontractor by reason of the subcontractor’s participation, or nonparticipation, in the NYC Construction Loan program.

New York City Side Guard Law Rider

Truck Safety Side Guards Requirement for City Contractors pursuant to Local Law 108 of 2021

In October 2021, the City Council passed legislation requiring Side Guards on Large Vehicles used weekly or on a more frequent basis by Contractors of the City of New York to fulfill requirements material to their City Contract, where such Contract has an estimated value of \$2,000,000.00 or more. Local Law 108 of 2021 (the “law”) can be accessed at:

<https://www1.nyc.gov/assets/bic/downloads/pdf/regulations/local-law-108.pdf>

On October 7, 2022, New York City Department of Citywide Administrative Services (“DCAS”) published the final rules for implementation of the Side Guard law in the City Record (“Adopted Rules”), see Title 55 Chapter 15 of the Rules of the City of New York. The Adopted Rules can be accessed at:

<https://www.nyc.gov/assets/dcas/downloads/pdf/cityrecord/city-record-10-07-22-adoption-of-sideguard-rules.pdf>

Contractors shall be reimbursed for the cost of installing Side Guards on City Contracted Vehicles (as defined in the Adopted Rules) performing work under the Contract. The reimbursement will be for actual invoices up to the \$3,000 per City Contracted Vehicle limit established in the Adopted Rules.

In cases where Subcontractors operate the City Contracted Vehicles impacted by the law, the Adopted Rules require the Contractor to reimburse the costs for the Side Guards to the Subcontractor.

The Contractor must supply the contracting Agency and DCAS (at NYCFleet@dcas.nyc.gov) with:

- Estimated number and lists of City Contracted Vehicles to be impacted by the law, including year, make, model, and owner.

The Contractor must supply the contracting Agency and DCAS Fleet (C/O Deputy Chief Fleet Management Officer, 23rd Floor South, Municipal Building, 1 Centre Street, NY, NY 10007, NYCFleet@dcas.nyc.gov) with a full updated list of impacted City Contracted vehicles including model, year, VIN, photos, and an implementation plan within 14 days of the Notice to Proceed or of the first order of the Contract. Questions about eligibility of City Contracted Vehicles can be directed to the contracting Agency or DCAS (NYCFleet@dcas.nyc.gov.)

Actual Side Guard costs will be reimbursed based on submitted invoices for the installations if implemented as retrofits. Side Guards previously installed on City Contracted Vehicles through new vehicle acquisitions as Original Equipment Manufacturer (OEM) components or previously retrofitted shall not be reimbursed. The City shall not pay for maintenance of existing Side Guards or replacement of previously installed Side Guards.

Costs for Side Guard installation must be consistent with the prevailing market for these installations. DCAS will provide Contractors with information, including vendors lists, about existing DCAS approved suppliers and costs. Contractors are not required to use the vendor list supplied by

DCAS. Contractors will be reimbursed by the contracting Agency after providing proof of Side Guard installation, including photos and invoices and written approval by DCAS. DCAS will reserve the right to inspect any Side Guard installation prior to approval of reimbursement.



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER No. 39

February 15, 2024

IMPROVING CITY FLEET AND TRUCK SAFETY

WHEREAS, the City of New York remains committed to protecting the health and safety of all New Yorkers and road users by ensuring the safety of its streets; and

WHEREAS, trucks are involved in 12% of fatalities to pedestrians and 30% of fatalities to bicyclists in NYC; and

WHEREAS, significant safety upgrades to City-owned vehicles and vehicles of city contractors are critical to achieving long-term safety improvements; and

WHEREAS, a safe systems approach combining training, technology, and improved vehicle design is proven to reduce crashes; and

WHEREAS, the City has implemented a comprehensive Safe Fleet Transition Plan to improve the safety of City-owned and operated fleet vehicles and trucks, which includes NY State License Event Notification System ("LENS"), safety training, crash tracking, truck side-guards, high vision trucks and surround cameras, and telematics; and

WHEREAS, the City depends on the regular and extensive use of contracted fleet and trucking assets inside the City of New York; and

WHEREAS, crashes involving City fleet and contractor vehicles can have an incalculable human cost, and also delay and disrupt the provision of critical services to the public and require time-consuming and costly repairs; and

WHEREAS, the Department of Citywide Administrative Services ("DCAS") is working to make City streets safer by managing central crash tracking for City agencies through its Fleet Management System; establishing a Fleets of the Future Network to promote fleet safety and sustainability in accordance with Executive Order 53 of 2020; implementing surround cameras and high vision trucks to address visual restrictions faced by truck operators; and, in accordance with Executive Order 41 of 2019, implementing live tracking of City fleet vehicles to improve safety;

NOW, THEREFORE, by the power vested in me as the Mayor of the City of New York, it is hereby ordered:

Section 1. Definitions. For the purposes of this Order, the following terms have the following meanings:

Chief Fleet Officer: The DCAS official appointed by the Commissioner, in accordance with Executive Order 161 of 2012, who is responsible for implementing policies and procedures to ensure safe, reliable, and proper use of City vehicles, or their duly authorized designee.

City-contracted vehicle or City-contracted truck: A motor vehicle, including a truck, that is utilized within the city of New York on a weekly or more frequent basis to fulfill requirements material to the scope of a contract registered with the Comptroller, where such contract has an estimated value of \$2 million or more and such motor vehicle is not a city fleet vehicle. Such term includes a motor vehicle that is utilized to fulfill the scope of a subcontract for work to be performed under a contract described in the previous sentence.

Such term does not include a motor vehicle or truck that is utilized pursuant to: a contract registered with the Comptroller pursuant to section 328 of the Charter before July 1, 2024, including the renewal, extension or modification of such existing contract; an agency on-call emergency contract, including an on-call storm emergency contract; an emergency procurement made pursuant to section 3-06 of title 9 of the Rules of the City of New York or pursuant to an executive order of the Mayor or Governor issued under section 24 or section 29-A of the New York State Executive Law; an intergovernmental contract; a government to government contract between the City and any State or Federal government agency; and a contract for the provision of utilities, as identified in subdivision (b) of section 825 of the New York City Charter.

Such term shall also not include a motor vehicle or truck that is utilized pursuant to a contract for which an information for bidders or other solicitation was issued on or before the effective date of this Order.

Contractor: A person that enters into a contract involving a City-contracted vehicle with the city of New York.

High Vision Truck: A truck with a cab-over or cab-forward design wherein the driver sits in front of the front axle as opposed to conventional cab design wherein the engine and front axle are in front of the driver. The distance from the forward of the center of the vehicle bumper at which the driver can first see the top of a 3-foot cone shall not exceed eight feet and the distance beyond the exterior of the passenger side door at which the driver can first see the top of the 4-foot cone shall not exceed six feet.

Telematics: Automatic vehicle location systems that track vehicle location and speed and alert the driver and another designated person(s) to such location and speed in real time.

Truck: A motor vehicle with a manufacturer's gross vehicle weight rating exceeding 10,000 pounds. The term does not include off road construction vehicles.

Truck Surround Camera: A system of cameras, sensors, and alerts placed on a truck that provides a truck operator with a full view of all four sides of the truck.

City Fleet or City Fleet Vehicle: A motor vehicle, including a truck, owned or leased by the City, whose drivers ("City Fleet Drivers") and operations ("City Fleet Operations") are authorized by the City and are subject to the requirements of the City of New York Fleet Management Manual and DCAS City Vehicle Driver Handbook.

§ 2. Safety Requirements for Contractors: Every mayoral agency shall include in a contract involving a City-contracted vehicle the requirements identified in this section, and shall further require a Contractor to include such requirements in any sub-contract involving a City-contracted vehicle.

(a) *Fleet Safety Plan*: Contractors shall submit a fleet safety plan within one month after the registration of their contract involving a City-contracted vehicle. Each contractor's fleet safety plan shall be updated at minimum every two years, and shall include:

1. A list of City-contracted vehicles and drivers, including sub-contractor vehicles and drivers, that the Contractor expects to employ in the performance of the contract;
2. Training plans to ensure safe fleet operation as set forth in subdivision (c) of this section;
3. Relevant technology investments, including truck surround cameras and telematics, as applicable;
4. The Contractor's crash monitoring and review process; and
5. A program of corrective action for employees and/or sub-contractor employees involved in unsafe driving events, and license monitoring.

(b) *Licensing*: Contractors shall ensure proper licensing for all drivers who operate City-contracted vehicles in performance of contracts involving such vehicles.

1. Contractors, including sub-contractors, shall utilize the LENS system for drivers with New York State driver's licenses, and shall implement a separate process for monitoring license events for drivers with out-of-state licenses.
2. Contractors shall notify the contracting agency of any license suspensions and/or arrests tied to unsafe or illegal vehicle operation by drivers of City-contracted vehicles.

- (c) *Training*: Contractors shall require any driver of a City-contracted vehicle to complete an online or in person safety course within six months of first performing services under the contract. Contractors shall provide to the contracting agency confirmation in writing that each such driver has completed such training, including the name of each such driver, the time and date the training was completed, and the training curriculum that was utilized.
- (d) *Crash Tracking*: Contractors shall report to the contracting agency regarding any crash resulting in bodily injury, fatality, major vehicle damage (over \$1,000), or property damage to a City facility involving a City-contracted vehicle occurring during the performance of a contract involving such vehicle. The City may restrict individual drivers with a record of unsafe driving from operation of city-contracted vehicles, subject to appropriate safeguards and applicable law.
- (e) *Truck Surround Cameras*: All City-contracted trucks, other than high vision trucks, shall be outfitted with truck surround cameras in accordance with the following schedule:
 - 1. No later than 12 months from contract registration where the contract involves 10 or fewer City-contracted trucks.
 - 2. No later than 18 months from contract registration where the contract involves more than 10 City-contracted trucks.
 - 3. If a new or replacement City-contracted truck is used after initial contract work has begun, such truck must be in compliance with this subdivision within 12 months from the date of first using such truck.
- (f) *Telematics*. All drivers of a City-contracted vehicle must use telematics during the performance of the contract involving such vehicle. Data regarding vehicle location and speed during the course of performance of such contract must be made available in accordance with the terms of such contract.

§ 3. Liquidated damages. Every mayoral agency shall include in a contract involving a City-contracted vehicle, and shall further require a contractor to include in any sub-contract involving a City-contracted vehicle, a liquidated damages provision. Such provision shall provide for potential liquidated damages up to \$500 for each violation of subdivisions (a), (b), (c), (d), and (f) of section 2 of this Order, and up to \$3,000 for each City-contracted truck that is found to be in violation of subdivision (e) of such section.

§ 4. Technical Guidance and Exemptions for Contracts Involving City-Contracted Vehicles.

- (a) *Technical Guidance and Assistance:* DCAS shall provide technical guidance and other assistance to agencies to assist with compliance with this Order in accordance with this subdivision.
 - 1. *Technical guidance:* DCAS shall provide technical guidance relating to standard specifications for high vision trucks, truck surround cameras, and telematics and whether exemptions from sections 2 and 3 of this Order may be granted.
 - 2. *Safety plan template:* DCAS shall publish a template fleet safety plan and the City's Safe Fleet Transition Plan.
 - 3. *Training programs:* DCAS shall assist contracting agencies with identifying training options and appropriate curricula.
- (b) *Exemptions:* A contracting agency may submit a request for an exemption from sections 2 and 3 of this Order to the Mayor's Office of Operations, which shall, in consultation with DCAS, grant such request where implementation of such sections would be impracticable. In determining whether implementation is impracticable, the Mayor's Office of Operations, in consultation with DCAS, may consider, but is not limited to considering, whether implementation will disrupt contract implementation; is infeasible for technical, operating or design reasons; or will impose undue costs.

§ 5. Safety Requirements for the City Fleet: All mayoral agencies that operate City Fleet Vehicles shall implement safety requirements in accordance with this section.

- (a) *License monitoring:* Each such agency shall maintain and regularly update a list of authorized drivers for City Fleet Operations in the NYC Fleet Focus system, administered by DCAS. Such agencies shall enroll their fleet operators in the LENS system and shall confirm such enrollment with DCAS.
- (b) *Training:* All City Fleet drivers shall complete an online or in-person fleet safety training course within 6 months of agency authorization to operate a City Fleet Vehicle. DCAS shall develop and approve the training curriculum. Employees with demonstrated instances of unsafe driving may be required to perform this training more often and DCAS may establish a schedule for all operators to repeat the training.
- (c) *Crash tracking:* Each such agency shall record each crash and incident involving a city fleet vehicle, including theft or vehicle damage, into the CRASH tracking system maintained by DCAS.

- (d) *Truck Surround Cameras*: Beginning July 1, 2024, all new Trucks purchased by a mayoral agency shall be outfitted with surround cameras, unless the Truck is designed as a high vision truck.
- (e) *Emergency vehicles*: Notwithstanding anything to the contrary in this section, agencies responsible for emergency response that have separate specialized driver training and vehicle data systems may implement a separate system for monitoring of licensees and training requirements, subject to verification by DCAS. The New York City Police Department may also implement a separate system for crash tracking, subject to verification by DCAS.
- (f) *Exemptions*: DCAS shall approve requests from city agencies for exemptions from the requirements of subdivisions (a) through (e) of this section, relating to City Fleet Vehicles, for technical, operating or design reasons; cost considerations; or where implementation of this section is otherwise impracticable.

§ 6. Agency Cooperation. All agency heads are directed to cooperate with DCAS and the Chief Fleet Officer in implementing and complying with this Order.

§ 7. Effective Date. This Order shall take effect immediately.

A handwritten signature in black ink, appearing to read "Eric Adams", is positioned above a horizontal line.

Eric Adams
Mayor

New York City Mayoral Executive Order No. 39 Rider
City Fleet and Truck Safety Requirements for City Contractors

Version: 11/19/24

[Instruction to Agencies: Please attach this Rider to the following agreements: (1) Procurement Contracts that meet the criteria set forth in Executive Order 39 of February 1, 2024; and (2) to the March 2017 version of the New York City Standard Construction Contract.]

Section 1.01 Background

This rider is included in the Agreement and made a part thereof pursuant to the provisions of Mayoral Executive Order 39 of 2024.

Section 1.02 Definitions

- A. Capitalized terms not otherwise defined in this rider shall have the meaning ascribed to them in the Agreement.
- B. Agreement: The agreement between the City and the Contractor, to which this rider has been added and made a part.
- C. City-contracted Vehicle means a Truck (as hereinafter defined) or any other motor vehicle that the Contractor anticipates providing in accordance with this Agreement or using in performing its obligations under this Agreement on a weekly or more frequent basis¹. This includes those vehicles anticipated to be provided or used by subcontractors to fulfill the scope of a subcontract for work to be performed under a contract that is subject to the Executive Order, regardless of monetary value of the subcontract, if the vehicle is utilized on a weekly or more frequent basis.
- D. Contracting Agency: the City agency or office through which the City of New York has entered into this Agreement.

¹ The following vehicles are not considered City-contracted vehicles and are thus not subject to Executive Order 39: any motor vehicle or truck that is utilized pursuant to (1) contracts registered prior to July 1, 2024, including the renewal, extension, or modification of such contracts; (2) an agency on-call emergency contract; (3) an emergency procurement made pursuant to section 3-06 of title 9 of the Rules of the City of New York or pursuant to an executive order of the Mayor or Governor issued under section 24 or section 29-A of the New York State Executive Law; (4) intergovernmental contracts; (5) government-to-government contracts between the City and any State or Federal government agency; and (6) a contract for utilities, as identified in subdivision (b) of section 825 of the New York City Charter.

- E. Contractor: the entity providing services under this Agreement.
- F. Executive Order: Mayoral Executive Order 39 of 2024, as it may be amended.
- G. High Vision Truck: A Truck with a cab-over or cab-forward design wherein the driver sits in front of the front axle as opposed to conventional cab design wherein the engine and front axle are in front of the driver. The distance from the forward of the center of the vehicle bumper at which the driver can see the top of a 3-foot cone shall not exceed eight feet and the distance beyond the exterior of the passenger side door at which the driver can first see the top of the 4-foot cone shall not exceed six feet.
- H. Registration: Registration of this Agreement pursuant to Section 328 of the New York City Charter.
- I. Telematics: Automatic vehicle location systems that track vehicle location and speed and alert the driver and another designated person(s) to such location and speed in real time.
- J. Truck: A City-contracted Vehicle with a manufacturer's gross vehicle weight rating exceeding 10,000 pounds. The term does not include off-road construction vehicles.
- K. Truck Surround Cameras: A system of cameras, sensors, and alerts placed on a Truck that provides a Truck operator with a full view of all four sides of the Truck.
- L. Vehicle Safety Plan: A plan with regard to City-contracted Vehicles, approved by the Contracting Agency, that includes the components listed in Section 2.03(A) through (F) of this rider.

Section 2.01 Vehicle Requirements

All City-contracted Vehicles shall conform to the following requirements:

- A. Truck Surround Cameras: All Trucks, other than High Vision Trucks, shall be outfitted with truck surround cameras in accordance with the following schedule:
 - a. Contracts involving 10 or fewer Trucks: No later than 12 months from Registration.
 - b. Contracts involving more than 10 Trucks: No later than 18 months from Registration.
 - c. New or replacement Truck acquired after work under this Agreement has begun: Truck must be outfitted with Truck Surround Cameras within 12 months from the date of first using such Truck.
 - d. Contractor must submit to the Contracting Agency photographic and purchase order evidence, that is satisfactory to the Contracting Agency, of compliance with this Paragraph (A).

- B. Truck Side-guards: Contractor shall provide side-guards for City-contracted Vehicles as applicable pursuant to Section 6-141 of the New York City Administrative Code.
- C. Telematics: All City-contracted Vehicles must be installed with Telematics. Data gathered by Telematics must be made available in a manner that is satisfactory to the Contracting Agency.

Section 2.02 Safety Requirements

Contractor shall provide the following:

- A. Licensing: Contractors shall ensure proper licensing for all drivers who operate City-contracted Vehicles. Contractors shall ensure that all drivers operating City-contracted Vehicles are enrolled in the New York State License Notification System (LENS) and that all out-of-state licenses are being monitored by Contractor. Contractor must notify the Contracting Agency of any license suspensions and/or arrests tied to unsafe or illegal vehicle operation by any drivers of City-contracted Vehicles.
- B. Training: Contractor must provide the Contracting Agency documentation, satisfactory to the Contracting Agency, showing:
 - a. That all drivers of City-contracted Vehicles have taken a New York State approved defensive driving class within six months after Registration; or
 - b. That all drivers of City-contracted Vehicles have attended a New York State-approved defensive driving class within 3 years prior to Registration; or
 - c. That all drivers of City-contracted Vehicles have received alternative safe driver training acceptable to the Contracting Agency that is documented to the satisfaction of the Contracting agency.
- C. Crash tracking: Contractors must notify the Contracting Agency of any and all collisions that take place involving City-contracted Vehicles while performing services under this Agreement.

Section 2.03 Vehicle Safety Plan

Within one month after Registration, the Contractor must submit, for review and approval, to Contracting Agency, at the address set forth in the Agreement for notices to the City, and DCAS Fleet (C/O Chief Fleet Management Officer, 23rd Floor South, Municipal Building, 1 Centre Street, NY, NY 10007) a proposed vehicle safety plan that shall include at the minimum the components listed in Paragraphs (A) through (E) below. If directed by the Contracting Agency,

Contractor shall revise said proposed vehicle safety plan in accordance with the directions of the Contracting Agency, and until the Contracting Agency issues its approval thereof, Contractor shall submit a revised proposed vehicle safety plan to the Contracting Agency in each case, within 15 days after receipt by Contractor of directions to that effect from the Contracting Agency. Upon approval of the proposed vehicle safety plan, said proposed plan shall be considered the Vehicle Safety Plan and Contractor shall comply with the terms thereof. Each second anniversary of the approval of the Vehicle Safety Plan the Contractor shall submit an update thereof. The Vehicle Safety Plan shall include at the minimum the following components:

- A. Vehicle List: List of City-contracted Vehicles, including the year, make, model, VIN and license plate number of each City-contracted Vehicle;
- B. Safety Training: Documentation showing that all drivers of City-contracted Vehicles have completed the training detailed in section 2.02(B) of this Rider;
- C. Technology: A list of all relevant technology investments installed on City-contracted vehicles, including but not limited to the technology listed in section 2.01 of this Rider;
- D. Crash Tracking: An explanation of Contractor's process of monitoring and reviewing collisions including plans to notify Contracting Agency of collisions that take place while performing services under this Agreement;
- E. Corrective Action: A corrective action program for drivers of City-contracted Vehicles that engage in unsafe or dangerous driving behaviors and license monitoring; and
- F. Additional Safety Measures: Contractor must indicate if there are any additional safety technologies, safety practices, training, or other procedures that are utilized for City-contracted Vehicles during the term of this Agreement.

Section 3.01 Liquidated Damages

- A. Contractor acknowledges that its failure to comply with the provisions of this Vehicle Safety Plan will cause loss and damage to the City, the precise extent of which is difficult to ascertain in monetary terms. For this reason, the parties desire to provide fair and reasonable compensation to the City for such losses, which compensation shall not be construed as a penalty. It is therefore agreed that, in addition to any other liquidated damages that the Contractor shall be required to pay to the City in accordance with the provisions of the Agreement, Contractor shall pay to the City the following:
 - a. The sum of \$500.00 for each instance of a failure by the Contractor to submit a Vehicle Safety Plan in accordance with the provisions of Section 2.03.

- b. The sum of \$500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(A) [Licensing].
- c. The sum of \$500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(B) [Training].
- d. The sum of \$500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.02(C) [Crash Tracking].
- e. The sum of \$500.00 for each instance of a failure by the Contractor to comply with the provisions of Section 2.01(C) [Telematics].
- f. The sum of \$3,000 for each instance of a failure by the Contractor to comply with the provisions of Section 2.01(A).
- g. The Contracting Agency will provide at least 5 working days of notice to the Contractor and opportunity to rectify before implementing these liquidated damages.

B. Liquidated damages received pursuant to this Agreement are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification, or the Contractor's obligation to indemnify the City, or to any other remedy provided for in this Agreement or by Law. The City may deduct and retain out of the monies which may become due under this Agreement, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

ATTACHMENT SCY
Security Requirements

1. DEFINITIONS

- (a) **“Agreement”** means the Agreement between the Contractor and the City, annexed hereto.
- (b) **“Authorized Person”** has the meaning given below in Section 16(a).
- (c) **“Authorized Subcontractor”** has the meaning given below in Section 16(a).
- (d) **“City”** means the City of New York and/or a county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, including Cyber Command, the expenses of which are paid in whole or in part from the City of New York’s treasury, or an entity created under New York law specifically for the benefit of the City or to serve persons present in the City of New York and that has 1 or more members or directors of which are appointed by the mayor or City Council (e.g., the New York City Board of Elections).
- (e) **“City Data”** means (1) Data characterizing the City or its behavior; (2) Data created, generated, stored or maintained by, at the direction of, or for the benefit of the City; and (3) any copies or derivatives of such Data. **“Data”** means any information representation(s) of information, knowledge, facts, ideas, concepts or similar including any texts, instructions, documents, databases, diagrams, graphics, drawings, images, sounds, or biometrics that are accessed, communicated, created, generated, stored (in temporary or permanent form), filed, produced or reproduced, processed, referenced, or transmitted, in any form or media.
- (f) **“City Technology Assets”** means all City Facilities, City Systems, City telecommunications, electronic data created, processed, accessed, transferred, stored, or disposed of by City Systems, and such systems’ peripheral equipment, networks, or magnetic data, and any electronic data created, processed, accessed, transferred, stored, or disposed of by such systems. **“City Systems”** means any system owned, maintained or operated by or on behalf of the City that connects to a City network, enables operational functions of the City, or creates, processes, accesses, transfers, stores, or disposes of City Data.
- (g) **“Commissioner”** or **“Agency Head”** means the head of a City entity.
- (h) **“Contractor”** means a person or entity engaged by the City of New York to perform tasks pursuant to the Agreement.
- (i) **“Cyber Command”** means the Office of Cyber Command, established within the New York City Office of Technology and Innovation (**“OTI”**), that is empowered to ensure compliance with Policies and Standards, mitigate cyber threats, mandate deployment of technical and administrative controls, review cyber related spending, and collaborate with federal and

state government agencies and private sector organizations.

- (j) **“DoITT”** means the Department of Information Technology and Telecommunications.
- (k) **“Facility(ies)”** means a physical structure, such as a data center or other building.
- (l) **“Person”** means an officer, agent or employee of the Contractor or a subcontractor of the Contractor.
- (m) **“Policies and Standards”** means the Citywide Information Security Policies and Standards, Cyber Command Policies and Standards, or any policies and procedures by OTI, available at <https://www1.nyc.gov/content/oti/pages/vendor-resources/cybersecurity-requirements-for-vendors-contractors>, as they may be amended or placed on a successor site by the City.
- (n) **“Process”** means to perform any act, omission or operation on or with respect to data, such as collecting, recording, organizing, storing, adapting, altering, retrieving, accessing, deleting, blocking, erasing, destroying, combining, reviewing, using, transmitting, disseminating or otherwise making data available.
- (o) **“Project”** means any type of work to be performed pursuant to the Agreement.
- (p) **“Contractor Systems”** means the Facilities, systems, networks and IT environments that are used to Process any City Data, deliver any services or to otherwise meet any of Contractor’s obligations under the Agreement.
- (q) **“Security Incident”** means an event that compromises the security, confidentiality, availability or integrity of City Data, City Technology Assets or Contractor Systems, including by compromising the physical, technical, administrative or organizational safeguards implemented by Contractor to protect the security, confidentiality, availability or integrity of City Data, City Technology Assets or Contractor Systems. Examples of a Security Incident include, but are not limited to, the unauthorized acquisition or use of unencrypted City Data (or encrypted City Data and the decryption key), intrusions, virus or malware, ransomware infections, social engineering, missing/stolen hardware, a breach of access credentials, DDOS and DoS attacks
- (r) **“Security Investigation”** means a criminal history and background investigation in accordance with the requirements set forth herein. The City reserves the right to modify the scope of requisite investigations upon provision of reasonable notice to the Contractor.
- (s) **“User Responsibility Policy”** or **“URP”** means the User Responsibilities Policy available at <https://www1.nyc.gov/assets/oti/downloads/pdf/vendor-resources/user-responsibilities.pdf>, as it may be amended or placed on a successor site by the City.

2. CITYWIDE INFORMATION SECURITY POLICY

The Contractor shall comply with the Policies and Standards, and terms of the Agreement. In addition, the Contractor shall ensure that all Authorized Subcontractors and Authorized Persons who may have access to any City Data or City Technology Assets in the course of carrying out their responsibilities or job functions comply with the Policies and Standards.

3. USER RESPONSIBILITY POLICY

The Contractor will be provided with online access to, or a copy of, the User Responsibility Policy. The Contractor shall require each Authorized Person (as defined below in Section 16(a)) who may have access to any City Technology Assets to sign a written acknowledgement and agreement to comply with its terms prior to his or her assignment to perform any Services. The Contractor shall provide a signed copy of the URP acknowledgement for each Authorized Person to the City project manager, or a person designated by the City, within fifteen days (15) days after the Authorized Person is assigned to perform Services.

4. SECURITY INVESTIGATION

- (a) The City may, prior to or during the course of the Agreement, request that the Contractor require a Person, or Persons, associated with the Services to undergo a Security Investigation before being granted access, or continued access, to Facilities, City Data, City Technology Assets or Contractor Systems. The City may require the Contractor and associated Persons to undergo federal, state and local background checks, where authorized by applicable law, that conform to industry standards, including criminal history and/or background investigation. Persons assigned to the Project by or through the Contractor shall be required to submit Identifying Information to the City, and may, to the extent authorized by applicable law, be required to submit fingerprints. The Contractor and associated Persons agree to be subject to a background screening and checks, which may include the following:
 - (i) Employment Verification;
 - (ii) Education Verification;
 - (iii) Reference Verification;
 - (iv) Criminal Record Check;
 - (v) Civil Court Records Check;
 - (vi) Professional License Check;
 - (vii) Credit History Check;
 - (viii) International Background Check; and
 - (ix) Terrorist Watch List Check.
- (b) If Security Investigations are requested or required by the City prior to the commencement of work by the Person, the Contractor is required to submit the results of the Security Investigation for each Person that it proposes to assign to perform services sufficiently in advance to ensure that all security clearance procedures are complete without delaying the Contractor's work performance. The City shall not be liable for payments or damages of any kind if the Contractor's work is delayed or the Contractor is required to assign different individuals on account of the City's reasonable delay or refusal

to grant an individual a security clearance under the Agreement.

- (c) The Contractor shall assume, without any reimbursement by the City, all costs incurred in connection with the investigations.
- (d) Where an emergency or other circumstance occurs which renders immediate compliance impractical, the City may, in its sole judgment, defer a Person's compliance and grant temporary access, pending the results of the Security Investigation. Such deferment shall not be construed as a waiver of the City's right subsequently to require that a Security Investigation be performed.
- (e) The City reserves the right, in its sole discretion, to refuse access to City Data or City Technology Assets: **(i)** to any individual who refuses to comply with the security or non-disclosure procedures required by Cyber Command or **(ii)** where the Cyber Command determines that the individual may present a risk to its security interests.

5. COMPLIANCE WITH OTHER SECURITY POLICIES AND PROCEDURES

In addition to the Policies and Standards and the User Responsibility Policy, the Contractor shall comply with, and ensure that all Authorized Subcontractors and Authorized Persons comply with, all applicable Facility, data processing and other security policies and procedures of the Cyber Command in effect for the duration of the Agreement, including, but not limited to, processing, handling and storage of Restricted and Sensitive Information, Internet usage, office equipment usage and timekeeping procedures. This may include being required to sign in and out and enter time worked into a timekeeping system provided by the City.

6. NOTIFICATION OF TERMINATION, REASSIGNMENT OR CESSATION OF ACCESS

The Contractor shall promptly notify Cyber Command and the City liaison assigned to the Services, in writing, when any Person previously engaged by the Contractor to gain access to any Facilities, City Data, City Technology Assets or Contractor Systems is no longer authorized by the Contractor to do so, and the Contractor shall make reasonable efforts to prevent any such Person from accessing any Facilities, City Data or City Technology Assets from the point in time that such individual's authorization ceases.

7. NON-DISCLOSURE AGREEMENT

If reasonably requested by the City, the Contractor shall require its Authorized Subcontractors and Authorized Persons who either work in direct support of the Services or who may reasonably be anticipated to unintentionally receive City Data to execute a Non-Disclosure Agreement in a form acceptable to the City.

8. CONTRACTOR-PROVIDED EQUIPMENT

The Contractor shall ensure that any products, services and other deliverables it provides to the City are compliant with the Policies and Standards.

9. NO INTRODUCTION OF VIRUSES

The Contractor shall use industry standards to ensure that it does not introduce any viruses or any other form of malicious code to City systems.

10. COOPERATION WITH ACCREDITATION

The Contractor shall cooperate with and facilitate the successful completion of any security accreditation tasks and processes relevant to the services and/or deliverables it provides. The Contractor shall complete said security accreditation tasks and processes within thirty (30) business days unless granted an extension by Cyber Command.

11. VENDOR SECURITY QUESTIONNAIRE

The Contractor shall complete and respond to all security questionnaires from the City within thirty (30) business days.

12. CONTRACTOR'S POLICIES

Upon request, the Contractor shall provide a copy of its information security policies relevant to the Agreement.

13. CITY AUDIT(S)

The City reserves the right to audit the IT infrastructure and information security controls and processes of the Contractor and to perform relevant tests to ensure that it is compliant with the Policies and Standards at any time. The Contractor will permit the City to perform an IT audit, including an audit of physical security of any of the Contractor's premises applicable to the services provided pursuant to the Agreement and will cooperate and furnish all requested materials in a timely manner. Cyber Command reserves the right to monitor the security posture of the Contractor throughout the course of the Agreement.

14. SOFTWARE SECURITY ASSURANCE (SSA) APPROVAL

The Contractor agrees to submit all devices, applications, systems, software and infrastructure used to support City systems, pursuant to the Agreement, to security testing in compliance with the City's Software Security Assurance process. The Contractor understands and acknowledges that failure to meet the SSA process requirements can result in termination of the Agreement.

15. REQUIREMENTS FOR SYSTEMS PROVIDING CRITICAL FUNCTIONS

- (a) If Contractor maintains systems that provide critical City capabilities and/or functions, Contractor shall provide the City with reports verifying that all patches and configurations are up to date, as well as forecast all required changes for the next twelve (12) months.
- (b) The Contractor shall ensure that all necessary capabilities and equipment potentially required to service critical technology in the event of an incident is locally available.

16. USE AND PROTECTION OF CITY DATA/INDEPENDENT REVIEW(S)/AUDIT(S)

- (a) The Contractor shall hold City Data in the strictest confidence, and shall not disclose any City Data to any person or entity other than a subcontractor that has been approved by the City in writing (each, an “**Authorized Subcontractor**”) or an employee of the Contractor or an Authorized Subcontractor who needs to know the City Data in order to perform the Contractor’s obligations under the Agreement (each, an “**Authorized Person**”).
- (b) The Contractor shall ensure that each Authorized Subcontractor is subject to an enforceable written obligation to comply with the terms and conditions in this Attachment SCY. Within ten (10) days of the City’s request, the Contractor shall provide the City with a copy of its contract with any Authorized Subcontractor.
- (c) The Contractor shall be liable for the full or partial breach of any of the terms of this Attachment SCY by: **(A)** any of its subcontractors, whether or not an Authorized Subcontractor, or **(B)** any Person, whether or not an Authorized Person.
- (d) The Contractor shall protect the privacy and security of City Data in accordance with the Agreement, industry best practices and all applicable laws, regulations and standards, including the Policies and Standards. Contractor shall implement, maintain and use appropriate administrative, technical and physical controls to ensure the security, confidentiality, integrity, and availability of City Data, including, without limitation, to prevent the unauthorized, unlawful, or accidental use, destruction, alteration, disclosure, access, modification, or loss of City Data.
- (e) The Contractor shall engage a third-party internationally recognized auditor to perform periodic audits, scans, and tests as follows:
 - (i) At least once per year and after any Security Incident that occurs during the Term:
 - (1) a SSAE 18/SSAE 16/SOC-1, Type II audit and a SOC-2, Type II audit of Contractor’s controls and practices relevant to security, availability, Processing integrity, confidentiality and privacy of City Data;
 - (2) an audit pursuant to Contractor’s information security program and practices;
 - (3) a network-level vulnerability assessment of all Contractor Systems used to deliver Services under the Agreement or to Process City Data; and
 - (4) a formal penetration test of all Contractor Systems used to deliver services under the Agreement or to Process Contract Data.
 - (ii) The Contractor shall provide Cyber Command with a copy of all unredacted reports generated for each audit, scan, and test within 10 days after its completion. Each report must: **(A)** indicate whether any material vulnerabilities, weaknesses, gaps, deficiencies, or breaches were discovered; and **(B)** if so, describe the nature of each vulnerability, weakness, gap, deficiency, or breach. The Contractor shall, at its own cost and expense, promptly remediate each vulnerability, weakness, gap, deficiency, or breach that is identified in a report.

- (f) The Contractor shall provide Cyber Command with copies of reports from any cybersecurity audit performed, within twelve (12) months of execution of the Agreement, by the Contractor or by a third-party auditor and any cybersecurity audit performed after execution of the Agreement within ten (10) days after the audit's completion.

17. NONCOMPLIANCE SELF REPORTING REQUIREMENT

The Contractor shall notify Cyber Command of any changes to the infrastructure of all information systems that would affect City Data or result in noncompliance with any federal or state law, Policies and Standards, or terms of the Agreement. Notification of each change shall be made to Cyber Command no later than thirty (30) business days after the change has occurred. For noncompliance, the Contractor shall submit to Cyber Command a document that includes the following:

- (i) Date of discovery;
- (ii) How the noncompliance was identified;
- (iii) Nature of the noncompliance;
- (iv) Scope of noncompliance; and
- (v) Corrective actions with associated timelines.

18. VULNERABILITY REPORTING AND NOTIFICATION REQUIREMENT

The Contractor shall inform Cyber Command of any identified vulnerabilities in information systems no later than ten (10) businesses days after receiving notification. The Contractor shall provide a report to Cyber Command that includes a detailed description of the identified vulnerabilities and a remedial plan with associated timelines informing the City and Cyber Command of all actions the Contractor has taken or plans to take to rectify the vulnerabilities.

19. SUGGESTIONS

The Contractor may surface issues, suggest options, and make recommendations to the City with regard to the Policies and Standards where appropriate.

20. LIAISON

At the beginning of the term of the Agreement, the Contractor shall identify and provide contact information for the Person who has been assigned overall responsibility for information security within its organization.

21. NO EXPORTING OF CITY DATA OUTSIDE UNITED STATES

The Contractor may not export City Data outside the United States except with the express written permission of the Commissioner or Agency Head of the City entity, or their designee, to which the City Data belongs, and then only for the City Data specified in that permission.

22. INTEGRITY OF PUBLIC CITY DATA

The Contractor must use industry best practices to ensure that the value and state of all public City Data is maintained and that the public City Data is protected from unauthorized modification.

23. REMOTE ACCESS METHODS

The Contractor must obtain written permission from the City for each method of remote access it wishes to use to access City Technology Assets.

24. WHAT TO DO IN CASE OF A SECURITY INCIDENT

- (a) Contractor shall implement, maintain, test and update a Security Incident response plan. In the event of an actual or suspected Security Incident, Contractor shall:
 - (i) notify the NYC Cyber Command Citywide Security Operations Center ("**Cyber Command Citywide SOC**") by telephone at (718) 403-6761 within 24 hours.
 - (ii) notify the Cyber Command Citywide SOC within 48 hours by written notice to SOC@cyber.nyc.gov, summarizing, in reasonable detail, the nature and scope of the Security Incident (including a description of all impacted City Data and City Technology Assets) and the corrective action already taken or planned by Contractor, which shall be timely supplemented to the level of detail reasonably requested by the City, inclusive of relevant investigation or forensic reports.
 - (iii) promptly, at its own cost and expense, take all reasonable and necessary actions to confirm, contain and end the Security Incident, mitigate its impact to the City, and prevent recurrence.
 - (iv) not delete any impacted virtual/cloud instances or re-image any impacted systems without prior consultation and agreement with Cyber Command.
 - (v) cooperate with the City in the investigation of the Security Incident, including promptly responding to the City's reasonable inquiries and providing prompt access to all evidentiary artifacts associated with or relevant to the Security Incident, such as relevant records, logs, files, data reporting, and other materials.
 - (vi) permit the City, in its sole discretion, to immediately suspend or terminate Contractor's right to create, process, access, transfer, store, or dispose of City Data or operate City Technology Assets.
 - (vii) not inform any third party that the Security Incident involves City Technology Assets or Data without first obtaining the City's prior written consent, except to the extent required by law or by third parties engaged by the Contractor to remediate the Security Incident.
 - (viii) collaborate with the City in determining whether to provide notice of the Security Incident to any person, governmental entity, the media, or other party, and the content of any such notice. The City will make the final determination as to whether notice will be provided and to whom, the content of the notice, and which Party will be the signatory to the notice.

- (ix) promptly notify the City and the Chief Information Security Officer for the City of New York of any investigations of its data use, privacy or cybersecurity practices, or a Security Incident by a governmental, regulatory or self-regulatory body.
- (x) bear the responsibility and all related costs for any Security Incident to the extent that the City is not at fault and caused by a vulnerability in the Contractor's product(s) or system(s), including the cost of any associated remedial actions or mitigation steps, consumer notification and related responses, credit monitoring, notification, regulatory investigations, fines, penalties, enforcement actions and settlements.
- (xi) promptly notify the City of any investigations of its data use, privacy or cybersecurity practices, or a Security Incident by a governmental, regulatory or self-regulatory body.

25. NOTIFICATION TO CYBER COMMAND

With the exception of the notification requirements applicable to a Security Incident as reflected in Section 24 of this Attachment, Contractor shall submit all notices, including any reporting documents, audit materials and other security documentation, to Cyber Command by email at compliance@cyber.nyc.gov.

26. MATERIAL BREACH

Violations of any part of this Attachment or any of the Policies and Standards shall constitute a material breach of the Agreement.

27. HEADINGS

Headings are inserted only as a matter of convenience and for reference and in no way define, limit, augment or describe the scope or intent of this Attachment.

[END OF ATTACHMENT SCY]

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 Contractor 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 penalties¹ 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).

NOTICE TO VENDORS

Please be advised that, pursuant to the authority granted to the City under Labor Law §816-b, [insert name of agency] hereby requires that the contractor awarded a contract as a result of this solicitation, and any of its subcontractors with subcontracts worth two million dollars or over, have, prior to entering into such contract or subcontract, apprenticeship agreements appropriate for the type and scope of work to be performed that have been registered with, and approved by, the New York State Commissioner of Labor. In addition, the contractor and its subcontractors will be required to show that such apprenticeship program/s have successfully passed the two year Probation period following the initial registration date of such program/s with the New York State Department of Labor.

The failure to prove, upon request, that these requirements have been met shall result in the contract not being awarded to the contractor or the subcontractor not being approved.

Please be further advised that, pursuant to Labor Law §220, the allowable ratio of apprentices to journeypersons in any craft classification shall not be greater than the ratio permitted to the contractor as to its workforce on any job under the registered apprenticeship program.

APPRENTICESHIP PROGRAM QUESTIONNAIRE ("APQ")

Bidder Name: _____

Project ID Number: _____

The bidder MUST complete, sign and submit this Apprenticeship Program Questionnaire with its bid.

1. Does the bidder have any Apprenticeship Program agreement(s) appropriate for the type and scope of work to be performed? (Note: Participation may be by either direct sponsorship or through collective bargaining agreement(s).)

_____ YES_____ NO
2. Has/have the bidder's Apprenticeship Program agreement(s) been registered with, and approved by the New York State Commissioner of Labor?

_____ YES_____ NO
3. Has/have the bidder's Apprenticeship Program successfully passed the two-year Probation period following its initial registration with the New York State Department of Labor?

_____ YES_____ NO

If the answers to Questions 1, 2, and 3 are "Yes", the bidder shall, in the space below (and/or attached herewith where applicable), provide the contact information for such Apprenticeship Program(s) as well as information demonstrating that such Apprenticeship Program(s) have passed the two-year Probation period following its initial registration with the New York State Department of Labor. (*The bidder may attach additional pages if necessary.*)

- **Where the bidder directly sponsors any such Apprenticeship Program(s)**, the bidder shall provide the following:
 - The trade classification(s) covered by such program(s), and the date(s) such program(s) was/were approved by the New York State Commissioner of Labor; and/or
 - A copy of a letter(s) from the New York State Department of Labor ("NYSDOL"), on NYSDOL's letterhead, executed by an official thereof, which verifies/verify the trade classification(s) covered by such program(s), and the date(s) such program(s) was/were approved by the New York State Commissioner of Labor and the Active status of such program(s).
- **Where the bidder participates in any such Apprenticeship Program(s) through its membership in an employer organization(s) that directly sponsors such program(s) or where the employer association(s) participates in such program(s) through collective bargaining**, the bidder shall provide the following:
 - The contact information for the employer organization(s), and the apprenticeable trade(s) covered pursuant to the bidder's affiliation therewith, and the date such program(s) was/were approved by the New York State Commissioner of Labor; or
 - A letter(s) from such employer organization(s), on letterhead of such organization(s), executed by an officer, delegate or official thereof, which verifies/verify the trade classification(s) covered by such program(s), and the date(s) such program(s) was/were approved by the New York State Commissioner of Labor, and that the bidder is both a member in good standing of the identified employer organization and is subject to the provisions of the Apprenticeship Program agreement(s) sponsored thereby.

APPRENTICESHIP PROGRAM QUESTIONNAIRE ("APQ")

Project ID Number: _____

- **Where the bidder participates in any such Apprenticeship Program(s) through collective bargaining agreements**, the bidder shall provide the following:
 - The contact information for such collective bargaining entity(ies) and the apprenticeable trade(s) covered pursuant to the bidder's affiliation therewith;
 - A letter(s) from such collective bargaining entity(ies), on letterhead of such entity(ies), executed by an officer, delegate or official thereof, which verifies/verify the bidder's status as a signatory/participant in good standing to such collective bargaining entity(ies) Apprenticeship Program agreement(s).

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery designed for writing. The edges of the paper are slightly irregular, suggesting it might be a scan of a physical document. There is no handwriting or other markings on the page.

Bidder: _____

By: _____
(Signature of Partner or Corporate Officer)

Title: _____

Date: _____