BID BOOK

CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
DIVISION OF MUNICIPAL SUPPLY SERVICES
MUNICIPAL BUILDING
1 CENTRE STREET, 18TH FLOOR
NEW YORK, NEW YORK 10007

INVITATION FOR BIDS

BID INFORMATION:

Please note that this procurement is being solicited through the Procurement and Sourcing Solutions Portal (PASSPort). All documents related to this solicitation will be available in PASSPort and all responses should be submitted via PASSPort and in accordance with directions provided by the Agency. Responses submitted through PASSPort will be signed electronically and will remain sealed until bid opening.

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(90L/January 2016)

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OFFER AND ACCEPTANCE

1. FIRM OFFER

The Bidder proposes to provide all labor and Services required under this Contract for Services ("Contract") and to perform all other work in connection therewith, all as specified by the terms and conditions of the Contract, based upon the unit prices or lump sum prices in the bid (C Pages).

A submitted bid constitutes an Offer to the City of New York ("City") by the Bidder to provide the Services specified at the unit or lump sum prices bid. The prices set forth in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is modified or withdrawn by written notice received in the office designated to receive bids before the time and date set for bid opening; or after the expiration of 45 days from the bid opening and in advance of an actual award.

The City reserves the right to make awards within 45 days after the date of bid opening during which period the bid may not be withdrawn. If, however, an award is not made within the 45-day period, a bid shall remain in effect until a contract is awarded or the City is in receipt of a written notice of the withdrawal of the Bidder's bid in advance of an actual award.

2. CITY'S ACCEPTANCE

The City shall accept the Offer by mailing to the Bidder, at the address specified in the bid, a Purchase Order or Notice of Award, for any of the items for which this bid is submitted. An acceptance of the Offer shall constitute a binding contract between the City and the Bidder to provide to the City the Services set forth in the Purchase Order or Notice of Award at the unit prices or lump sum price specified in the bid subject to the terms set forth in the Contract as if said form of Contract had been signed by the Agency Deputy Commissioner Citywide Procurement and the Bidder.

INSURANCE MINIMUM LIMITS AND SPECIAL CONDITIONS

1. All certificate(s) of insurance submitted pursuant to Part III of the Services Contract must be accompanied by a certification as set forth below (see, pages A-7 and A-8) and include the following information:
   a. For each insurance policy, the name and NAIC number of issuing company, number of the policy and effective dates;
   b. Policy limits consistent with the requirements listed below;
   c. Additional insureds or loss payees; and
   d. The number assigned to the Contract by the City (in the "Description of Operations").

2. Insurance indicated by a blackened box (■) or by an ☒ is required under this Contract.

Types of Insurance (per Part II in its entirety)	Contract Provision	Minimum Limits and Special Conditions
■ Commercial General Liability	Article 2	$1,000,000 per occurrence $2,000,000 aggregate (applicable separately to this Contract) Additional Insureds: 1. City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10 and CG 20 26 and 2. _____ 3. _____
☐ Professional Liability	Article 3	$1,000,000 per claim
■ Workers' Compensation ■ Disability Benefits Insurance ■ Employers' Liability	Article 4 Article 4 Article 4	Workers' Compensation and Disability Benefits Insurance are statutory per New York State law without regard to jurisdiction. Employers' Liability: $1,000,000 each accident. *Note: All Workers' Compensation, Disability Benefits and Employers Liability forms must comply with the requirements of Part II, Article 4.*
■ Commercial Automobile Liability	Article 5	$1,000,000 per accident combined single limit. Coverage at least as broad as the latest edition of ISO Form CA0001. *Note: If vehicles are used for transporting hazardous materials, Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) and proof of MCS 90.*
[OTHER] ☐ _____	Article 6	$_____per occurrence $_____aggregate Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

_____
[Name of broker or agent (typewritten)]

_____
[Address of broker or agent (typewritten)]

_____
[Email address of broker or agent (typewritten)]

_____
[Phone number/Fax number of broker or agent (typewritten)]

_____
[Signature of authorized official, broker or agent]

_____
[Name and title of authorized official, broker or agent (typewritten)]

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

Sworn to before me this _____day of _____20___

_____

NOTARY PUBLIC FOR THE STATE OF _____

STANDARD INSTRUCTIONS TO BIDDERS

PART I
GENERAL DEFINITIONS

1. “Agency” is the department, board, bureau, office or other City subdivision for which the Services are being provided.

2. "Agency Chief Contracting Officer" (also, “ACCO”) means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate agency staff in conjunction with the CCPO, i.e., the Agency Chief Contracting Officer of the Department or a delegated representative.

3. "Agency Head" is the head of an Agency.

4. "Blanket Order" is a Purchase Order issued to a Vendor by an Agency with a "not to exceed" amount and without specific quantities and delivery dates. This enables the Agency to make purchases at different times and in varying amounts from a Requirement Contract by means of shipping instructions, the total expenditures not to exceed the amount of the Blanket Order.

5. “Change Order” is any alteration, change, amendment, or modification to any contract or agreement approved as required by Law or rule.

6. “City” is the City of New York.

7. “City Chief Procurement Officer” (also, “CCPO”) is the position delegated authority by the Mayor to coordinate and oversee the procurement activity of mayoral agency staff, including the ACCOs and any offices which have oversight responsibility for the procurement of construction, computer and computer services.

8. “Commissioner” is the Commissioner of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

9. “Comptroller” is the Comptroller of the City.

10. “Contract” (also, “Agreement”) shall mean the various documents that constitute the contract between the City and the Contractor that gives rise to obligations that are enforceable and recognized by law. To the extent the any of the documents listed below are provided to the Contractor, the Contract shall include, but may not be limited to, the following documents (collectively, “Contract Documents”):

    a. The Bid (also, The Bid Book), including but not limited to:
        i. A Pages (Invitation for Bid, vendor oath, affirmation and signature, offer and acceptance, insurance requirements, Standard Instructions to Bidders and Bidder checklist);
        ii. B Pages (Contract Specific Terms and Conditions, scope of Services and Special Instruction to Bidders);
        iii. C Pages (schedule of quantities and prices);
        iv. Notices to Bidders; and
        v. Specifications if any.
    b. The New York City Service Contract (Parts I-VI)

c. All addenda issued by the ACCO prior to the receipt of bids

d. Notice of Award
e. The Purchase Order(s)

Following the Contract registration with the Comptroller, additional documents may become part of the Contract Documents, including but not limited to change orders or modifications.

11. "Contractor" is the person, firm or corporation awarded this Contract and obligated to furnish and deliver the Services to the City in accordance with all the terms and conditions of the Contract.

12. "Date of Contract Award" shall be the date of the Notice of Award, if issued, or the printed date that the Purchase Order was accepted into the City's Financial Management System ("FMS").

13. "Department" is the Department of Citywide Administrative Services, City of New York. "DCAS" is the acronym that stands for Department of Citywide Administrative Services.

14. "Direct Order" is a Purchase Order issued to the Contractor by the Department that shall include a specific quantity of goods to be delivered within a definite period of time to the address specified in the order.

15. "Invoice" is a written request for a Contract payment that is submitted by a Contractor in good faith, setting forth the description, price and quantity of goods or Services delivered or rendered, in such form and supported by such documentation as an Agency may require; as well as any other documents required by the Contract.

16. "Law" or "Laws" includes, but is not limited to, the Constitution of the United States and the State of New York ("State"), the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a statute of the United States or of the State of New York, a local law of the City of New York and any executive order, ordinance, rule or regulation having the force of law and adopted thereto, as amended, and common law.

17. "Materials" shall include, but shall not be limited to, any and all physical items necessary and required to complete the Work, as determined by the ACCO in his or her sole discretion, including, without limitation, supplies, consumables, and any and all other assets and/or resources which may provide the basis for, or be incorporated into, the Work. Payment for Materials shall be limited to the actual and reasonable cost of the Materials or any discounted price paid by the Contractor increased by the Percentage Mark-Up bid by the Contractor.

18. "Notice of Award" (also, "Summary of Award") shall mean a written notice issued by the ACCO or his or her designee, notifying the Contractor that the Contract has been registered with the Comptroller. A Notice of Award may also serve as a notice to the Contractor to commence Work on a date specified therein.

19. "Percentage Mark-Up" (also, "% mark-up") shall mean the percentage bid by the Contractor to be added as a multiplier to the amount paid to the Contractor for labor and Materials. The Percentage Mark-Up shall be deemed to include, without limitation, any and all elements of overhead and profit and all direct and indirect costs incurred by the Contractor, any and all elements of overhead and profit including the cost of all insurance and bonds, governmental fees, licenses, and permits of any kind or nature whatsoever that the Contractor must carry

or incurs pursuant to the Contract as well as all payroll taxes (State Unemployment Insurance, Federal Unemployment Insurance and payments pursuant to the Federal Insurance Contributions Act) or other statutory, or contractual costs or expenses that the Contractor must pay on behalf of its employees. The Percentage Mark-Up shall also include Contractor's costs or expenses for tools, small tools, equipment and accessories, whether owned or rented, scaffolding, travel, transportation, mobilization, supervision, management and superintendence. Unless otherwise set forth in the Contract, the Percentage Mark-Up shall further be deemed to include any costs, expenses, overhead or profit if the Contractor subcontracts all or any part of the Work.

20. "Procurement Policy Board" (also, "PPB") shall mean the board established pursuant to Charter §311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

21. "Provide" shall mean "furnish and install", unless otherwise specified.

22. "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.

23. "Purchase Order" is an official document of the City directing the Contractor to perform. A Purchase Order formalizes a purchase transaction with the Contractor made against an existing contract. For the purposes of this Contract, a Purchase Order shall be used interchangeably with a Task Order.

24. "Requirement Contract" (also, "Type C Contract") is a contract for an indefinite amount of Services to be provided at specified times or as ordered, that establishes Unit Prices, usually of a fixed price type. Generally, an approximate amount or the best information available as to amount is stated in the solicitation. The Contract may provide a minimum amount of Services the City is obligated to order and may also provide for a maximum amount provision that limits the City's obligation to order. An Agency purchasing off a Requirement Contract shall issue Purchase Orders directly to the Contractor and shall be responsible for payment and managing Contractor's performance for its Purchase Orders.

25. "Schedule" is the schedule of quantities, prices, specifications and descriptions annexed to the Contract and made a part thereof.

26. "Services" (also, "Work") are the subject matter of this Contract and shall include, but are not limited to, any labor, time, superintendence, management, administration; obtaining any and all permits, certifications, licenses and insurance as may be necessary and required to complete the Services; or other effort by a Contractor necessary for performance of the Contract, and shall include the furnishing of any parts, equipment, rigging, materials and incidentals required to perform the Service.

27. "Term" shall mean the amount of time within which an Agency can issue a Purchase Order pursuant to the Contract, and such time shall be whichever is the latest of the following Contract periods: (1) the initial term of the Contract as set forth in B Pages and/or the Specifications, (2) the extended term of the Contract, or (3) the renewal term of the Contract.

28. "Time of Performance" is the specific time or times indicated in Purchase Order(s) issued pursuant to this Contract at or within which performance is to be completed.

29. "Unit Price" shall mean the total amount to be paid to the Contractor for Unit Price Work, by application of the Unit Price to an estimated quantity of Services to be performed under

each item, irrespective of whether such amount is derived from separate labor and Material components or combined in a single sum. Unless otherwise specified, each Unit Price shall be deemed to include, without limitation, any and all direct or indirect costs incurred by the Contractor and any and all elements of overhead and profit as well as any and all direct and indirect costs of the Contractor including, but not limited to: the cost of all insurance and bonds of any kind or nature whatsoever that the Contractor must carry pursuant to the Contract, as well as all payroll taxes or other statutory, or contractual costs or expenses that the Contractor must pay on behalf of its employees. The Unit Price shall also include Contractor's costs or expenses for tools, small tools, equipment and accessories, whether owned or rented, scaffolding, travel, transportation, and mobilization. Unless otherwise specified, the Unit Price shall further be deemed to include any costs, expenses, overhead or profit if the Contractor subcontracts all or any part of the Work.

30. "Vendor" (also, "Bidder") is an actual or potential Contractor.

31. "Task Order" (also, "Work Order") shall mean a written order issued to the Contractor by the ACCO that shall include a specified scope of Work to be completed within a definite time period with a "not to exceed" amount provided, however, that the "not to exceed" amount, scope of work and time within which a Task Order is to be completed may be amended, changed or modified by the ACCO, in his or her sole discretion.

PART II
STANDARD INSTRUCTIONS TO BIDDERS

THESE INSTRUCTIONS ARE STANDARD FOR ALL CONTRACTS FOR SERVICES ISSUED BY THE OFFICE OF CITYWIDE PROCUREMENT. IN ACCORDANCE WITH ALL APPLICABLE RULES, REGULATIONS AND STATUTES, THE OFFICE OF CITYWIDE PROCUREMENT MAY DELETE, SUPERSEDE OR MODIFY ANY OF THESE STANDARD INSTRUCTIONS FOR A PARTICULAR CONTRACT BY INDICATING SUCH CHANGE IN THE BID BOOK, THE SPECIAL INSTRUCTIONS TO BIDDERS OR IN THE SCHEDULE.

1. PROCUREMENT POLICY BOARD RULES. This Contract is subject to the PPB Rules, in effect at the time of this solicitation. In the event of a conflict between said Rules and a provision of this Contract, the Rules shall take precedence. For information and updates on the Procurement Policy Rules, bidders are referred to www.nyc.gov/ppb or the Mayor's Office of Contract Services at 212-788-0010.

2. CONTRACT – INTERPRETATION AND EXAMINATION.

   2.1 Request for Interpretation or Correction. Prospective Bidders must examine the Contract Documents carefully and before bidding must request the ACCO, in writing, for an interpretation or correction of every perceived 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 delivered to, and acknowledged by, each person recorded as having received a copy of the Contract Documents from the Department, and which will also be posted at the place where the Contract Documents are available for inspection by prospective Bidders. Upon such mailing 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.

   Only the written interpretation or correction given by the ACCO, or his or her designee(s), is binding. 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.

2.2 The Contract Documents are intended to explain and complement one another. Any factual conflicts between or among the separate elements, any errors or omissions, or any doubt as to the requirements of this Contract shall be resolved or corrected in writing by the ACCO in his or her discretion. The Bidder shall have no power unilaterally to make any such resolutions or corrections. Such resolutions or corrections by the ACCO shall be final and conclusive upon the Bidder. Should any conflict occur between or among the Contract Documents, or any part of this Contract, the Bidder shall be deemed to have estimated the most expensive way of providing the Services and performing the Work, unless the Bidder shall have asked for and obtained a decision in writing from the ACCO before the submission of its bid as to what shall govern.

2.3 Priority of Documents. Unless otherwise modified by the City, should there be conflicting provisions in the Contract Documents, the order of precedence shall be:

a. Schedule of Quantities and Prices (C Pages)
b. The Specifications, if any
c. Contract Specific Terms and Conditions, Scope of Services and Special Instructions (B Pages)
d. All addenda issued by the ACCO prior to the receipt of bids
e. The Bid (also, The Bid Book), including, without limitation, the A Pages
f. The New York City Service Contract (Parts I-VI)
g. Notice of Award
h. The Purchase Order(s)

3. BIDS

3.1 Bid Form and Content. All bids shall be submitted on forms provided by the City, upon which the Bidder shall insert the bid price, or other information requested, and shall sign and submit along with all other necessary submissions. Bids shall be typewritten or written legibly in ink. Erasure or alterations to Bidder-provided information shall be initialed by the signer in blue or black ink. No alteration, erasure or addition is to be made to the typewritten or printed matter of the bid documents. Such changes shall be of no force and effect and may be grounds for rejection of the bid. All bids shall be signed in blue or black ink.

3.2 Submission of Bids. If so provided in the solicitation, bids may be submitted electronically; otherwise all bids shall be submitted in a sealed envelope, addressed as required in the bid documents, on or before the time and the place designated in the bid documents. A bid will not be accepted if it is received by the Office of Citywide Procurement after the time scheduled for the opening. This applies to bids sent in any medium (mail, hand delivery or electronically). If a Bidder chooses to use a special delivery service it will be the responsibility of the Bidder to ensure that the bid is delivered directly to the Office of Citywide Procurement's Bid Room. Bids must indicate on the outside envelope the bid number and bid opening date; otherwise the bid will not be accepted and will not be opened.

3.3 Prices, Extensions and Discounts.

3.3.1 The Bidder shall insert against each item which it proposes to furnish, the price per stated unit and the extensions. In the event of a discrepancy between the unit price and the extension, the unit price will govern. If discount bids are requested, and there is an error in the extension of the total, the discount

offered will govern.

3.3.2 Cash discounts will not be considered in determining the low bidder.

3.3.3 The quantities described in the Specifications and/or C Pages for the Work to be provided during the term of the Contract are only estimates. The Department reserves the right, in its sole discretion, to increase or decrease the quantity of Services to be provided. This Contract does not guarantee or obligate the Department to issue any specific number of Purchase Orders. The Contractor shall not be entitled to claim or receive any additional monies arising out of any failure of the Department to order any minimum amount of services during the term of the Contract. In addition, the City reserves the right to perform any of the Work described herein using its own personnel, material and equipment.

3.4 Sales, Excise and Federal Transportation Taxes. Unless this Contract indicates otherwise, the City is exempt from the payment of any sales, excise or federal transportation taxes. The price bid, whether computed as a net Unit Price or based upon a trade discount from catalog list prices, must be exclusive of taxes and will be so construed. The Purchase Order, or other approved writing indicating the City of New York as the purchaser, is the only documentation that may be accepted as evidence of sales tax exemption.

3.5 Manufacturers' Warranties and Guaranties. Unless otherwise indicated in this Contract, the Contractor shall obtain all manufacturers' warranties and guaranties of all equipment, materials and Services required by this Contract in the name of the City of New York and shall timely deliver same to the City.

3.6 Additional Services Units and Service Sites. The City reserves the right to change the number of units to be serviced and the service points set forth in this Contract

3.7 Proprietary Information/Trade Secrets. The Bidder shall identify those portions of its bid that it deems to be confidential, proprietary information or trade secrets, and provide justification why such materials should not be disclosed by the City. All materials the Bidder desires to remain confidential shall be clearly indicated 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.

All such materials so indicated shall be reviewed by the Agency 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 shall be returned to the Bidder. Prices, makes and model or catalog numbers of items offered, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the Bidder.

The Agency's decision to honor a Bidder's request for confidentiality shall be limited as to the audit authority of applicable entities, such as the Comptroller or federal agencies, or as otherwise required by law, including but not limited to the Freedom of Information Law.

4. BIDDER QUALIFICATIONS.

4.1 Evidence of Ability.

4.1.1 Should the Services to be performed by the Contractor be done on property that is not City-owned, the City reserves the right to inspect the premises where Services are to be performed, before or after making an award of contract.

4.1.2 The Bidder shall, upon request, submit evidence that will prove to the satisfaction of the ACCO that it is qualified and able to furnish the Services on which it bids in the manner and time specified. It also represents and shall furnish evidence that it possesses all necessary licenses, permits or certificates required to carry on the business of furnishing the Services on which the bid was submitted.

4.1.3 If the evidence required in 4.1.1 and 4.1.2 of this Section 4.1 (Evidence of Ability) is not furnished, or if, upon examination of such evidence or other inspection of the plant or premises, it is found that the Bidder does not comply with the requirements set forth in this Contract, the ACCO shall have the right to reject the bid in whole or in part. Should the non-compliance be discovered after the award is made, the ACCO shall have the right to cancel and terminate this Contract and/or declare the Contractor in default, in addition to any other remedies provided by contract or at law or equity.

4.1.4 In addition to any other requirement of this Contract, the ACCO may request the Bidder to submit a written statement setting forth such information as may be deemed necessary by the ACCO to determine the Bidder's ability and responsibility to perform the work and supply the Services in accordance with the Contract.

4.2 Financial Qualifications.

4.2.1 The Agency may require any Bidder to furnish all books of account, records, vouchers, statements or other information concerning the Bidder's financial status for examination as may be required by the Agency to ascertain Bidder's responsibility and capability to perform the Contract.

4.2.2 If the Bidder fails or refuses to supply any of the documents or information set forth in 4.2.1 above or fails to comply with any of the requirements thereof, the ACCO may reject the bid and may find that this constitutes grounds for a finding of non-responsibility.

4.3 Examination before Award. The City reserves the right, before making an award, to conduct examinations to determine whether or not the Services proposed to be furnished meet the requirements set forth in the Contract. If any such examination shows that the Contract requirements are not complied with, or that Services proposed to be furnished do not meet the requirements called for by the Contract, the ACCO may reject such bid, and may award the Contract to the next lowest responsive and responsible Bidder. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the City to make any examinations before awarding a Contract. It is further understood that the making or waiving of any such examination in no way relieves the Contractor from fulfilling all requirements and conditions of this Contract.

5. SPECIFICATIONS FOR EQUIPMENT AND SUPPLIES.

5.1 Specifications and "Or Equal" Bidding. Written specifications may be provided by the City to describe the equipment, parts, supplies or like items required for Services. The Bidder must comply with all material requirements of the specifications. Whenever

such items are indicated in the specifications or schedules by a catalog description, or by a trademark or trade name or by the name of any particular patentee, manufacturer, or dealer, such description shall mean the items indicated or any equal thereto in all essential respects as shall be determined by the City. Notwithstanding the above, when such items are purchased according to an Acceptable Brands List or are indicated as brand specific only, no equal will be accepted.

All Bidders are presumed to be bidding on the make, model, brand or sample specified unless they submit, either on the line provided therefor, or in a letter attached to the bid, all of the following: manufacturer's name, catalog number and any other information necessary to prove that an intended substitution of equipment parts or supplies or like items for Services is equal in all essential respects to the bid standard. The Bidder must prove to the satisfaction of the ACCO that its designated substitute is equal to the bid standard and salient characteristics in all material respects; otherwise, its bid will be rejected. The City reserves the right to consider material characteristics which it, in its sole discretion, deems intrinsic to the nature of the product even though such characteristic has not been listed as salient. Any and all determinations as to whether equipment, parts, supplies or like items required for Services, submitted by a Bidder, is “or equal” to a bid specification shall be in the sole discretion of the City.

5.2 Unused Items. Unless specifically noted in this Contract, all items related to the Services required must be new and unused, however, Bidders are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product; unless such use is precluded due to health, welfare or safety requirements or product specifications contained herein.

5.3 Submission of Descriptive Literature. Descriptive literature shall not be submitted unless expressly requested elsewhere in the Contract Documents. Any unsolicited descriptive literature which is submitted shall not be examined and shall not be deemed to vary any of the provisions of this Contract. Should the City request descriptive literature from the Bidder, it shall be delivered by the Bidder, properly identified, within fifteen (15) calendar days of the request unless this Contract or the request letter indicates a different time. If the Bidder fails to deliver the same in a timely manner, the ACCO shall have the right to deem the bid non-responsive or to cancel and terminate the contract.

Descriptive literature requested by the City shall be submitted free of charge to the 18th floor, Municipal Building, 1 Centre Street, New York, New York 10007, unless some other address is indicated.

6. AWARD.

6.1 Item and Class Awards. Awards may be made by item or class in the interest of the City as determined by the ACCO. When class bids are indicated in the Contract, the Bidder must bid on each item in the class. A Bidder desiring to bid "no charge" on an item in a class must so indicate; otherwise the bid for the class may be construed as incomplete and may be rejected. The ACCO reserves the right to delete an item(s) from a class and award the remaining items on a class basis or a per item basis, in the interest of the City. When a class bid shows evidence of unbalanced bid prices, such bid may be rejected.

6.2 Mistakes in Bids.

6.2.1 Mistakes Discovered Before Bid Opening. A Bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 6.7 (Pre-Opening Modification or Withdrawal of Bids) herein.

6.2.2 Mistakes Discovered Before Award. In accordance with the PPB Rules § 3-02(m), if a Bidder alleges a mistake in a 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:

(i) Minor Informalities. Minor informalities in bids are matters of form rather than substance evident from the bid document, 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.

(ii) Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.

(iii) Mistakes Where Intended Correct Bid is Not Evident. A Bidder may be permitted to withdraw a low bid if:

a. a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
b. the Bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

6.2.3 Mistakes Discovered after Vendor Selection. Mistakes shall not be corrected after Vendor selection except where the CCPO, subject to the approval of the City Corporation Counsel, makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

6.3 Rejection of Bids.

6.3.1 Rejection of Individual Bids. The Agency may reject a bid if:

(i) The Bidder fails to furnish any of the information required pursuant to Division of Labor Services or Vendex requirements hereof; or if
(ii) The Bidder is determined to be not responsible pursuant to the PPB Rules; or if
(iii) The bid is determined to be non-responsive pursuant to the PPB Rules; or if
(iv) The bid, in the opinion of the ACCO, contains unbalanced bid prices and is thus non-responsive.

6.3.2 Rejection of All Bids. The Agency, upon written approval by the ACCO, may reject all bids and may elect to re-solicit bids if in its sole opinion it shall deem it in the best interest of the City to do so.

6.3.3 Resolicitation in Cases of Failed Bids. The ACCO may determine that it is appropriate to reject all bids after bid opening, but before award, and to complete the acquisition by a new solicitation pursuant to PPB Rules § 3-02(v). Resolicitation in such a case is permitted only when at least five (5) responses

to the solicitation have been received and, despite efforts to address problems in the solicitation by means of pre-bid conferences and amended specifications, all responses are found to be non-responsive as a result of the same defect(s) in the specification or other solicitation documents.

6.4 Low Tie Bids.

(a) When two (2) or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the ACCO will break the tie in the following manner and order of priority:

(i) Award to a certified New York City small minority or woman-owned business entity bidder;

(ii) Award to a New York City bidder;

(iii) Award to a certified New York State small, minority or woman-owned business bidder;

(iv) Award to a New York State bidder.

(b) If two (2) or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

6.5 Alternate Services. A Bidder may not bid multiple services for one bid item. If a Bidder offers more than one, only the lowest price offering will be considered. If the price offerings are identical, only the first item listed will be considered.

6.6 Waiving Informalities. The ACCO reserves the right to waive any informality, technicalities, irregularities and omissions in a bid when the ACCO deems such waiver to be in the interest of the City.

6.7 Pre-Opening Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written notice received in the office designated in the Contract for receipt of bids, before the time and date set for the bid opening. If a bid is withdrawn in accordance with this Section 6.7, the bid security, if any, shall be returned to the Bidder.

6.8 Late Bids, Late Withdrawals and Late Modifications. Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. 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.

6.9 Bid Evaluation and Vendor Selection. This Contract shall be awarded, if at all, to the responsible Bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and whose bid price is either the most favorable bid price or, if the Invitation For Bids so states, the most favorable evaluated bid price or award to other than the lowest responsible bidder pursuant to the PPB Rules § 3-02(o). A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.

6.10 Restrictions. No negotiations with any Bidder shall be allowed to take place except under the circumstances and in the manner set forth in the PPB Rules. Nothing in the Rules shall be deemed to permit a Contract award to a Bidder submitting a higher

quality item than that designated in the Invitation for Bids if that bid is not also the most favorable bid.

6.11 Right to Appeal Determinations of Non-Responsiveness or Non-Responsibility and Right to Protest Solicitations and Award. The Bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award. For further information concerning these rights, the Bidder is directed to the PPB Rules §§ 2-07, 2-08 and 2-10.

7. VENDEX QUESTIONNAIRE.

7.1 Pursuant to Admin. Code §6-116.2 and PPB Rules § 2-08(e) (9 RCNY §2-08), bidders may be obligated to submit completed VENDEX questionnaires. Generally, if this bid is $100,000.00 or more, or if this bid when added to the sum total of all contracts, concessions and franchises the bidder has received from the City and any subcontracts received from City contractors over the past twelve months, equals or exceeds $100,000.00, VENDEX questionnaires must be completed and submitted by those bidders selected for award, and reviewed by the Department of Investigation, prior to award. Any questions concerning this requirement must be submitted to the ACCO or the contact person for this Contract.

7.2 Failure to submit the required VENDEX questionnaires may result in a finding of non-responsiveness which would preclude a bidder from being awarded this Contract.

7.3 Pursuant to the PPB Rules § 2-08(e)(8), whenever the CCPO has permitted the filing of some or all of the required information within thirty (30) days after the registration of the contract, the submission of the required information within the required time period is a material term and condition of the contract and the City may terminate the contract without penalty to the City in the event of violation of the condition. The Mayor or his or her designee may determine on the basis of the belatedly filed information that it is in the best interest of the City to terminate the contract. The Comptroller or his or her designee may determine that the belatedly filed information reveals matters which if provided earlier would have provided a basis for an objection to registration of the contract by the Comptroller, and the Mayor or his or her designee may determine that he or she would have agreed with such determination and may terminate the contract. Notwithstanding any provision of this Contract to the contrary, if the City terminates this Contract pursuant to the provisions, the City shall have no obligation to pay to the Contractor any amounts representing lost or anticipated profits, and shall retain any other rights it has in law or contract to recover monies paid to the Contractor prior to termination of this Contract.

7.4 Pursuant to the PPB Rules § 2-08(e)(9), whenever a late filing of required VENDEX information, i.e., within thirty (30) days after the registration of the Contract, is permitted and the Contractor fails to submit the required information within the required time period, that fact shall be communicated to the CCPO and the Comptroller and shall be included in the VENDEX data base. Until the information has been filed with the CCPO:

7.4.1 No further contract shall be awarded to that Contractor;

7.4.2 The Contractor shall be ineligible to bid or propose or otherwise be awarded a further Contract; and

7.4.3 No payments shall be made to the Contractor for performance on that Contract unless authorized in writing by the CCPO.

8. FALSE STATEMENTS. A false statement willfully or fraudulently made in connection with

the bid and/or any of the forms completed and submitted to the City in connection with the bid, may result in the termination of any contract between the City and the Bidder; and the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

9. BID PROCESS. The New York City Comptroller is charged with the audit of contracts in New York City. Any Bidder 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, New York, New York.

PIN: 8572700011

SPECIAL INSTRUCTION TO BIDDERS
CONTRACT SPECIFIC TERMS AND CONDITIONS

CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
DIVISION OF MUNICIPAL SUPPLY SERVICES
MUNICIPAL BUILDING, NEW YORK, NY 10007

BID NUMBER: 2700011.

BID TITLE: AUTO BODY AND CHASSIS REPAIR SVCS, QUEENS EAST

ALL INQUIRIES REGARDING THIS BID ARE TO BE DIRECTED TO:
PURCHASING AGENT: SHERIQUE VASSELL AT (212) 386-0421

VENDORS WILL BE SEEN BY APPOINTMENT ONLY

TYPE OF CONTRACT: THIS IS A "C" CONTRACT (REQUIREMENT CONTRACT) AS DEFINED IN THE NEW YORK CITY PURCHASE CONTRACT, PART II, PARAGRAPH 2.8, OR, IF APPLICABLE, THE NEW YORK CITY SERVICE CONTRACT, PART II, PARAGRAPH 2.6.

IN ACCORDANCE WITH THE NEW YORK CITY PURCHASE CONTRACT, PART II, SECTION 5.6 - ALTERNATE PRODUCTS - OR, IF APPLICABLE, THE NEW YORK CITY SERVICE CONTRACT, PART II, SECTION 5.5 - ALTERNATE SERVICES:

A BIDDER MAY NOT BID MULTIPLE PRODUCTS OR SERVICES FOR ONE BID ITEM. IF A BIDDER OFFERS MORE THAN ONE, ONLY THE LOWEST PRICE OFFERING WILL BE CONSIDERED. IF THE PRICE OFFERINGS ARE IDENTICAL, ONLY THE FIRST ITEM LISTED WILL BE CONSIDERED.

PRODUCTS OFFERED SHOULD BE MANUFACTURED FROM RECYCLED, RECOVERED, OR ENVIRONMENTALLY PREFERABLE MATERIALS TO THE MAXIMUM EXTENT POSSIBLE PROVIDED THAT THE PRODUCT MEETS ALL SPECIFICATIONS AND PERFORMANCE CRITERIA AND PROMOTES ECONOMICALLY ADVANTAGEOUS LIFE CYCLE COSTS.

ALL ITEMS AWARDED UNDER THIS CONTRACT MUST BE IN COMPLIANCE WITH THE NEW YORK CITY MAYOR'S EXECUTIVE ORDER NO. 113 (1988), "PROHIBITION OF THE PURCHASE OF PRODUCTS MADE OF POLYSTYRENE FOAM."

WHENEVER PRACTICABLE, PACKAGING SHALL ELIMINATE WASTE; REDUCE WASTE BY WEIGHT, VOLUME AND TOXICITY WITHOUT SUBSTITUTING A MATERIAL THAT IS NOT RECYCLABLE; AND SHOULD CONTAIN RECYCLED CONTENT.

THE CITY MAY, IN IT'S SOLE DISCRETION, DISSAPROVE ANY PROVIDER(S) OF GOODS AND/OR SERVICES USED BY PRIME VENDOR/CONTRACTOR TO FULFILL ANY CONTRACT RESULTING FROM THIS SOLICITATION. AS USED IN THIS SECTION, A "PROVIDER" SHALL INCLUDE, BUT NOT BE LIMITED TO, A SUBCONTRACTOR, A SUPPLIER OF GOODS AND/OR SERVICES, AND THE MANUFACTURER(S) OF ANY GOODS BEING PROCURED UNDER SUCH CONTRACT. A VENDOR WHO IS AWARDED A CONTRACT PURSUANT TO THIS SOLICITATION MAY, AT THE CITY'S OPTION, BE ASKED TO PROVIDE TO THE CITY A LIST OF PROVIDERS AND, FOR EACH PROVIDER, ITS ADDRESS AND THE NAME OF ITS PRINCIPALS.

IN ADDITION, THE VENDOR MAY BE ASKED TO PROVIDE, ANY OTHER INFORMATION DEEMED NECESSARY BY THE CITY TO DETERMINE WHETHER A PROVIDER SHALL BE DISAPPROVED. FURTHERMORE, DURING THE TERM OF SUCH CONTRACT, THE VENDOR MAY BE ASKED TO SUPPLY TO THE CITY ALL SUCH INFORMATION REGARDING ANY ADDITIONAL PROVIDER(S) IT INTENDS TO USE.

THE CITY RESERVES THE RIGHT TO WITHDRAW ANY APPROVAL IT HAS GIVEN, WHERE SUCH WITHDRAWAL OF APPROVAL IS BASED ON INFORMATION RECEIVED SUBSEQUENT TO THE APPROVAL. THE VENDOR MAY NOT USE A PROVIDER THAT HAS BEEN DISAPPROVED BY THE CITY OR WHOSE APPROVAL HAS BEEN WITHDRAWN.

PURSUANT TO PROCUREMENT POLICY BOARD RULE 2-08(F)(2),THE CONTRACTOR WILL BE CHARGED A FEE FOR THE ADMINISTRATION OF THE PASSPORT SYSTEM, INCLUDING THE VENDOR NAME CHECK PROCESS, IF A VENDOR NAME CHECK REVIEW IS REQUIRED TO BE CONDUCTED BY THE DEPARTMENT OF INVESTIGATION. THE CONTRACTOR SHALL ALSO BE REQUIRED TO PAY THE APPLICABLE REQUIRED FEES FOR ANY OF ITS SUB-CONTRACTORS FOR WHICH VENDOR NAME CHECK REVIEWS ARE REQUIRED. THE FEE(S) WILL BE DEDUCTED FROM PAYMENTS MADE TO THE CONTRACTOR UNDER THE CONTRACT.

FOR CONTRACTS WITH AN ESTIMATED VALUE OF LESS THAN OR EQUAL TO $1,000,000, THE FEE WILL BE $175.

FOR CONTRACTS WITH AN ESTIMATED VALUE OF GREATER THAN $1,000,000, THE FEE WILL BE $350.

INTENT AND SCOPE OF CONTRACT:
THE PURPOSE OF THIS CONTRACT IS TO PROCURE AUTO BODY REPAIR SERVICES TO RESTORE A VEHICLE TO IT'S PRE-INCIDENT CONDITION. SERVICES INCLUDE BUT ARE NOT LIMITED TO,REPLACING AND STRAIGHTENING AUTOMOTIVE BODY, CHASSIS AND INTERNAL COMPONENTS, PAINTING AUTO BODY COMPONENTS, OBTAINING PARTS AND MATERIALS, AND PERFORMING RELATED PAINT PREPARATION, FINISHING AND DELIVERY RELATED TASKS OR AT THE DISCRETION OF THE CITY OF NEW YORK.

PERIOD OF CONTRACT:
THE TERM OF CONTRACT RESULTING FROM THIS SOLICITATION SHALL BE FOR THREE (3) YEARS WITH ONE (1) THREE (3) YEAR RENEWAL OPTION.

THE ANTICIPATED DATES FOR THIS CONTRACT ARE:
FROM: DECEMBER 1, 2026
TO: NOVEMBER 31, 2029

THE CITY RESERVES THE RIGHT, PRIOR TO CONTRACT REGISTRATION, TO CHANGE (ADJUST) THE START AND END DATES AS NOTED ABOVE. THE CITY FURTHER RESERVES THE RIGHT TO CHANGE (ADJUST) THESE DATES AFTER CONTRACT REGISTRATION TO REFLECT THE ACTUAL REGISTRATION DATE.

THE CITY RESERVES THE RIGHT TO REQUEST ANY ADDITIONAL INFORMATION NECESSARY TO DETERMINE THE BIDDER'S ABILITY TO PERFORM THE WORK AND PROVIDE THE SERVICES IN ACCORDANCE WITH THE CONTRACT. IF REQUESTED, THE INFORMATION MUST BE SUBMITTED WITHIN FIVE (5) CALENDAR DAYS OF THE REQUEST.

THE CITY ALSO RESERVES THE RIGHT TO CONDUCT A SITE VISIT TO ENSURE THAT BIDDERS HAVE THE CAPABILITY TO PERFORM THE SERVICES UNDER THIS CONTRACT. SITE VISITS WILL BE SCHEDULED AS NECESSARY.

THE CITY'S DETERMINATION ABOUT A BIDDER'S CAPABILITY SHALL BE FINAL.

CONTRACT QUANTITIES:
QUANTITIES SPECIFIED HEREIN ARE ESTIMATES BASED ON EXPERIENCE. THE QUANTITIES TO BE ORDERED ARE ONLY THOSE NEEDED BY THE AGENCY. THE CITY WILL NOT BE COMPELLED TO ORDER ANY SPECIFIC QUANTITY OF ANY ITEM, NOR WILL THE CITY BE LIMITED TO THE QUANTITY SPECIFIED.

ALL BID PRICE ITEMS MUST INCLUDE ANY AND ALL APPLICABLE TAXES.THE CITY OF NEW YORK, A POLITICAL SUBDIVISION OF THE STATE OF NEW YORK IS EXEMPT FROM NEW YORK STATE AND LOCAL SALES AND USE TAX WITH THE STATE OF NEW YORK PURSUANT TO NEW YORK STATE TAX LAW §1116. ANY TAX IMPOSED BY A JURISDICTION AND REQUIRED TO BE COLLECTED FROM THE CITY OF NEW YORK BY A CONTRACTOR MUST BE INCLUDED IN ALL BID PRICES. BIDDERS ARE URGED TO TO CAREFULLY READ ALL SPECIFICATIONS BEFORE BIDDING.

PLEASE REFER TO THE ATTACHMENT A - SPECIFICATIONS FOR ALL THE TERMS AND CONDITIONS RELATED TO THIS CONTRACT.

THIS CONTRACT WILL BE SUBJECT TO THE ISSUANCE OF PURCHASE ORDERS AND/OR BLANKET ORDERS. BLANKET ORDERS WILL INDICATE THE MAXIMUM AMOUNT OF MONEY THE CITY HAS SET ASIDE FOR THE PURCHASE OF PRODUCTS AND SERVICES. IF A BLANKET ORDER IS ISSUED, SERVICE REQUIREMENTS OR WORK ORDERS WILL BE ISSUED SUBSEQUENTLY, DETAILING SPECIFIC REQUIREMENTS.

NO WORK SHALL BE PERFORMED WITHOUT A PURCHASE ORDER.

IT SHALL BE INCUMBENT UPON THE CONTRACTOR NOT TO EXCEED THE AMOUNT OF MONEY AUTHORIZED BY THE BLANKET ORDER.

IF SHIPPING INSTRUCTIONS ARE ISSUED AFTER BLANKET ORDER IS DEPLETED, CONTRACTOR MUST NOTIFY AGENCY AND WITHHOLD SHIPPING PRODUCT UNTIL A NEW ORDER IS ISSUED.

USAGE REPORT
THE CITY MAY REQUEST USAGE REPORTS FOR ANY TIME PERIOD AFTER THE CONTRACT IS EFFECTIVE. THE REPORT SHALL BE FORMATTED TO INCLUDE: CONTRACT TITLE, CONTRACT NUMBER, AND TERM OF THE CONTRACT AT THE TOP, AND SHALL INDICATE THE PERIOD OF TIME COVERED BY THE REPORT. THE REPORT IS TO BE ORGANIZED TO SHOW USER AGENCY, ITEM ORDERED, UNIT OF ISSUE, QUANTITY ORDERED, AND DOLLAR VALUE.

THE REPORT MAY BE SUBMITTED IN EXCEL, PDF OR ANY OTHER FORMAT DEEMED ACCEPTABLE BY DCAS. ONCE REQUESTED, THE REPORT MUST BE SUBMITTED WITHIN FIVE (5) BUSINESS DAYS.

PASSPORT:
VENDORS INTENDING TO DO BUSINESS WITH THE CITY OF NEW YORK SHOULD COMPLETE AN ONLINE PROCUREMENT AND SOURCING SOLUTIONS PORTAL (PASSPORT) DISCLOSURE FILING (FORMERLY KNOWN AS VENDEX) TO BE CONSIDERED FOR CONTRACTS. VENDORS MUST CREATE ONINE ACCOUNTS AND FILE ALL DISCLOSURE INFORMATION.

THIS CONTRACT MAY BE SUBJECT TO THESE FILING REQUIREMENTS PRIOR TO ANY AWARD. FAILURE TO FILE MAY BE CAUSE FOR DISQUALIFICATION.

PAPER SUBMISIONS, INCLUDING CERTIFICATIONS OF NO CHANGE TO EXISTING VENDEX PACKAGES, WILL NOT BE ACCEPTED IN LIEU OF COMPLETED ONLINE FILINGS. FOR MORE INFORMATION ABOUT PASSPORT, PLEASE VISIT NYC.GOV/PASSPORT.

PLEASE ALSO SEE PAGE B002 FOR ADDITIONAL PASSPORT (AKA VENDEX) INFORMATION.

DESCRIPTION	QUANTITY	UOI	UNIT PRICE	EXTENSION

CLASS/ZONE AWARD 1

ITEM NUMBER: 1.

TOTAL FOR QUEENS EAST 1. LOT $_____ $_____

PLEASE ENTER YOUR TOTAL BID AMOUNT INTO THE PASSPORT ITEM GRID.

TOTAL CLASS OR ZONE AWARD (ITEMS 1.00 THRU 1.00) 1 .....$_____

CASH DISCOUNTS

OFFERS OF CASH DISCOUNTS WILL NOT BE CONSIDERED IN MAKING AN AWARD. PLEASE NOTE BELOW IF YOU OFFER A CASH DISCOUNT AND, IF SO, THE DISCOUNT TERMS.

DISCOUNT

YES ..... NO ..... TERMS ..... % ..... DAYS

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT A

DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES

ATTACHMENT A

AUTO BODY AND CHASSIS REPAIR SERVICES IN QUEENS EAST FOR VEHICLES OWNED AND/OR OPERATED BY THE CITY OF NEW YORK

BID # 2700011

EPIN# 85727B0030

1. INTRODUCTION

The City of New York, acting by and through its Department of Citywide Administrative Services ("DCAS" or the "Department") seeks auto body and chassis repair services for vehicles that are owned, leased, or rented by City agencies. There will be one (1) award based on geographical location as described in Section 2 below.

1.1. Background

1.1.1. Geographical location

The geographical based contract will be with an auto body and chassis repair services vendor that is located in the geographic area listed below. The geographical based contract will be for Light-Duty Vehicles only as defined in Section 2 "Definitions of Terms". A vehicle is considered stationed in a geographical area when it is situated in that geographical area at the time of a request for any services to the vehicle. The request for service shall be made to the Contractor for that geographical area. In the event that necessary services are not available within the geographically designated area set forth below, the City reserves the right during the term of the contract to have auto body and chassis repair services performed by an awarded vendor for another geographic location at its sole discretion.

The geographical based award will be for Queens East which shall be defined below in Section 2 "Definitions of Terms". The bidder's primary repair facility is required to be located ten (10) Drivable Miles, or less, from the Department of Parks and Recreation Repair Facility located in Cunningham Park, 199-02 Union Turnpike, Queens, New York.

1.1.2. Appropriate Composition of the Fleet

1.1.2.1 Currently, City agencies have approximately 28,600 units including just over 23,700 on road vehicles and 4,900 off road units and equipment. The geographical distribution of these vehicles by borough is as follows: Manhattan (26%), Brooklyn (22%), Bronx (11%), Queens (33%), Staten Island (6%), and in upstate New York (2%). The vehicles within the fleet average approximately six point seven (6.7) years of age with odometer readings of forty thousand one hundred (40,100) miles.

1.1.2.2 The City does not guarantee that the composition, age or mileage of the fleet will remain constant and provides this information for background purposes only.

1.1.3. Agency Contract Administrator

1.1.3.1. NYC Fleet, the City's Fleet Management unit located at the Department of Citywide Administrative Services ("DCAS") will administer this requirement contract with each

auto body and chassis repair services vendor ("Contractor"). Upon award of the Contract(s), NYC Fleet will designate a Contract Manager ("CM") who shall be the Contractor's primary point of contact for overall Contract issues and concerns.

1.1.3.2. The DCAS Contract Manager will provide a list of the Agency Contract Administrators whose responsibility is limited to its agency's transactions. The DCAS Contract Manager and/or the Agency Contract Administrator ("ACA") will be responsible for the daily management of its transactions which will include, but not be limited to: solving estimate issues, authorization of work, vehicle delivery and pickup, verification of work completed, payment of invoices and dealing with invoice inconsistencies.

1.1.3.3. The DCAS Contract Manager will be responsible for resolving with the Contractor disputed contract issues which may include, but are not limited to, non-payment by a City agency, recurring contract disputes and city-wide issues, such as contract interpretation of intent, overall contract enforcement and relationship management.

2. DEFINITIONS OF TERMS

2.1. These Specifications are to be read in conjunction with all of the attached Contract documents including, but not limited to, 850L/January 2016 (A PAGES), hereinafter "850L" and the Standard New York City DCAS Service Contract (90L/January 2016), hereinafter "Standard Service Contract." Additional definitions may be found in Part I ("General Definitions") of 850L. Unless otherwise specified:

2.1.1. **Acceptable Date of Completion ("ADC")** shall mean the date, no later than 5:00 p.m. of that date, by which auto body repairs are to be completed by the Contractor. The Contractor must ensure that the vehicle is ready for use, has been properly test driven at operating temperature, the vehicle's keys are readily available, the painting is completely dry, and all work is done to the satisfaction of the City. The Contractor must meet the requirement to test drive the vehicle regardless of whether any repairs were made to mechanical components of the vehicle.

2.1.2. **Affirmative Claim** shall mean a written claim demanding compensatory damages from the responsible third party to compensate for damages caused to the insured.

2.1.3. **Agency Contract Administrator ("ACA"**) shall mean the individual(s) named by DCAS from the major fleet agencies who may authorize work on the behalf of their agency.

2.1.4. **Authorization -** shall mean a written notice from the CM or an ACA that the Contractor may proceed to work on a vehicle. The Authorization will set forth the agreed upon dollar amount, the work order number assigned (from the NYC Fleet Focus management system or any future systems authorized by NYC Fleet), the date by which all parts must be ordered and received and/or the date back orders must be reported.

2.1.5. **City Business Days** shall mean those days that the Department of Citywide Administrative Services offices are open and exclude the City-observed holidays of New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence

Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day and weekends.

2.1.6. **Contract Manager ("CM")** shall mean the individual(s) named by the Chief Fleet Management Officer and employed by DCAS who have administrative and supervisory roles over this contract.

2.1.7. **Drivable Miles** shall mean miles measured on a path upon which a vehicle can traverse on paved and publicly accessible roads.

2.1.8. **Hazardous Waste Removal** shall mean the removal and/or disposal by the Contractor of materials that are defined by the United States Environmental Protection Agency ("EPA") in 40 CFR Part 261 and/or the New York State Department of Environmental Conservation ("DEC") in 6 NYCRR Part 371, as well as other materials regulated for purposes of release, reuse, disposal, or recycling (e.g., Chlorofluorocarbons ("CFCs") ethylene glycol, mercury, oil, asbestos) or declared to be hazardous by another governmental entity with jurisdiction in the State of New York.

2.1.9. **Light-Duty Vehicle** shall mean any motor vehicle with a gross vehicle weight of 8,500 pounds or lower.

2.1.10. **Notice to Proceed with Work** shall mean a documented confirmation from NYC DCAS to the Contractor indicating the date that the requirement contract will commence. For specific vehicle repairs the date of work performance will begin at 7:00 AM the next business day after receipt of the Authorization unless such Authorization is provided before 10:00 AM. In these cases, work days will begin on the day of notification.

2.1.11. **Orange Peeling** shall mean an unacceptable painting condition resulting from the failure to prime surfaces properly or from inadequate paint distribution.

2.1.12. **Original Equipment Manufacturers ("OEM") Specifications** shall mean the specifications to which a motor vehicle manufacturer built a vehicle, including all parts used therein, as documented by the motor vehicle manufacturer. OEM Specifications are critical in determining proper alignment, gapping, clearances, strength, form, function and color, and must be rigorously adhered to by the Contractor. All parts specified by the Contractor as being OEM must be obtained from a licensed dealership and the parts must be labeled as genuine repair parts of the OEM.

2.1.13. **Paint and Materials** shall mean those materials needed to properly finish replaced and repaired parts, including automotive paint, thinners, primers, fillers, sandpaper, welding material and all the tools needed to apply such materials. All paint must be in accordance with the strictest EPA regulations in effect at either the time of bid opening or at the time of application.

2.1.14. **Pre-Incident Condition** shall mean the condition of a vehicle before any damage or loss, as defined in New York State Insurance Department Regulation 64 [11 NYCRR 216.7(b)(5)(vii)]. Restoring a vehicle to Pre-Incident Condition means that a restored

vehicle matches its pre-incident condition as to form, fit, finish, quality, performance, color, function and paint quality.

2.1.15. **Quality of non-OEM Parts** shall mean that if non-OEM replacement parts (as defined in 11 NYCRR 216.7(b)(5)) are used, those parts are to equal or exceed the comparable OEM part in terms of fit, form, finish, quality and performance. In addition, said part is to be warranted by the non- OEM at least to the extent and duration as the comparable OEM part.

2.1.16. **Queens East** shall mean that section of the borough of Queens that is located east of, and including the east sides of, Junction Boulevard and Woodhaven Boulevard and south of, and including the south side of that section of Queens Boulevard that joins Junction Boulevard and Woodhaven Boulevard.

2.1.17. **Remanufactured Part** shall mean a part that is rebuilt by a non-OEM manufacturer.

2.1.18. **Sandy Dry Quality** shall mean an unacceptable surface condition resulting from the failure to prime surfaces properly or to apply sufficient paint to properly prime the surfaces of the vehicle and which causes the auto body surface to feel rough, dry and not sanded.

3. CONTRACT TERM AND ESTIMATED CONTRACT AMOUNT

3.1. Contract Term

3.1.1. The term of the Contract awarded from this solicitation shall commence on the date set forth in the written Notice of Award issued by DCAS and shall terminate three (3) years after such commencement date, unless sooner terminated in accordance with the terms and conditions of the Contract. Any monies not used at the end of the Contract shall remain with the City.

3.1.2. The City reserves the right, in its sole discretion, to renew the Contract for an additional three (3) years, in accordance with the Procurement Policy Board (PPB) Rules, unless sooner terminated in accordance with the terms and conditions of the Contract.

3.1.3. The Agency Chief Contracting Officer reserves the right, in her or his sole discretion, to extend the Contract for an additional three hundred and sixty-five (365) consecutive calendar days in accordance with the PPB Rules.

3.1.4. The City further reserves the right to change these dates after Contract registration to reflect the actual Comptroller's registration date.

3.2. Estimated Award Amount

3.2.1. The estimated amount of the Contract is two million seven hundred thousand dollars ($2,700,000.00).

3.2.2. This is a Requirements Contract for services to be provided at specified times as ordered by each User Agency. The quantities specified herein are estimates based on historical usage and experience. They are provided for bid estimate purposes only. This estimated amount is not binding on the City. The City will only order services as needed. The City does not guarantee a minimum or maximum quantity of goods or services to be purchased under this Contract.

4. BIDDER QUALIFICATIONS AND EXPERIENCE REQUIREMENTS

4.1. Licenses and Permits

4.1.1. Contractor must be registered and regulated pursuant to Article 12A of the New York State Motor Vehicle and Traffic Law (Motor Vehicle Repair Shop Registration Act). During the term of the contract, including any renewal or extension thereof, the Contractor must maintain a valid license, as a motor vehicle repair shop. **A copy of the bidder's motor vehicle repair shop license must be provided within the PASSPort Questionnaire at the time of the bid due date.**

4.1.2. The Contractor must have on its staff at least one technician who has a National Institute for Automotive Service Excellence ("ASE") certificate or approved equal as a Master Collision Repair/Refinishing Technician. The ASE certification or approved equal may be held by the contractor's and subcontractor's employees. The certificate must have been issued within the last three (3) years. **The bidder must provide a copy of an ASE certificate or approved equal within the PASSPort Questionnaire at the time of the bid due date.**

4.1.3. The Contractor must have at least five (5) years' experience in providing the auto body repair and other services set forth in the contract. **This must be confirmed within the Attachment B – Bidder Capacity Form and submitted within the PASSPort Questionnaire at the time of bid opening.**

4.1.4. The Contractor must submit, at the time of the bid, the names of four (4) references with e-mail addresses and phone numbers where the Contractor has provided similar service. **This must be provided within the Attachment B – Bidder Capacity Form and submitted within the PASSPort Questionnaire at the time of bid opening.**

4.1.5. These permits and licenses must be maintained by, and the ASE certified or approved equal technician must be on the staff of, the Contractor at all times and must be available in person or via email or phone within 24 hours, upon request of the Agency Contract Administrator during the term of the contract, including any renewal or extension thereof.

4.2. Hybrid Safety Training Requirements

4.2.1. During the term of the contract, including any renewal or extension thereof, the Contractor, must provide:

4.2.1.1. Proof that at least two (2) of its technicians and those of any subcontractor have been hybrid safety trained by a hybrid manufacturer or a dealership representing the manufacturer or accredited training certificate approved by OEM (i.e., I-CAR, ASE, etc.). All Hybrid Safety Training Requirements must have been issued within the last three (3) years.

4.2.1.2. Copies of the prime vendor's technicians' Safety Course Completion certificates constitute proof of meeting this requirement and must be submitted within the PASSPort Questionnaire at the time of the bid.

4.3. Electric Vehicle Safety Training Requirements

4.3.1. During the term of the contract, including any renewal or extension thereof, the Contractor, or a designated subcontractor, must provide;

4.3.1.1. Proof that at least one (1) of its technicians and those of any subcontractor have been electric vehicle safety trained by an electric vehicle manufacturer or a dealership representing the manufacturer or accredited training certificate approved by OEM (i.e., I-CAR, ASE, etc.). All Electric Vehicle Safety Training Requirements must have been issued within the last three (3) years.

4.3.1.2. Copies of the prime vendor's technicians Safety Course Completion certificates constitute proof of meeting this requirement and must be submitted within the PASSPort Questionnaire at the time of the bid.

5. SCOPE OF WORK

5.1. General Requirements

5.1.1. The Contractor will provide the auto body repair services necessary to restore a vehicle to its Pre-Incident Condition. These services include, but are not limited to, replacing, and straightening automotive body, chassis and internal components, painting auto body components, obtaining parts and materials, and performing related paint preparation, finishing and delivery related tasks or at the sole discretion of The City of New York.

5.1.2. The Contractor and its subcontractors must possess all permits and licenses required by the applicable federal, state and local laws for all equipment operated on and at its premises and facilities.

5.1.3. The work to be performed under the contract includes furnishing all labor, parts and materials, including travel time, equipment and all other work incidental thereto necessary or required to perform any repairs as part of this contract.

5.1.4. Contractor, under the terms of this contract, is strictly prohibited from performing any work not specifically referenced in this contract. Examples of prohibited services include, but are not limited to, tinting of glass, installation of equipment such as light and siren packages and radios, vehicle "upfits." Contractor must take care not to disrupt vehicle telematics systems. These systems must not be disconnected and reconnected when work is completed. Any removal of such devices will require the

Contractor, as his/her expense, to reinstall the system if, upon return of the vehicle, the telematics system is unresponsive.

5.1.5. The Contractor's primary repair facility shall be able to accommodate three (3) City vehicles for auto body repair at any given time, in addition to its other workload, and the facility must allow for appraisers and City inspectors to access such City vehicles.

5.2. Services to be Provided

5.2.1. The Contractor must be capable of providing the following services at its business location or at the business location of its subcontractor:

5.2.1.1. Repair or replacement of body panels, including restoration of all mirrors and trim.

5.2.1.2. Repainting, that includes color and type matching; and the proper masking of panels that are not to be painted.

5.2.1.3. Straightening of frame and unibody assemblies to factory specifications.

5.3. Intended Results of the Work

5.3.1. The quality of services, as set forth above, requires that all auto body repair services restore the vehicle to its Pre-Incident Condition. The Contractor must estimate the work and, once agreed to by an Authorization, must accomplish the work in accordance with, and within the time and cost guidelines set forth in that Authorization.

5.3.2. Following repairs and repainting, the Contractor must prepare the vehicle for delivery. If the Contractor experiences or locates any vehicle condition that constitutes an operational or safety problem which had not previously appeared on its estimate, the Contractor must notify the CM or the ACA of that condition in writing. If the Contractor has the capability to correct the condition, and it is auto body damage caused by the incident, the Contractor will issue a revised estimate to the City and wait for the City's determination of the estimate. The Contractor will retain the vehicle, without imposition of any storage fees for a maximum of seven (7) City Business Days, while the City makes its determination to accept or reject the Contractor's revised estimate.

5.3.3. Quality of Repairs:

To meet Pre-Incident Condition standards, the Contractor must repair all dents, dings, scratches, scrapes, crunches, buckles and similar conditions, subject to the City's determination of satisfactory repairs. The City will require any unsatisfactory condition to be corrected prior to its acceptance of any vehicle.

5.3.4. Quality of the Finishing:

The Contractor must finish all vehicles to meet Pre-Incident Condition standards. Unless authorized by the City to blend an adjoining panel the Contractor shall cover such adjoining panels or other parts of the vehicle not requiring repair to avoid over-spraying. The City will not accept any painting that results in runs, Orange Peeling, Sandy Dry Quality of finish, dull spots, poorly matched color or improper blending. When so authorized, the Contractor must properly buff out and polish all surfaces painted.

5.3.5. Quality of Straightened Parts:

The Contractor will ensure that all straightened components and auto body panels meet Pre-Incident Condition standards. The Contractor will adhere to all OEM Specifications regarding positioning, gapping and clearance. The City will not authorize the straightening of any component that has been designated by the City-contracted appraiser or the City inspector as in need of replacement. Whenever the estimated repair of any panel's part or component equals 75% of the labor and parts cost of replacing same, the Contractor will show replacement of such part or component in its estimate. Parts that are considered to be safety components must be replaced. No attempt to repair these parts is to be made.

5.4. Contractor's Responsibility for Performance of Work

5.4.1. The Contractor is solely responsible for all work performed to ensure the vehicle is returned to a Pre-Incident Condition. The Contractor is solely responsible for all estimating, warranty, meeting of completion dates, delivery, and invoicing.

5.4.2. Subcontracting:

Provided that the Contractor specified in its bid submission that subcontractors would be used, such subcontractors may perform up to 20% of the labor and paint hours on an Authorization. The Contractor must, either in its bid or prior to the award of the contract, identify any subcontractors and the work that is to be subcontracted. These subcontractors must be geographically located within the required Drivable Miles criteria set forth in Attachment B – Bidder Capacity Form. The Contractor remains solely responsible for the completion of all work, including the generation of all estimates and invoices. The Contractor warrants that any work performed by a subcontractor meets or exceeds the quality standards set forth in the contract, including the standards for Pre-Incident Condition. At any time during the term of the contract or any renewal or extension thereof, the City may require the Contractor to terminate the services of any subcontractor for failure to comply with the requirements of the contract. NYC Fleet reserves the right to not issue payment to a Contractor for services provided by a sub-contractor in the event a Contractor uses a subcontractor that was not approved by or was rejected by the City. The continued use of unauthorized subcontractors may result in the termination of this contract.

5.4.3. Invoicing by a Subcontractor:

The Contractor will submit with its invoices to the City all of its suppliers' invoices, including subcontractors' invoices with all required documentation, for any work performed. All required notices, work orders, directives and requests for services will be issued only to the Contractor. The City will neither accept invoices from any subcontractor of the Contractor nor pay any differential costs to the Contractor for any work done by a subcontractor when the amount does not adhere to the Contractor's bid. The Contractor will further ensure that its subcontractors do not place a mechanic's lien on the City vehicle due to non-payment of any subcontractor invoice or for any monies owed to the subcontractor by the Contractor. Any work to be performed by the subcontractor must be identified on the Contractor's estimate and approved in advance. If a subcontractor starts work without advance approval, the City reserves the right to disapprove payment for the work performed by such subcontractor.

5.5. Delivery of the Vehicle

The City will bring its vehicle to the Contractor's facility at the address set forth in its bid. The City will not pick up, deliver to or arrange for appraisals or inspections at any facility of Contractor's subcontractor. NYC Fleet at its sole discretion may make exceptions for this in case of vehicle inoperability or if additional damage would occur to vehicle if further transported.

5.6. Damages Incurred at the Contractor's Facility

5.6.1. When a vehicle is dropped off at a Contractor's Facility, the Contractor and driver must review and document all damage. From the time a vehicle is delivered to the Contractor until the time a duly designated representative of the City picks up the vehicle, the Contractor has sole responsibility for the vehicle's safekeeping.

5.6.2. Any damage not previously noted in the City-contracted appraiser's report, or identified by the Contractor upon submission of its shop estimate, will be deemed to have been caused by the Contractor. For such damage, the Contractor must perform the repair at no cost to the City, according to the same quality standards set forth herein.

5.7. Access to Vehicles by City Inspectors and City-Contracted Appraiser

5.7.1. The City reserves the right to have all damaged and vandalized vehicles appraised and inspected by City inspectors and/or City-contracted appraiser at any time during Contractor's business hours. City inspectors may arrive to conduct the inspection at any time and without prior notification to the Contractor. City inspectors may make appointment times with Contractors where workload and scheduling require additional time.

5.7.2. The City-contracted appraiser will provide the Contractor with no more than 90 minutes advanced notice. Contractors should use this time to prepare the vehicle for the appraisal which includes, without limitation, securing a bay and lift in the repair facility. The Contractor will allow whatever access, including placing the vehicles on a lift, that is needed to determine the scope of work and will not interfere with the City's inspections and appraisals.

5.7.3. The Contractor and the City inspector and/or City-contracted appraiser must agree as to the scope of work, including which panels and components require some form of repair, straightening, refinishing, removal and reinstallation or replacement. The Contractor, however, is not required to agree with the City-contracted appraiser as to the method in which the work is to be performed or the length of time of such operations. The CM or ACA will resolve any differences in the Authorization.

5.8. Contractor's Estimate

5.8.1. Prior to writing an estimate, the Contractor must determine if the estimate can be written from a review of visible damage to the vehicle. If so, the Contractor must submit a written estimate to the CM or ACA within two (2) City Business Days from receipt of

the vehicle. However, should the Contractor determine, based on the impact, that there is other damage that can only be assessed by removing body panels, the Contractor must request a partial Authorization from the City.

5.8.2. The Contractor's estimate must be complete and separately detail labor hours, paint labor hours, parts costs, Paint and Materials, any subcontractor work, and miscellaneous expenses. The Contractor must submit estimate(s) and invoice(s) in accordance with the requirements of Section 398-d of the New York State Vehicle and Traffic Law.

5.8.3. Contractor is to use the current version of one of the following estimating software programs: Motor Crash Estimating Data, Audatex, Mitchell Estimating, ADP Shoplink or CCC One. Should Contractor wish to use other software, such software must be evaluated by NYC Fleet. No software may be used until it is approved by NYC Fleet.

5.8.4. If the City has filed an Affirmative Claim to recover the costs of repair, Contractor will provide an estimate for that repair. If there are additional damages to the vehicle, not covered by the claim, Contractor is required to provide a separate estimate for the additional repairs.

5.8.5. Contractor's Estimate must comply with the prices set forth in their bid.

5.8.6. Procedure to Request Partial Authorization

If Contractor determines that body panels need to be removed in order to assess damage, the Contractor must request, in writing, a partial Authorization from the Contract Manager or ACA. The request is to document the number of hours requested, the reason for that number of hours and must be accompanied with digital photograph(s) showing the area that needs teardown. If so authorized, the City will send a partial Authorization, setting forth the number of labor hours it is approving. If the City chooses to repair the vehicle, such dismantling time will be considered part of the labor hours needed to repair the vehicle and it is not to be added to the estimate or invoice as an additional charge. However, if the City does not repair the vehicle, the CM or ACA will then advise the Contractor whether the removed components are to be reassembled and, if so reassembled, the City will revise the partial Authorization accordingly. The Contractor will send a final bill in the amount set forth in the final partial Authorization issued.

5.8.7. Contractor to Use Estimate to Assist City Inspector and/or Appraiser

The Contractor is responsible for completing its estimate prior to the scheduled independent appraisal by the City inspector and/or City-contracted appraiser. Based on its estimate, the Contractor must ensure that the City inspector and/or City-contracted appraiser sees all the required work needed to restore the vehicle to Pre-Incident Condition. As the City- contracted appraiser must perform an independent judgment of the repairs needed, the Contractor must not show or provide the City-contracted appraiser a copy of its own estimate. A failure by the Contractor to show the City-contracted appraiser the required work on the vehicle may result in the City refusing to provide Authorization for that repair.

5.8.8. City Right to Prepare its Own Estimate

The City reserves the right to estimate damages that it wants repaired prior to delivery of the vehicle. Agencies using the City generated estimate will provide the Contractor with such an estimate upon delivery of the vehicle. Then, the Contractor, within the required two (2) City business days, must generate its own estimate detailing its agreement or non-concurrence with the City's estimate. It is then the responsibility of the CM or ACA to resolve any differences.

5.8.9. Requirement to Provide Digital Photographs

In order to expedite an Approval, the Contractor must provide digital photographs of the areas of the vehicle to be repaired with each estimate. These digital photographs must have sufficient resolution to allow them to be viewed clearly using commercial software products such as Microsoft Photo Gallery (76 dot per inch (DPI) or higher).

5.8.10. Completeness of the Estimate

The Contractor is solely responsible for the content and completeness of its estimate and must ensure that it is consistent with its bid price and the commercial estimating software being used.

5.8.11. Repair in Lieu of Replacement

Should the Contractor recommend repair of a part that the City inspector and/or City-contracted appraiser has indicated needs replacement, the Contractor must ensure that all body labor hours associated with removals and reinstallations and repair, and all related painting are included in its estimate. For example, if the Contractor is recommending repair of a door rather than its replacement, the Contractor must ascertain whether repairs are needed to any internal door component. If the Contractor cannot ascertain this without access time, the Contractor must follow the procedures for partial Authorizations as set forth in Section 5.8.6. The City reserves the right to reject the Contractor's approach or any requests for a partial Authorization.

5.8.12. Paint and Materials

The Contractor, in its estimate and invoice, must set forth its calculation of the amount for Paint and Materials by multiplying the authorized number of paint labor hours by the hourly rate shown in its bid.

5.8.13. Parts

In its estimate and invoice, the Contractor must set forth the price of each part reflecting the respective parts discount contained in its bid for an OEM part, a non-OEM part, an aftermarket part, or a remanufactured part. The City reserves the right to provide any or all required parts, in which case, the Contractor will only charge the requisite remove, replace and re-finish times.

a. OEM Parts

For any OEM part, the discount shown on the bid is to be applied to the manufacturer's price book's list price that is current on the date of the estimate.

b. Aftermarket Parts

For aftermarket parts where a price list exists that shows the list price, the item will be estimated and invoiced with the discount shown on the bid. Should a price list not exist, the Contractor will estimate and invoice at the mark-up percent shown in its bid.

c. Remanufactured Parts

For remanufactured parts where a price list exists that shows the list price, the item will be estimated and invoiced with the discount shown on the bid. Should a price list not exist, the Contractor will estimate and invoice at the mark-up percent shown in its bid. When a remanufactured part is installed, the Contractor must ensure that its quality, performance and warranty meet OEM standards. The Contractor will not add any preparation time to the labor hours allowed by its commercial estimating software for the removal of the old part and installation of the remanufactured part.

d. Like Kind Quality ("LKQ") Parts

For any LKQ part, the mark-up shown on the bid is to be applied to the manufacturer's. price book's list price that is current on the date of the estimate.

e. Non-OEM Parts

For a non-OEM part, the Contractor must show the supplier of that part, including the supplier's telephone number. The Contractor must show the total cost of replacing the damaged part with a non-OEM part; therefore, the estimate must show the cost of the non-OEM part including any discount or mark-up as shown on the bid. The Contractor must then add the cost of any labor and parts needed to prepare the non-OEM part so that it meets the Pre-Incident Condition standard. In this regard, the Contractor must ensure that the total cost of the non-OEM option does not exceed 75% of the total cost of using OEM or aftermarket parts. On the invoice, the cost of the non-OEM part must equal the purchase price paid by the Contractor plus the additional percentage to be added as set forth in its bid. A photocopy of the invoice showing the purchase price of the non-OEM part to the Contractor must accompany the final bill. (Note: If, from the date of estimate until the date an Authorization is given, the original supplier of the non-OEM part no longer has the part available and the Contractor is unable to either secure the part in the agreed time frame or obtain it at the agreed price, the Contractor must immediately contact the CM or ACA to seek an amended Authorization.) In all cases, the City reserves the right to reject the non- OEM option and insist on an OEM part. Please note Aftermarket, Remanufactured and Like Kind Quality Parts fall under Non-OEM Parts.

f. Tires

For replacement tires, the Contractor must specify the quantity, unit cost, brand name and tire dimensions. The Contractor is to obtain unit pricing consistent with, or better than, those published by tire manufacturers or on commercial internet sites, such as Tirerack.com. The Contractor will be allowed to mark up the tires consistent with the percentage set forth in its bid. The City agency reserves the right to reject the replacement of any tire or request the Contractor to consider other makes and models of tires.

5.8.14. Miscellaneous Charges

The Contractor will ensure that its bid for labor, parts, paint and materials includes all expenses associated with the preparation for painting and delivery of the vehicle to the City agency. These expenses include, but are not limited to: preparation charges, such as car washing, vacuuming of interiors; use of stock materials, such as car washing products, sealers, car covering and flex agents; and all charges associated with the disposal of such products (hazardous waste removal). While required to bid the cost of wheel alignments and other miscellaneous charges, these charges will only be included in an estimate or invoice if such items of work are actually required and provided, and only at the rates set forth in the Contractor's bid.

a. Restrictions on Clear Coating, Wet Sanding, Buffing, Denibbing, and Polishing

The Contractor may use any acceptable estimating software that is permitted in Section 5.8.3. to determine the time to be estimated for these operations. However, the Contractor must set its software for clear coating to a maximum time limit of 2.5 hours. Additionally, when entering refinishing time for wet sanding, rub out and buffing, denibbing and polishing, the Contractor will ensure that the total of these operations does not exceed 1.5 hours. (Note: The Contractor may request additional time for wet sanding, buffing, denibbing and polishing should an agency request a complete re-painting of a vehicle. Should an agency request a compounding of the vehicle to remove dulling of the finish due to exposure to the elements, the Contractor will show this on the estimate as a separate "Compounding" charge). The City reserves the right to reject the provision of any of these operations.

b. Restrictions on Pre/Post Scanning

Scanning is limited to 1.5 hours. Scanning the vehicle computer prior and after repairs is limited to 1.5 hours. If additional scanning is needed due to other failures, preapproval by DCAS fleet is required. Pre-approval will only be sent via email.

5.8.15. Revisions to the Original Estimate

Prior to initiating any repair or purchasing any part that is not included in its original estimate, the Contractor must revise its original estimate and notify the CM and or ACA in writing. The Contractor must wait until it receives an amended Authorization. To substantiate the need for the revision, the Contractor must provide the City with documentation including, but not limited to, digital photographs of any previously hidden damage, copies of supplier invoices on price revisions. The Contractor will not be compensated for the provision of any additional repairs or parts not contained in an amended Authorization.

5.9. Authorization to Begin Repair

5.9.1. The City will provide the following information in its Authorization: the name of the individual authorizing the repair, the dollar amount of the Authorization, the Acceptable

Date of Completion and the date by which parts backorders must be reported, if the Contractor believes such backorders will affect its ability to meet the Acceptable Date of Completion.

5.9.2. The Contractor agrees that immediately upon receipt of an Authorization, it will order all needed parts and refinishing materials. The Contractor will not begin any auto body repairs unless authorized to do so by the CM or ACA. In general, work is to begin at 7:00 AM the next business day unless notice to proceed is provided before 10:00 AM. In these cases, workdays will begin on the day of notification.

5.9.3. Determination of the Amount of the Authorization

The CM or ACA will compare the scope of work shown in the Contractor's estimate with that of the City's appraisal or inspection. If consistent, any appraisal or inspection amounts will be re- calculated according to the prices, price rates, fees and discounts set forth in the Contractor's bid. After comparison to the Contractor's estimate, the CM or ACA will determine if the Contractor's estimated price is reasonable and will establish the Acceptable Date of Completion. The accepted terms will be recorded on the Authorization, which will be sent to the Contractor. The Contractor must accept the Authorization terms, either by a written response to the CM or ACA or by initiating work. If the CM or ACA does not accept the Contractor's estimate and/or the Contractor rejects the price or the Acceptable Date of Completion, the City reserves the right to negotiate a fair and reasonable amount or to remove the vehicle from the Contractor's facilities. In the latter case, the City shall only pay the Contractor for any work previously authorized and the "Charge for Estimate When City Decides Not to Repair Vehicle" amount set forth in the Contractor's bid.

5.9.4. Contractor Not to Exceed Scope of the Authorization

The Contractor shall not perform any work beyond that which is agreed to and authorized by the CM or ACA. The City will not pay for any work performed without an Authorization, including the Contractor's failure to receive prior approval to revise an original estimate for work performed. Notwithstanding any dispute concerning payment, neither the Contractor nor its subcontractors shall place a mechanic's lien on the vehicle and shall promptly release the vehicle to the City.

5.9.5. Calculation of the Acceptable Date of Completion

The CM or ACA will calculate the Acceptable Date of Completion by dividing, by six (6), the sum of labor and paint hours authorized by the City and adding three (3) City Business Days to obtain parts. (Note: The sum of labor and paint hours authorized is not the number indicated by the Contractor in its estimate. Instead, it is the number of such hours noted in the appraisal plus any additional hours noted in the Contractor's estimate that are allowed by the CM or ACA.)

5.9.6. Amended Authorizations

When an Authorization is amended (see Section 5.8.15.), the additional time for a new Acceptable Date of Completion will be determined by dividing, by six (6), the number of additional labor and paint hours authorized, and adding one (1) City Business Day to obtain parts; this additional time will be added to the original Acceptable Date of Completion. (For example, if the original Acceptable Date of Completion was October 15, 2025 (a Monday and a City Business Day) and an additional two (2) City Business Days are authorized, the new Acceptable Date of Completion would be October 17, 2025).

5.9.7. City's Right to Remove Vehicle if the Contractor Fails to Meet the Acceptable Date of Completion

The City reserves the right to remove from the Contractor's premises, or the premises of any subcontractor, any vehicle that has not been repaired by five (5) City Business Days beyond the Acceptable Date of Completion. The City may elect to use a contracted towing firm, or a firm contracted by the New York State maintenance management company. The City will be required to pay only for those completed repairs, less any deductions as shown in Section 12.1.3. and less the cost of any towing of the vehicle and the differential amount of the repair at the new facility.

5.10. Pickup of Vehicle upon Completion

5.10.1. The City is responsible for pickup of a vehicle upon completion of repairs. The CM or ACA may reject any vehicle deemed completed by the Contractor if the City determines that the vehicle needs further repairs that the Contractor included or failed to include in its estimate. If these further repairs cause any delay beyond the original Acceptable Date of Completion, the City may deduct the amount set forth in Section 12.1.3.

5.11. Contractor's invoice

5.11.1. The Contractor's final invoice must not exceed the amount set forth in the final Authorization issued by the CM or ACA. The invoice must be based on prices and rates no greater than those contained in the Contractor's bid and its estimate, inclusive of any applicable fees, taxes or other expenses incurred by the Contractor.

5.11.2. Contents of Invoice

The Contractor shall submit clear and legible original invoices, detailing its repair in the same format as its estimate. The invoice must show the locations of all work performed, including the date materials were received. Failure to comply with any of the requirements set forth in the contract may result in the delay or denial of payment. At a minimum, the invoice must show the following:

- **a.** Contractor's name, address and telephone number
- **b.** NYC Contract number
- **c.** Tax Identification Number
- **d.** Invoice number and date

e. Total Amount Due
f. Completed Authorization (Agency Issued)
g. Sign-In / Sign-Out Time Sheet (Agency Issued) - When applicable.

5.11.3. Attachments to the Invoice

As part of its invoice to the City, the Contractor must attach a photocopy of parts invoices for those parts replaced with a unit cost over twenty-five dollars ($25.00). In order to receive payment from the City for a part, the parts invoice must be dated, contain the supplier's invoice number, name, address and telephone number, the name of the part, the part number and its list price, and the invoice must be billed to the Contractor's (or if applicable subcontractor's) business name and address shown on the Notice of Award of the Contract.

5.11.4. Invoicing in PASSPort

MOCS or the User Agency may request that the Contractor start submitting invoices relating to the User Agency's individual contract(s) through the City's PASSPort System. Upon receipt of such request from the City, the Contractor agrees that it shall commence submitting invoices relating to the User Agency's individual contract(s) through the PASSPort System. Contractor training will be made available to process invoices in PASSPort.

5.12. Contractor's Emergency Telephone

5.12.1. The Contractor shall furnish the telephone numbers of at least three (3) responsible firm members or employees of the Contractor who can be reached twenty-four (24) hours a day in the event of an emergency concerning the work to be performed under the contract. **Emergency contacts must be provided within the PASSPort Questionnaire at the time of bid opening.**

6. PRICES FIXED FOR THE TERM OF THE CONTRACT

The prices bid by the Contractor are fixed for the term of the contract, excluding any price adjustments executed pursuant to Section 13 of the specifications.

7. WARRANTY

7.1. The Contractor will provide a warranty, of no less than twelve (12) months from date of pickup from the Contractor, for all defects due to improper repair/painting techniques or insufficient amount of paint applied, including cracking, peeling and paint wear. Such defects that occur during the warranty period will be corrected by the Contractor at no cost to the City.

7.2. The Contractor will also warrant all parts for ninety (90) days from the date of pickup from the Contractor or the manufacturer's warranty period, whichever is longer.

7.3. The Contractor will warrant that all parts installed, whether OEM, aftermarket or non-OEM meet OEM Specifications in terms of fit, form, finish, quality and performance.

7.4. The Contractor must perform warranty work to correct any warranted defects and the Acceptable Date of Completion for such work shall be calculated in the same manner as done in Section 5.9.5. from the date the vehicle is delivered to the Contractor. Failure to perform the warranty work within that date will subject the Contractor to the deductions set forth in Section 12.1.3.

7.5. The City will deduct these amounts from future invoices or, if no invoices exist, require the Contractor to remit to the City a certified check or money order in the amount due. Contractor's obligation to pay shall survive the expiration or earlier termination of the contract.

8. STATUS OF REPAIRS AT EXPIRATION OR TERMINATION OF CONTRACT

8.1. At the expiration of the contract, or earlier termination thereof, DCAS will be liable to the Contractor only for work that was authorized prior to the date of expiration or earlier termination.

8.2. The Contractor will notify the City of any vehicles that have not been authorized by that date and the City will remove them from the Contractor's premises within three (3) City Business Days. In the event the City fails to remove the vehicles, the Contractor may begin on the fourth City Business Day to charge storage fees for each City Business Day thereafter.

8.3. The Contractor's storage fee will not exceed five dollars ($5.00) per City Business Day. The Contractor will not charge storage fees for those days that are not City Business Days.

9. PARKING, TRAFFIC AND TOWING PENALTIES

9.1. The Contractor shall be solely responsible for the payment of any parking, traffic or towing charges, fines or penalties levied against a vehicle while in the possession of the Contractor or its subcontractor.

9.2. The Agency Contract Administrator will maintain logs indicating pick-up and delivery times of such vehicles. The DCAS Contract Manager may deduct from any amount due the Contractor, the amount of any such charges, fines or penalties levied against a vehicle while in the Contractor's or a subcontractor's possession for which the City is required to pay.

9.3. If there is no amount due the Contractor, the Contractor, within ten (10) City Business Days of written notification to pay for any such charges, fines or penalties, shall remit to the City a certified check or money order in the amount due. Contractor's obligation to pay such charges, fines or penalties shall survive the expiration or earlier termination of the contract.

10. THE BID INFORMATION:

10.1. <u>The following attachments and exhibits are included in this bid:</u>

10.1.1. Bid Book (Divided into A, B and C pages)
10.1.2. New York City Standard Service Contract (90L/January 2016)

10.1.3. Attachment "A" – Specifications
10.1.4. Attachment "B" – Bidder Capacity Form
10.1.5. Attachment "C" – Bid Sheet (Provided within the PASSPort Questionnaire)
10.1.6. Attachment "D" – Whistleblower Notification and DOI Poster
10.1.7. Attachment "E" – NYC Earned Safe and Sick Time Contract Rider
10.1.8. Attachment "F" – NYC Side Guard Law Rider
10.1.9. Attachment "G" – Iran Divestment
10.1.10. Attachment "H" – NYC Mayoral Executive Order 39 Rider
10.1.11. Attachment "I" – Subcontractor Reporting System Rider

Important note: It is the Contractor's responsibility to verify and ensure all of the requirements set forth in the bid solicitation documents are submitted in the PASSPort Questionnaire. Failure to comply may render your bid non-responsive.

11. SUBCONTRACTING, JOINT VENTURES AND PARTNERSHIPS

11.1. Subcontracting

11.1.1. Subcontracting will be permitted in accordance with the requirements set forth in Part IV, Section 9.2 of the Standard Service Contract.

11.1.2. The Contractor shall first obtain written approval from DCAS before subcontracting any portion of the Services.

11.1.3. All subcontractors shall be approved by DCAS. The Contractor shall request approval and approval modifications for all subcontractors in PASSPort. No subcontractor shall commence work under the contract unless the Contractor has requested approval in PASSPort and has received approval of such request, in writing, from the City.

11.1.4. All subcontractors/business partners shall be fully qualified and possess all requisite licenses, certificates and permits to perform the work described herein. The City reserves the right to request proof of qualifications, licenses and experience prior to making a final determination.

11.1.5. The Contractor shall identify any subcontractors or business partners who shall perform Contract work and their specific responsibilities and qualifications. All subcontractor arrangements, joint ventures, and partnerships are subject to prior written approval by the City.

11.1.6. Subcontracting on any individual Purchase Order shall be approved by the User Agency. All subcontractors and their personnel shall be subject to all terms and conditions of this Contract.

11.1.7. When subcontracting is allowed, all required notices, Work Orders, directives and requests for services will be issued to the Contractor.

11.1.8. The Contractor will be responsible for Quality Control of all work performed by all subcontractors.

11.1.9. The City reserves the right to require the Contractor to terminate the services of any subcontractor at any time.

11.1.10. The City reserves the right to prohibit subcontracting and to require the Contractor to self-perform all services under the contract.

11.1.11. In no event shall the prices charged to the City for subcontracting Work exceed bid prices.

11.1.12. All invoices prepared by a subcontractor shall be submitted to the Contractor with all the necessary back up.

11.1.13. The Contractor shall submit to the City with its invoices all suppliers' invoices including all relevant subcontractor invoices for Work performed.

11.2. Joint Ventures and Partnerships

11.2.1. There is no minimum requirement for the proportion of work performed by either of the two (2) venture partners. Joint ventures must carry the required insurances either as policies written specifically for the joint venture entity, or by using their existing single entity policies with endorsements written for the joint venture activity.

11.2.2. The City does not recognize the corporate configuration wherein one company is "in association with" another. Relationships between two (2) or more firms shall be either as a Joint Venture or Prime /Subcontractor.

12. LIQUIDATED DAMAGES

12.1. The Contractor must notify the CM or ACA of the arrival of any vehicle at the Contractor's primary facility within two (2) hours of its arrival. Exceptions will be made for emergency tows that occur outside of normal business hours, weekends, and holidays. Failure to issue notification of any vehicles dropped off at Contractor's facility shall result in the Contractor being subject to fixed and liquidated damages of twenty-five dollars ($25.00) for every two (2) hour period to a maximum of one hundred dollars ($100) per day. Unless otherwise directed by the Contract Manager, a vehicle must remain at the Contractor's facility to allow for the schedule of any appraisal and issuance of a towing by the CM or ACA.

12.2. The Contractor must send all estimates by fax or email to the appropriate CM and/or ACA and have the capability of sending such estimates as PDF attachments to emails. The Contractor will be subject to a fixed and liquidated damages of twenty-five dollars ($25) per day to a maximum of one hundred dollars ($100) for failure to provide estimates on time. Contractors will be informed by City when estimates have exceeded the two-business day requirement and will be given four (4) hours after the notice to provide such estimates before penalties are assessed.

12.3. Without waiving any other right, the CM or ACA shall deduct a fixed and liquidated damages of fifty dollars ($50.00) from the Contractor's invoice for each City Business Day beyond an original

Acceptable Date of Completion or new Acceptable Date of Completion that work on the vehicle is not completed. The CM or ACA, in his or her sole discretion, may waive this deduction provided that the Contractor can substantiate that its failure to meet the Acceptable Date of Completion was for reasons that were beyond the ability of the Contractor to prevent.

13. ESCALATION CLAUSE

13.1. If the three (3) year renewal is exercised, the rate may be adjusted for each renewal year to reflect the percentage change in the Consumer Price Index (CPI) CUUR0000SETD for Motor Vehicle Maintenance and Repair in U.S City average, all urban consumers, not seasonally adjusted. The initial base date for comparison will be the month in which this contract is registered. The increase shall go into effect on the date indicated in the contract modification.

13.2. CPI price adjustments are not automatic. It is the contractor's responsibility to initiate the price adjustment request. The request must be made in writing to DCAS Agency Chief Contracting Officer and must include CPI price adjustment calculations based on the CPI along with other supporting documents justifying the reasons for the adjustment. The letter shall be on company letterhead and shall be signed by the proper authority of the company. (Note: Not all percentage changes in CPI will result in an increase. In cases where there is a decrease DCAS will adjust the pricing accordingly.)

13.3. The escalation clause is only applicable to bid items 1 through 4 and 16 through 20. There shall be no adjustments to any percent markups or discounts for the life of the contract.

13.4. It is the contractor's responsibility to verify if the CPI percentage change will result in an increase or decrease prior to requesting a price adjustment.

14. INDEMNIFICATION

14.1. Sections 13.2 and 13.3 of Part IV of the Standard Service Contract are hereby deleted in its entirety and replaced with the provisions of this Section 14.

14.2. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Contract to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Contract. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

14.3. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to

which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Contract. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Contract's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

15. INSURANCE REQUIREMENTS

15.1. Part III of the Standard Services Contract is hereby deleted in its entirety and replaced with the provisions of this Article 15.

15.2. The Contractor shall maintain the following types of insurance if and as indicated in the schedule on Page A-6 of 850L/January 2016 (A-Pages) of the Bid Book (hereinafter referred to as the "Insurance Schedule"), with the minimum limits and special conditions specified in the Insurance Schedule, throughout the term of this Contract, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article. Wherever this Article 15 requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

15.3. Worker's Compensation, Disability Benefits and Employers' Liability Insurance

15.3.1. The Contractor shall maintain Worker's compensation insurance, employers' liability insurance and disability benefits insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing Services under the Contract.

15.3.2. Within 10 days of award of this Contract or as otherwise specified by DCAS, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor's workers' compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of workers compensation coverage. The following forms are acceptable:

15.3.2.1. C-105.2 Certificate of Workers' Compensation Insurance;
15.3.2.2. U-26.3 – State Insurance Fund Certificate of Workers' Compensation Insurance;
15.3.2.3. Form SI 12 – Certificate of Workers' Compensation Self Insurance;
15.3.2.4. Form GSI-105.2 – Certificate of Participation in Worker's Compensation Group Self- Insurance;
15.3.2.5. Form DB-120.1 – Certificate of Disability Benefits Insurance**;**
15.3.2.6. Form DB-155 – Certificate of Disability Benefits Self-Insurance;

15.3.2.7. Form CE-200 – Affidavit of Exemption
15.3.2.8. Other forms approved by the New York State Workers' Compensation Board; or
15.3.2.9. Other proof of insurance in a form acceptable to the City.

15.4. Other Insurance

15.4.1. Commercial General Liability Insurance

The Contractor shall maintain commercial general liability insurance in the amounts specified in the Insurance Schedule covering operations under this Contract. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims made." Such coverage shall list the City, together with its officials and employees, and any other entities listed in the Insurance Schedule, as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the Services, ISO Form CG 20 37.

15.4.2. Commercial Automobile Liability Insurance

If indicated in the Insurance Schedule and/or if vehicles are used in the provision of services under this Contract, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof MCS-90.

15.4.3. Professional Liability Insurance

15.4.3.1. If indicated in the Insurance Schedule, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Contract. The policy or policies shall cover the liability assumed by the Contractor under this Contract arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

15.4.3.2. All subcontractors of the Contractor providing professional services under this Contract for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in the Insurance Schedule. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

15.4.3.3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase

extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

15.4.4. Other Insurance

The Contractor shall provide such other types of insurance in the amounts specified in the Insurance Schedule.

15.5. General Requirements for Insurance Coverage and Policies

15.5.1. Unless otherwise stated, all insurance required by this Article must:

15.5.1.1. be provided by companies that may lawfully issue such policies;

15.5.1.2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and

15.5.1.3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance).

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

15.5.3. There shall be no self-insurance program, including a self-insurance retention, exceeding $10,000.00, with regard to any insurance required under this Article, unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed in the Insurance Schedule with all rights that would be provided by traditional insurance required under this Contract, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

15.5.4. The limits of coverage for all types of insurance for the City, including its officials and employees and any other additional insured listed on the Insurance Schedule that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in the Insurance Schedule (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

15.6. Proof of Insurance

15.6.1. For each policy required under this Article and the Insurance Schedule, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its

officials and employees, is an additional insured with DCAS within ten days of award of this Contract. The following proof is acceptable:

15.6.1.1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in the A-Pages of this Contract) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

15.6.1.2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

15.6.2. Proof of insurance confirming renewals of insurance required under this Article must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 15.6.1.

15.6.3. The Contractor shall provide the City with a copy of any policy required under this Article 14 upon the demand for such policy by the Commissioner or the New York City Law Department.

15.6.4. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 14 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

15.6.5. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 14 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

16. CONFIDENTIALITY

Part IV, Section 15.2 of the Standard Service Contract is hereby deleted in its entirety and replaced with the following:

16.1. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Article to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("disclosure demand"), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure

demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

16.2. Where in connection with the services under this Agreement the Contractor, or its employees, subcontractors, or agents, will have access to, acquire, disclose, or use any data that includes private information (as defined in Admin. Code § 10-501(b)), the Contractor shall provide written notice to the Department within three days of the earlier of discovery by the Contractor or notification to Contractor of any breach of security (as defined in Admin. Code §10-501(c)). Such notice shall inform the Department of the nature and scope of the breach of security.

16.2.1. Upon such discovery or notification of such breach of security, the Contractor shall take reasonable steps to determine the cause(s) of such breach and to remediate the cause(s) of such breach, shall provide written notice to the Department of such steps, and shall cooperate with any investigation conducted by the City of such breach. Such cooperation includes, but is not limited to, promptly responding to the City's reasonable inquiries and providing prompt access to in human and machine readable format all evidentiary artifacts associated with such breach of security, such as relevant records, logs, files, data reporting, and other materials.

16.2.2. In the event of such breach of security, the Contractor shall cooperate and coordinate with the City regarding any notifications determined by the City to be made to individuals affected by such breach.

16.2.3. Without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of such notifications to individuals affected by the breach of security and/or other actions mandated by any Law, or administrative or judicial order, to address such breach of security, and to cover the costs of any fines or disallowances imposed by the State or federal government as a result of such breach. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of identity theft monitoring services for individuals affected by such breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such preventive measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

16.3. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

16.4. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Article.

16.5. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Part IV, Section 15.3.2 of the Standard Services Contract.

16.6. A breach of this Section 16 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Part IV, Section 18 of the Standard Service Contract. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

17. PROCUREMENT AND SOURCING SOLUTIONS PORTAL (PASSPORT)

17.1. Vendors intending to do business with the City of New York should complete an online Procurement and Sourcing Solutions Portal (PASSPort) disclosure filing (formerly known as VENDEX) to be considered for contracts. Vendors must create online accounts and file all disclosure information.

17.2. This contract may be subject to these filing requirements prior to any award. Failure to file may be cause for disqualification.

17.3. Paper submissions, including Certifications of No Change to existing VENDEX packages, will not be accepted in lieu of completed online filings. For more information about PASSPort, please visit nyc.gov/passport.

17.4. Additionally, pursuant to Procurement Policy Board Rule 2-08(f)(2), the Contractor will be charged a fee for the administration of the PASSPort system, including the Vendor Name Check process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The Contractor shall also be required to pay the applicable required fees for any of its sub-contractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the Contractor under the contract.

17.5. For contracts with an estimated value of less than or equal to $1,000,000, the fee will be $175. For contracts with an estimated value of greater than $1,000,000, the fee will be $350.

END OF THE DOCUMENT

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT B

Bidder Capacity Form

ATTACHMENT B BIDDER CAPACITY FORM – QUEENS EAST

THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES

AUTO BODY AND CHASSIS REPAIR SERVICES FOR
VEHICLES OWNED AND/OR OPERATED BY THE CITY OF NEW YORK
STATIONED IN QUEENS EAST

NOTICE: The City of New York ("City") is seeking auto body and chassis repair services vendors that are in close geographic proximity to the parking and operating areas of the City's fleet stationed in QUEENS EAST, as defined in the specifications. For this portion of the bid, the bidder's primary repair facility is required to be located ten (10) Drivable Miles, or less, from the Department of Parks and Recreation ["DPR"] Repair Facility located in Cunningham Park, 199-02 Union Turnpike, Queens, New York.

To bid on the QUEENS EAST auto body and chassis repair services solicitation, the bidder must complete this Bidder Capability Form and the Bid Sheet labeled "QUEENS EAST." To bid on a solicitation for another geographical area of the City, the bidder must complete the Bid Capability Form and the Bid Sheet labeled for that other geographical area.

The bidder hereby certifies that, in providing the auto body and chassis repair services, it can meet and provide the requirements lettered A through F, below, by initialing the appropriate blocks and setting forth in detail how it meets and provides each requirement. The City may reject any bid that fails to meet these requirements. The City reserves the right to request the bidder to further explain its comments and to inspect the bidder's facilities prior to an award of a contract.

Please complete this form in its entirety and attach the completed form to the PASSPort Questionnaire.

A. Licenses, Certificates, References

1. Does bidder possess a valid license as a motor vehicle repair shop?

   Yes _____ No _____ Bidder Initials: _____

2. Please provide New York State Motor Vehicle Repair Shop Certificate Number OR New Jersey License #:

   _____

3. Does bidder have on its staff at least one (1) technician who has a National Institute for Automotive Service Excellence ["ASE"] certificate as a Master Collision Repair/Refinishing Technician?

   Yes _____ No _____ Bidder Initials: _____

4. Are all permits and licenses to use all equipment within bidder's facilities current?

   Yes _____ No _____ Bidder Initials: _____

5. Are bidder's facilities for Hazardous Waste Removal in compliance with EPA, state and local laws, rules and regulations?

   Yes _____ No _____ Bidder Initials: _____

6. Bidder to list at least five years of experience in providing auto body repair services and provide at least four (4) references.

   Number of years' experience: _____

   References:

#1: Name: _____

Address: _____

_____

e-mail: _____

Phone: _____

#2: Name: _____

Address: _____

_____

e-mail: _____

Phone: _____

#3: Name: _____

Address: _____

_____

e-mail: _____

Phone: _____

#4: Name: _____

Address: _____

_____

e-mail: _____

Phone: _____

7. Does the bidder have on its staff at least two (2) technicians who has been Hybrid Safety trained by a hybrid manufacturer or a dealership representing the manufacturer or accredited training certificate approved by OEM (i.e., I-CAR, ASE, etc.).

   Yes _____ No _____ Bidder Initials: _____

8. Does the bidder have on its staff at least one (1) technician who has been Electric Vehicle Safety trained by a hybrid manufacturer or a dealership representing the manufacturer or accredited training certificate approved by OEM (i.e., I-CAR, ASE, etc.).

   Yes _____ No _____ Bidder Initials: _____

B. Staging and Parking Facilities

The bidder's primary facility is to be located within ten (10) drivable miles of the DCAS garage facilities located at Cunningham Park, 199-02 Union Turnpike, Queens New York. Further, the bidder's primary repair facility is to be able to accommodate three (3) City vehicles for auto body repair at any given time, in addition to its other workload, and the facility must allow for appraisers and City inspectors to access such City vehicles.

1. Bidder to list the address of its primary repair facility where City vehicles will be delivered and picked up.

   _____

   _____

   _____

   Comments:

   _____

   _____

   _____

_____

_____

_____

2. Is this facility within ten (10) drivable miles of Cunningham Park, 199-02 Union Turnpike, Queens, New York?

   Yes _____ No _____ Bidder Initials: _____

3. Can this facility accommodate three (3) City vehicles in addition to other workload?Yes

   _____ No _____ Bidder Initials: _____

C. Body Repairs and Chassis Straightening

The bidder must be able to perform:

- all mechanical, electrical and body repair, including the straightening or replacement of body panels, bumpers, brackets and lights;
- chassis alignments and must possess straightening equipment to repair all unibody and conventional frames to manufacturer specifications.

1. Can the bidder perform all mechanical, electrical and body repair?

   Yes _____ No _____ Bidder Initials: _____

2. Can the bidder perform chassis alignment?

   Yes _____ No _____ Bidder Initials: _____

3. Does the bidder possess straightening equipment to repair all unibody and conventional frames to manufacturer specifications?

   Yes _____ No _____ Bidder Initials: _____

4. Does the bidder possess wheel alignment machines to align steering?

   Yes _____ No _____ Bidder Initials: _____

Comments:

_____

_____

_____

_____

_____

D. Painting Facilities and Equipment

The bidder must have an enclosed paint spray booth that conforms to:

- All requirements of the United States Environmental Protection Agency ["EPA"] and
- New York City fire prevention and building codes or the applicable codes of another locality where the spray booth is located.

1. Does the bidder have an enclosed paint spray booth as described above?

   Yes _____ No _____ Bidder Initials: _____

The bidder must employ industry recognized masking and repainting techniques, including color matching and blending.

2. Will the bidder employ industry recognized masking and repainting techniques? If so, please describe those techniques.

   Yes _____ No _____ Bidder Initials: _____

Description:

_____

_____

_____

_____

_____

Comments:

_____

_____

_____

_____

_____

E. Subcontractors

1. Will bidder utilize any subcontractors for this contract?

   Yes _____ No _____ Bidder Initials: _____

2. If yes, please provide the following information:

   Subcontractor(s) Name:

   _____

   _____

   _____

   Subcontractor(s) Address:

   _____

   _____

   _____

   _____

   _____

   Services to be Subcontracted:

   _____

   _____

   _____

   _____

   _____

Note: Per the Specifications, the Contractor shall obtain written approval from DCAS before subcontracting any portion of the Services. The City reserves the right to request proof of qualifications, licenses and experience prior to making a final determination. Please review Section 11 of the Specifications for additional information.

F. Other

1. Does the bidder have a digital camera?

   Yes _____ No _____ Bidder Initials: _____

2. Can bidder attach digital photographs to shop estimates?

   Yes _____ No _____ Bidder Initials: _____

3. Can bidder forward estimates by e-mail using PDF or similar file extension?

   Yes _____ No _____ Bidder Initials: _____

4. Bidder to indicate which software it will be using to write its estimates:

Motor Crash Estimating Data	Yes _____	No _____	Bidder Initials: _____
Audatex	Yes _____	No _____	Bidder Initials: _____
Mitchell Estimating	Yes _____	No _____	Bidder Initials: _____
ADP Shoplink	Yes _____	No _____	Bidder Initials: _____

Other, please list:

_____

NOTE: Other offered software will be evaluated and must be approved for use by NYC Fleet

COMPANY NAME:
SUBMITTED BY (print name):
TITLE:
SIGNATURE:
DATE:

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT D

Whistleblower Notification & DOI Poster

ATTACHMENT D

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of $100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act ("WPEA"), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

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 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

Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT E

NYC Earned Safe & Sick Time Rider

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://wwwl.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 reqmres.

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;

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[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/dealabout/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. IfDCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

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

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

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

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT F

NYC Side Guard Law Rider

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://wwwl. nyc.gov/assets/bic/downloads/pdf /regulations/loca l-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/dca *sf* 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 NYCF1eet@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.

Chapter 15: Installation of Side Guards on Large Vehicles

§ 15-01 Definitions.

As used in this chapter, and unless otherwise specified, the following terms have the following meanings:

Agency. The term "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

BIC. The term "BIC" means the New York City Business Integrity Commission.

Chief Fleet Management Officer. The term "Chief Fleet Management Officer" means 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. The term "City" means the City of New York.

City Contracted Vehicle. The term "City Contracted Vehicle" means any Large Vehicle that is utilized within the City on a weekly or more frequent basis to fulfill requirements material to the scope of a Contract.

City Fleet. The term "City Fleet" means vehicles owned by Agencies of the City or leased for periods of over one (1) year.

Commissioner. The term "Commissioner" means the Commissioner of the New York City Department of Citywide Administrative Services.

Contract. The term "Contract" means any contract awarded by the City and registered with the New York City Comptroller after the Effective Date and whose cost is to be paid from funds belonging to or administered by the City, where such contract has an estimate value of $2,000,000 or more. This definition does not include (1) Agency on-call emergency contracts, including on-call storm emergency contracts; (2) the following types of contracts that are governed by rules of the Procurement Policy Board: emergency procurements; intergovernmental contracts; government to government contracts; and contracts for the provision of work or services by public utilities; and (3) renewals, exemptions or modifications of contracts registered with the Comptroller prior to the Effective Date.

Contractor. The term "Contractor" means any entity that enters into a contract with the City.

DCAS. The term "DCAS" means the New York City Department of Citywide Administrative Services.

Effective Date. The term "Effective Date" means January 1, 2023.

Large Vehicle. The term "Large Vehicle" means a motor vehicle with a manufacturer's gross vehicle weight rating exceeding 10,000 pounds. Such term does not include street sweepers, fire engines, car carriers, off-road construction vehicles, or any specialized vehicles or vehicle types on which Side Guard installation is deemed impractical by the Department in accordance with Administrative Code § 6-141(c).

Notice to Proceed. The term "Notice to Proceed" means the written direction to a Contractor by an Agency to commence work pursuant to a Contract registered with the New York City Comptroller.

Side Guard. The term "Side Guard" means a lateral protective safety device fit to the side of a Large Vehicle that is designed to prevent pedestrians and bicyclists from falling into the exposed space between the front axle and the rear axle of such vehicles and that meets the requirements of 55 RCNY § 15-02.

Subcontractor. The term "Subcontractor" means any entity that enters into a subcontract to perform work on behalf of a Contractor which enters into City contract registered with the City.

Volpe Side Guard Standard. The term "Volpe Side Guard Standard" means the United States Department of Transportation's Volpe Side Guard standard published and referred to as "U.S. DOT Standard DOT-VNTSC-OSTR-16-05", as amended, or a functionally equivalent national vehicle Side Guard standard, as determined by DCAS.

(Added City Record 10/7/2022, eff. 11/6/2022)

§ 15-02 Side Guard Requirements.

(a) *General Requirements.* Unless prohibited by Federal, State, or City law, or an exemption has been issued pursuant to 55 RCNY § 15-04, all Large Vehicles in the City Fleet must be equipped with Side Guards by the Effective Date and all City Contracted Vehicles performing work under a Contract are required to be equipped with Side Guards by the Effective Date or in compliance with the Phase-In Period set forth in 55 RCNY § 15-03(b).

(b) *Satisfaction of Side Guard Requirements.* The requirements for Side Guards will be considered satisfied if one or more of the following three situations is present:

(1) The Large Vehicle is equipped with Side Guards that allow for a maximum 13.8 inch ground clearance, a maximum 13.8 inch top clearance up to four feet in height, and a minimum 440 pound impact strength that achieves a smooth and continuous longitudinal (forward to backward) impact surface flush with the vehicle sidewall, known as the "NYC Volpe Side Guard Standard".

(i) Side Guards may include rail style guards, provided that such rails are no less than four inches tall and no more than 11.8 inches apart.

(ii) Side Guards may incorporate other vehicle features such as toolboxes and ladders, or the function of a Side Guard may be performed by those features, subject to the approval of DCAS.

(2) The Large Vehicle cannot maintain a Side Guard due to the design or operations of the vehicle, subject to the Contractor's application to DCAS for, and the grant of, an exemption from these rules.

(3) The Large Vehicle is designed or equipped on each side of the unit such that, by virtue of its shape and characteristics, its component parts can be regarded as replacing or functioning as Side Guards in accordance with the Volpe Side Guard Standard, or will perform the function of Side Guards with modifications separate from installation of Volpe Standard sideguards, subject to the approval of DCAS.

(c) In the case that mandated Federal standards are established for truck Side Guards, DCAS will assess any Federal specification guidelines and issue revised rules relating to the New York City specification(s), if required.

(Added City Record 10/7/2022, eff. 11/6/2022)

§ 15-03 City Contracted Vehicles.

(a) All City Agency Contracts involving City Contracted Vehicles must contain specifications reflecting the requirements set forth in this chapter, including the submission of compliance plans and reports described in subdivision (c) of this section, which specifications will be reviewable by DCAS.

(1) Contracts may include additional charges by the Contractor for the installation of Side Guards at a price not to exceed $3,000.00 per vehicle unless otherwise approved by DCAS, in its sole discretion.

(2) Contractors shall ensure that the Subcontractors have access to funding to add Side Guards to City Contracted Vehicles used in City Agency Contracts. Contractors shall reimburse Subcontractors for the costs of any Side Guards installed on vehicles which are required to comply with these rules.

(3) Contractors must provide a list of vehicles that require retrofits to be performed, as well as an affidavit stating that any add-on fees for Side Guard installations will only be included for trucks not previously equipped with Side Guards under any City contract or otherwise previously fitted and equipped with operational Side Guards.

(b) *Phase-in Period for City Contracted Vehicles.* Except when a Contractor or a Subcontractor is granted an exemption pursuant to 55 RCNY § 15-04, the requirements of this chapter will apply. Side Guards must be installed and fully operational no later than:

(1) Twelve (12) months from the issuance of a Notice to Proceed pursuant to an individual Contract utilizing ten (10) or fewer Large Vehicles; or

(2) Eighteen (18) months from the issuance of a Notice to Proceed pursuant to an individual Contract utilizing more than ten (10) Large Vehicles.

(c) *Compliance Plan and Reports.* Any Contract entered after the Effective Date must require the Contractor to submit the following to the Chief Fleet Management Officer:

(1) A written compliance plan within fourteen (14) days following the Notice to Proceed or the placing of the first order under the Contract, as applicable.

(2) A report that includes the following information, submitted six (6) months following the Notice to Proceed or the placing of the first order under the Contract, as applicable, or when requested by the Chief Fleet Management Officer:

(i) the number of Large Vehicles used in the performance of the Contract by the Contractor and any Subcontractor;

(ii) the number of Large Vehicles used in the performance of the Contract by the Contractor and any Subcontractor that are retrofitted with safety enhancing equipment as required by these rules;

(iii) one or more photographs of both sides of each Large Vehicle used in the performance of the Contract by the Contractor and any Subcontractor that is retrofitted with safety enhancing equipment as required by these rules. The photographs must also show the Large Vehicle's license plate number with the safety enhancing equipment fitted on the vehicle; and

(iv) a certification that the Contractor and any Subcontractor under the Contract have complied with the requirements of these rules.

(3) The Chief Fleet Management Officer will review written compliance plans and reports to confirm that the Agency or Contractor (including its Subcontractor) meets the requirements of these rules.

(d) *Record Retention and Audits.*

(1) Contractors and their Subcontractors must keep records of their Compliance Plans and Reports for a period of six (6) years from the date of the Notice to Proceed, or from the payment of the last invoice pursuant to their Contract with the City, whichever occurs later.

(2) At any time during a Contract, or during the record retention period set forth in subdivision (d) of 55 RCNY § 15-03, DCAS will have, upon reasonable notice, full access to and the right to request and inspect documents and records in accordance with applicable law that are maintained or retained by or on behalf of the Contractor and its Subcontractor pursuant to such subdivision (d).

(e) DCAS is authorized to request and perform the physical inspection of any Large Vehicle used in the performance by an Agency, Contractor or Subcontractor, in order to ensure compliance with contract provisions required by this chapter, in accordance with applicable law.

(Added City Record 10/7/2022, eff. 11/6/2022)

§ 15-04 Exemptions.

(a) City Agencies and Contractors (including on behalf of any of its Subcontractors using Large Vehicles in the performance of the Contract) may submit an application, on a form available on DCAS' website, to the Chief Fleet Management Officer for an annual exemption from the requirements of these Rules if they have determined that compliance is impractical; or it will disrupt provision of public safety or public health services; or there are limitations in the capacity of vendors to supply Side Guards; or because the vehicle cannot maintain a Side Guard due to the design or operations of such vehicle.

(b) Contractors (including on behalf of any of its Subcontractors using Large Vehicles in the performance of the Contract)may also submit requests for an exemption from the timeframes of the installation schedule set forth in 55 RCNY § 15-03 based on a claim of undue financial hardship. However, Contractors will have the opportunity to account for and factor in the costs for Side Guards as part of the bid pricing they submit for a Contract as part of Contract pricing structures. An exemption request based on financial hardship must satisfactorily explain why the financial hardship has remained despite the opportunity for the Contractor to account for the costs in its bid prices.

(c) Exemptions may be available if one or more of the following circumstances exist and there is sufficient evidence or proof provided with respect to such circumstances:

(1) Supply chain disruption;

(2) Delays in the commencement of work or payments which are not caused by the fault of the Contractor;

(3) If removing the vehicle from service would have a material effect on the contractor's ability to perform work under the Contract;

(4) Natural or man-made emergencies. For purposes of this paragraph, "natural or man-made emergencies" means acts or events beyond the control and without any fault or negligence of the Contractor. Such events may include, but are not limited to, pandemic, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor; or

(5) Any other circumstance, whether or not anticipated or found to be usual or typical, which is accompanied by supporting information provided pursuant to paragraph (d) of this subdivision.

(d) The application for an exemption must include all of the following information and statements, to be verified in an affidavit accompanying the application:

(1) A list of all Large Vehicles that the applicant owns, leases or otherwise controls to conduct the applicant's business; and

(2) A statement, accompanied by supporting documents, and if applicable, financial statements, that retrofitting the applicant's Large Vehicles in order to comply with these rules is impractical; or would disrupt provision of public safety or public health services; or would cause the applicant to suffer an undue financial hardship.

(e) The Chief Fleet Management Officer will evaluate an exemption request and make a determination within 90 days of receipt whether to approve or deny such request.

(f) An annual exemption granted pursuant to this section will expire one year from the date it has been granted, except for exemptions granted pursuant to 55 RCNY § 15-02(b)(2). Exemptions granted pursuant to such paragraph will remain applicable as long as the specific vehicle(s) are in operation by the Agency or, as to a Contractor or Subcontractor, the life of the Contract with the City.

(g) The Chief Fleet Management Officer may renew an exemption for additional one-year periods in the event that the Agency, a Contractor or a Subcontractor submits a written statement verified by affidavit that such Agency, a Contractor or a Subcontractor continues to be eligible for the exemption. The Chief Fleet Management Officer retains the discretion to reject an exemption request if, based on such Officer's determination, circumstances have changed that would obviate the basis for such previously granted exemption. Applications to renew an exemption must be submitted using the form available on DCAS' website.

(h) The Chief Fleet Management Officer shall have the sole authority to grant a exemption of the requirements set forth in these rules.

(i) *Appeals.*

(1) If the Chief Fleet Management Officer denies the request for exemption and/or extension of exemptions from the requirements of these rules, the Contractor or Subcontractor may appeal in writing to the Commissioner or their designee within 30 days of receipt of the Chief Fleet Management Officer's determination, on a form available on DCAS' website. Receipt of notice by the Contractor or Subcontractor shall be deemed to be no later than five (5) days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the Commissioner or their designee.

(2) The written appeal by the Contractor must briefly state all the facts or other bases upon which the Contractor contests the Chief Fleet Management Officer's determination, and must include supporting documentation.

(3) The Commissioner or their designee will consider the merits of the Contractor's appeal and provide a written decision no later than 90 days after receipt of such appeal.

(Added City Record 10/7/2022, eff. 11/6/2022)

§ 15-05 Violations.

(a) A Contractor may be assessed up to $4,000 for each City Contracted Vehicle, including those vehicles used on behalf of the Contractor by its Subcontractor(s), that are found to be out of compliance with the requirements of these rules.

(b) In addition to other remedies provided by law or specified in the Contract, any person who knowingly makes a false statement of material fact to any City Agency with respect to the financial condition of the Contractor submitted in connection with a request for an exemption from compliance with these Rules may be fined not less than $100 nor more than $1,000 for each such false statement and the person on whose behalf such false, deceptive or fraudulent representation was made, shall thenceforth be disqualified from bidding on any contracts for the City.

(c) For purposes of this section, a person knowingly makes a false statement of material fact when such statements regarding the Contractor's financial condition fail to comply with the standards set forth in Administrative Code § 6-112.

(d) A Contractor shall be responsible and liable for the actions or omissions of its subcontractor(s), and for any assessments imposed upon such subcontractor(s) pursuant to these rules.

(Added City Record 10/7/2022, eff. 11/6/2022)

§ 15-06 Vehicles Regulated by the Business Integrity Commission (BIC).

In the event that a City Contracted Vehicle is also a vehicle licensed or regulated by the New York City Business Integrity Commission (BIC), any laws or rules applicable to or promulgated by BIC will govern with respect to Side Guard matters addressed by these rules.

(Added City Record 10/7/2022, eff. 11/6/2022)

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT G

Iran Divestment Rider

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:

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT H

NYC Mayoral Executive Order 39 Rider

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 basis[1]. This includes those vehicles anticipated to be provided or used by subcontractors to fulfill the scope of a subcontract for work to be performed under a contract that is subject to the Executive Order, regardless of monetary value of the subcontract, if the vehicle is utilized on a weekly or more frequent basis.

D. Contracting Agency: the City agency or office through which the City of New York has entered into this Agreement.

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

E. Contractor: the entity providing services under this Agreement.

F. Executive Order: Mayoral Executive Order 39 of 2024, as it may be amended.

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

H. Registration: Registration of this Agreement pursuant to Section 328 of the New York City Charter.

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

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

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

L. Vehicle Safety Plan: A plan with regard to City-contracted Vehicles, approved by the Contracting Agency, that includes the components listed in Section 2.03(A) through (F) of this rider.

Section 2.01 Vehicle Requirements

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

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

B. Truck Side-guards: Contractor shall provide side-guards for City-contracted Vehicles as applicable pursuant to Section 6-141 of the New York City Administrative Code.

C. Telematics: All City-contracted Vehicles must be installed with Telematics. Data gathered by Telematics must be made available in a manner that is satisfactory to the Contracting Agency.

Section 2.02 Safety Requirements

Contractor shall provide the following:

A. Licensing: Contractors shall ensure proper licensing for all drivers who operate City-contracted Vehicles. Contractors shall ensure that all drivers operating City-contracted Vehicles are enrolled in the New York State License Notification System (LENS) and that all out-of-state licenses are being monitored by Contractor. Contractor must notify the Contracting Agency of any license suspensions and/or arrests tied to unsafe or illegal vehicle operation by any drivers of City-contracted Vehicles.

B. Training: Contractor must provide the Contracting Agency documentation, satisfactory to the Contracting Agency, showing:
    a. That all drivers of City-contracted Vehicles have taken a New York State approved defensive driving class within six months after Registration; or
    b. That all drivers of City-contracted Vehicles have attended a New York State-approved defensive driving class within 3 years prior to Registration; or
    c. That all drivers of City-contracted Vehicles have received alternative safe driver training acceptable to the Contracting Agency that is documented to the satisfaction of the Contracting agency.

C. Crash tracking: Contractors must notify the Contracting Agency of any and all collisions that take place involving City-contracted Vehicles while performing services under this Agreement.

Section 2.03 Vehicle Safety Plan

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

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

A. Vehicle List: List of City-contracted Vehicles, including the year, make, model, VIN and license plate number of each City-contracted Vehicle;

B. Safety Training: Documentation showing that all drivers of City-contracted Vehicles have completed the training detailed in section 2.02(B) of this Rider;

C. Technology: A list of all relevant technology investments installed on City-contracted vehicles, including but not limited to the technology listed in section 2.01 of this Rider;

D. Crash Tracking: An explanation of Contractor's process of monitoring and reviewing collisions including plans to notify Contracting Agency of collisions that take place while performing services under this Agreement;

E. Corrective Action: A corrective action program for drivers of City-contracted Vehicles that engage in unsafe or dangerous driving behaviors and license monitoring; and

F. Additional Safety Measures: Contractor must indicate if there are any additional safety technologies, safety practices, training, or other procedures that are utilized for City-contracted Vehicles during the term of this Agreement.

Section 3.01 Liquidated Damages

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

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

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

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

ATTACHMENT I

Subcontractor Reporting System Rider

SUBCONTRACTOR REPORTING SYSTEM RIDER

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of $100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

NYC DCAS
Citywide Administrative Services

Yume Kitasei
Commissioner

Roman Gofman
Deputy Commissioner
Citywide Procurement

90L Standard Service Contract

THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
OFFICE OF CITYWIDE PROCUREMENT
1 CENTRE STREET, NEW YORK, NY 10007

CONTRACT FOR SERVICES

The Department of Citywide Administrative Services ("DCAS" or "Department") and the Contractor (individually, "Party" and collectively, the "Parties"), in consideration of the mutual agreements herein contained, and pursuant to the Procurement Policy Board ("PPB") Rules, hereby agree as follows:

PART I
CONTRACT DEFINITIONS

Part I, General Definitions of the Standard Instructions for Bidders in the A Pages of the Bid Book shall be deemed a part of this Contract and any such defined terms shall, wherever they appear in this Contract, be construed as defined therein, unless a different meaning is clear from the context.

PART II
COOPERATIVE PURCHASING

All agencies of the City of New York, the Department of Education, Health and Hospitals Corporation, and the New York City Housing Authority, are entitled to use this Contract, upon the same terms and conditions as further detailed in this Contract and Contract Documents.

In addition, any governmental or quasi-governmental agency that has executed a cooperative purchasing Memorandum of Understanding ("MOU") with the City ("Participating Agency(ies)") may utilize this Contract with the consent of the Contractor, provided the Participating Agency pays any additional delivery charges outside the metropolitan area as agreed upon with the Contractor.

Participating Agencies and the Contractor acknowledge and agree that the responsibility with regard to performance of any such contract or any condition or term thereunder by either such Party thereto shall be borne, and is expressly assumed, by the Participating Agency and the Contractor; and not the City agency letting this Contract.

PART III
INSURANCE

1. AGREEMENT TO INSURE.
   The Contractor shall not commence performing Services under this Contract unless and until all insurance required by this Part III is in effect, and shall ensure continuous insurance coverage in the manner, form and limits required by this Part III throughout the term of the Contract. Minimum insurance amounts shall be detailed in the A Pages, attached hereto as part of the Contract Documents.

2. COMMERCIAL GENERAL LIABILITY INSURANCE.
   2.1 The Contractor shall provide Commercial General Liability Insurance covering the Contractor as Named Insured and the City including its officials and employees as Additional Insured. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 0001, and shall be "occurrence" based rather than "claims-made."

2.2 Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the latest edition of ISO Form CG 20 10 or ISO Form CG 20 26.

2.3 Such Commercial General Liability Insurance shall name all other entities designated as additional insureds in the A Pages of the Bid Book but only for claims arising from the Contractor's operations under this Contract, with coverage at least as broad as the latest edition of ISO Form CG 20 10 or ISO Form CG 20 26.

3. PROFESSIONAL LIABILITY INSURANCE.

3.1 At the Department's direction, if professional Services are provided pursuant to this Contract, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such Services to be provided under this Contract. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Contract arising out of the negligent performance of professional Services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

3.2 All subcontractors of the Contractor providing professional Services under this Contract for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the same amount as required of the Contractor, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

3.3 Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

4. WORKERS' COMPENSATION, DISABILITY BENEFITS, AND EMPLOYER'S LIABILITY INSURANCE.

The Contractor shall maintain, and ensure that each Subcontractor maintains, Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of, or with regard to, all employees providing Services under this Contract.

5. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

5.1 If vehicles are used in the provision of Services under this Contract, then the Contractor shall maintain Commercial Automobile Liability Insurance for liability arising out of ownership, maintenance or use of any owned (if any), non-owned or hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

5.2 If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

6. OTHER TYPES OF INSURANCE.

The Contractor shall provide such other types of insurance, at such minimum limits and with such conditions, as are specified in the A Pages.

7. GENERAL REQUIREMENTS FOR INSURANCE COVERAGE AND POLICIES.

7.1 All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

7.2 All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

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

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

7.5 Subject to the approval of the Commissioner, in his or her sole discretion, the Contractor may satisfy its insurance obligations under this Part III through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

7.6 In his or her sole discretion, the Commissioner may, subject to the approval of the Comptroller and the City Corporation Counsel, accept Letters of Credit and/or custodial accounts in lieu of required insurance.

7.7 The Contractor shall be responsible for providing continuous insurance coverage in the manner, form and limits required by this Contract and shall be authorized to perform Services only during the effective period of all required coverage. In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately notify the Commissioner in writing of such lapse as required by Section 8.6, stop providing Services, and shall not recommence providing Services until authorized in writing to do so by the Commissioner. Contract time shall continue to run during such periods and an extension of time shall only be granted in the Commissioner's sole discretion. The Commissioner may also declare the Contractor in default for failure to maintain required insurance.

8. PROOF OF INSURANCE.

8.1 For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage:

8.1.1 C-105.2 Certificate of Workers' Compensation Insurance;

8.1.2 U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance;

8.1.3 Request for WC/DB Exemption (Form CE-200);

8.1.4 Equivalent or successor forms used by the New York State Workers' Compensation Board; or

8.1.5 Other proof of insurance in a form acceptable to the City.

8.2 For each policy required by this Part III, except for Workers' Compensation Insurance, Employer's Liability Insurance, and Disability Benefits Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) days of award of this Contract. All Certificates of Insurance shall be (a) in a form acceptable to the City and the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to 2.2 hereinabove. All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form provided by the City or copies of all policies referenced in the Certificate of Insurance.

8.3 Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article 8 (Proof of Insurance). Such Certificates of Insurance shall comply with the requirements of Sections 8.1 and 8.2 herein, as applicable.

8.4 The Contractor shall provide the City with a copy of any policy required under this Part III upon the demand for such policy by the Commissioner or the New York City Law Department.

8.5 The Contractor shall not commence Work unless and until all required certificates have been submitted to and accepted by the Commissioner, the Contract has been registered by the Comptroller and DCAS issues a Notice to Proceed. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Part III (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

8.6 In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Part III shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, 1 Centre Street, Room 1005, New York, New York 10007.

9. MISCELLANEOUS.

9.1 Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Part III, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York together with its officials and employees as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York

City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

9.2 The Contractor's failure to maintain any of the insurance required by this Part III shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

9.3 Insurance coverage in the minimum amounts required in this Part III shall not relieve the Contractor or its subcontractors of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Contract or Law.

9.4 The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any liability insurance required under this Part III (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Contract.

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

9.6 There shall be no self-insurance program with regard to any insurance required under this Part III unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance under this Part III, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

9.7 The Contractor's failure to secure policies in complete conformity with this Part III, or to give an insurance company timely notice of any sort required in this Contract or to do anything else required by this Part III, shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

9.8 In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured thereunder, the Contractor shall ensure that the subcontractor name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

PART IV
TERMS AND CONDITIONS

1. COMPLIANCE WITH LAWS.
The Contractor shall perform all Services under this Contract in accordance with all applicable Laws as are in effect at the time such Services are performed.

2. PROCUREMENT POLICY BOARD.

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

3. SCOPE OF SERVICES.
The Contractor shall perform the Services described in the B Pages of the Bid Book and Specifications, if any, attached to this Contract in the manner and within the time herein specified.

4. TERM AND TIME OF PERFORMANCE.

4.1 The Term of this Contract shall be specified in the B Pages and may also be detailed in the Specifications. In the event of a conflict between the B Pages and the period reflected in the Specifications, the Specifications shall be controlling.

4.2 Options to renew this Contract, if any, shall be set forth in the B Pages.

4.3 Notwithstanding 4.2 above, pursuant to the PPB Rules, the Department has the option of extending the Contract Term for good and sufficient cause for a cumulative period not to exceed one (1) year from the date of expiration of the Contract.

4.4 Continuation of the Contract:
Notwithstanding the provisions of Section 4.1, in the event:

(a) A Purchase Order for Services is issued by an Agency during the term of the Contract, as such term is defined in the A Pages, Standard Instructions to Bidders, including the last day thereof; and,

(b) The Time of Performance specified in the Purchase Order extends beyond the Term of the Contract,

(c) Then and in such event, the Contract shall remain in full force and effect for whatever period of time is necessary for completion of such Purchase Order.

4.5 Non-Waiver. The performance by the Contractor of any Services after the Time of Performance shall not be deemed a waiver of the right of the Commissioner, his or her designee, the ACCO or other applicable Agency Head to terminate this Contract or to require the performance of any unperformed Service in accordance with this Contract or any other remedy whether contractual or otherwise stated at law or in equity.

5. CONTRACTOR RESPONSIBILITIES.

5.1 The Contractor shall perform the Services, as set forth in the Contract documents, and do all things incidental thereto.

5.2 Competent Workers. The Contractor shall employ only competent workers in the performance of this Contract. The Contractor's performance of this Contract, or of any other Services, shall not cause or result in a suspension of, delay in, or strike upon the Services to be performed hereunder by any of the trades working hereon or on any other contracts with the City. If, in the opinion of the ACCO, the Contractor violates such obligation, the ACCO, in his or her sole discretion and at his or her option, may either demand that any incompetent workers be replaced and not again employed in the performance of this Contract, which demand shall be complied with by the Contractor, or the ACCO may, upon notification to the Contractor, consider the Contractor in default.

5.3 The Contractor shall furnish all of the labor, machinery, equipment, materials and supplies necessary to perform all of the Services required for the complete and prompt execution of everything described or reasonably implied from, and in such manner as to comply with, the conditions and specifications as set forth in the Contract documents.

5.4 The Services required for the performance of this Contract includes any Services required to make the end result operative. If equipment, materials and/or methods are not detailed in drawings or specifications, but are required as industry standards for operative purposes, the Contractor will, at no additional cost to the City, provide such equipment, materials, and/or methods of a quality that meets both industry standards and is consistent with other Services provided under the Contract.

5.5 If equipment installation is required under the Contract, Contractor shall acquaint itself with conditions to be found at the site(s) and shall assume all responsibility for placing and installing equipment in the required locations.

5.6 All materials used in the installation of equipment shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound.

5.7 The Contractor shall protect the site(s) from damage and, at its own cost and expense, shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents.

5.8 Services shall be performed so as to cause the least inconvenience to the City and its Agencies and with proper consideration for the rights of other contractors or workers. The Contractor shall promptly perform its Services and shall coordinate its activities with those of other contractors.

5.9 Installation shall include the furnishing of any equipment, rigging and materials required to install or replace the contract item in the proper location. If any alteration, dismantling, excavation or the like is required to effect installation, the Contractor shall thereafter promptly restore the structure or site to its original condition.

5.10 Materials, equipment or supplies shall be stored at the sites only with the approval of the Agency and at the Contractor's sole risk. In general, Contractor should avoid such onsite storage to prevent possible damage to or loss of the material.

5.11 The Contractor shall clean up and remove all debris and rubbish resulting from its performance of Services as required or directed by the City, at its sole cost and expense. Upon completion of the Services, the premises shall be left in a neat unobstructed condition, broom clean and in satisfactory repair and order.

5.12 Substitution of Items. In the event a specified manufacturer's commodity listed in the Contractor's bid document becomes unavailable or cannot be supplied to the City by the Contractor for any reason beyond the Contractor's control, a product deemed by the ACCO to be the equal of the specified commodity must be substituted by the Contractor at no additional cost or expense to the City.

6. INSPECTION AND RISK OF LOSS.

6.1 The City shall have the right to inspect the goods and equipment upon which Services are performed at any place it may select. An inspection by the City shall in no way be deemed a waiver by the City of any right to later reject, revoke acceptance or recover damages for Services performed which are not in fact free from patent or latent defects; or of the Contractor's obligation to perform Services according to Specifications.

6.2 The Contractor agrees that the Services shall be in every respect at the risk of the Contractor until completed and accepted by the City.

7. NON-PERFORMANCE AND REJECTION.

7.1 Rejected Services. The City may withhold or revoke acceptance of or reject any Services which are found, upon examination, not to have been performed in strict conformance with the terms of this Contract. The City will send written notice of rejection to the Contractor at the address shown on the award.

7.2 Labels. Parts and equipment incorporated into the goods being serviced and which are customarily labeled or identified must have securely affixed thereto the original, unmutilated label or marking of the manufacturer. Failure to comply with this requirement may be considered sufficient cause for rejection. A label or marking required by any regulatory agency must be affixed to the parts or equipment furnished under this Contract.

8. REPRESENTATION AND WARRANTIES.

8.1 Conflicts of Interest.

8.1.1 The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Contract. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Contract.

8.1.2 Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official, other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Contract which affects her or his personal interest or the interest of any corporation, partnership or other entity in which she or he is, directly or indirectly, interested, nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Contract. This Section 8.1 (Conflicts of Interest) shall not prevent directors, officers, members, partners or employees of the Contractor from participating in decisions relating to this Contract where their sole personal interest is in the Contractor.

8.1.3 The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

8.2 Procurement of Contract.

8.2.1 The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Contract upon any agreement or

understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the Parties. The Contractor makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution of this Contract.

8.2.2 For any breach or violation of the representations and warranties set forth in 8.2.1 above, the Commissioner shall have the right to annul this Contract without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Contract. The rights and remedies of the City provided in this Section 8.2 (Procurement of Contract) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Contract.

8.3 Safe Working Conditions. The Contractor shall maintain safe working conditions during the performance of this Contract and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Services. The Contractor shall erect and maintain, as required by existing conditions and progress of the Services, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities, when applicable. Failure to maintain such conditions constitutes a breach of a material provision of this Contract.

8.4 Parts Guarantee. The Contractor warrants that parts and equipment incorporated into the goods being serviced are standard new equipment, the current model of regular stock product with all parts regularly used with the type of equipment serviced and that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

8.5 Vendex. The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor’s Office of Contract Services.

The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Contract, and represents and warrants that the information it and its principals have provided is accurate and complete.

8.6 Bankruptcy and Reorganization. In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

9. ASSIGNMENT AND SUBCONTRACTING.

9.1 Assignment. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract, without the prior written consent of the Commissioner. The

giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. When used in this Contract, the phrases "otherwise dispose of this Contract" and "other disposition" shall be broadly construed, and shall be deemed to include, without limitation, sale or transfer of all or a majority of the shares of the Contractor, if the Contractor be a corporation, or any change in controlling ownership of the Contractor, if the Contractor be a partnership, limited partnership or any other form of business entity.

9.1.1 Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

9.1.2 Before entering into any such assignment, transfer, conveyance or other disposal of this Contract, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified Services in accordance with the terms and conditions of this Contract. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

9.1.3 Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Contract, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Contract, except so much as may be necessary to pay the Contractor's employees.

9.1.4 The provisions of this Section 9.1 (Assignment) shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

9.1.5 This Contract may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

9.2 Subcontracting.

9.2.1 The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract, without the prior written approval of the Department. The Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the Services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department.

9.2.2 The Contractor acknowledges that the proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon

the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified Services in accordance with the terms and conditions of this Contract. The Department shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information.

9.2.3 All subcontracts shall contain provisions specifying that:

9.2.3.1 The Services performed by the subcontractor must be in accordance with the terms of the Contract between the City and the Contractor;

9.2.3.2 Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

9.2.3.3 Nothing contained in the agreement between the Contractor and the subcontractor, or under the Contract between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

9.2.3.4 The subcontractor specifically agrees to be bound by Part IV, Article 15 and Part V, Section 1.1 of this Contract and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

9.2.4 The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

9.2.5 For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

9.2.6 The Department may revoke the approval of a subcontractor granted pursuant to this Section 9.2 (Subcontracting) in writing if revocation is deemed to be in the interest of the City on no less than ten (10) days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all provision of Services under the Contract. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Contract beyond the effective date of the revocation. The City shall pay for Services provided by the subcontractor in accordance with this Contract prior to the effective date of revocation.

9.2.7 The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Contract.

9.2.8 Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 9.2 (Subcontracting).

10. LABOR PROVISIONS.

10.1 Independent Contractor Status. The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the

City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Contract, and they will not, by reason of this Contract, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

10.2 Employees.

10.2.1 All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform Services under this Contract are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their Services, direction, compensation, and personal conduct while engaged under this Contract. Nothing in the Contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Contract, nothing in this Contract shall impose any liability or duty on the City to any person or entity.

10.2.2 In performing the Services under this Contract, the Contractor is solely responsible for the necessary and adequate workers' compensation insurance, personal injury and property damage insurance, as further detailed in Part III of this Contract.

10.3 Removal of Individuals Performing Services. The Contractor shall not have anyone perform Services under this Contract who is not competent, faithful and skilled in the Work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful or unskilled, such individual shall no longer perform Services under this Contract.

10.4 Notice of Labor Disputes. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to the Department, including all relevant information with respect thereto.

10.5 Prohibited Acts. The Contractor shall not employ any labor or utilize materials or means which, during the course of this Contract, may in any way cause or result in strikes, Services stoppages, delays, suspension of Services or similar troubles by workers employed by the Contractor, by any of the trades working in or about the buildings and premises where Services are being performed under this Contract, by contractors or their subcontractors pursuant to other agreements or contracts or on any other building or premises owned or operated by the City, its agencies, departments boards or authorities. Any violation by the Contractor of these requirements shall be considered proper and sufficient cause for declaring the Contractor to be in default.

11. PRICING.

11.1 The Contractor, whenever required during the Contract, including but not limited to the time of bidding, shall submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a specified date.

11.2 The price of any change order, or contract modification subject to the conditions of 11.1 above shall be adjusted to exclude any significant sums by which the City finds that such price was based on cost or price data furnished by the Contractor which was inaccurate, incomplete or not current as of the date agreed upon between the Parties.

11.3 Time for Certification. The Contractor must certify that the cost or pricing data submitted are accurate, complete and current as of a mutually determined date.

11.4 Refusal to Submit Data. When any Contractor refuses to submit the required data to support a price, the ACCO may not allow the price.

11.5 Fund availability. This Contract shall be executory only to the extent of funds available to the Agency for the purchase of the Services. The Contractor acknowledges and is hereby given notice that financial obligations of the City payable under this Contract after the City's current fiscal year and all fiscal years thereafter are contingent upon funds for this Contract being appropriated, budgeted and otherwise made available.

12. PAYMENT

12.1 The City agrees to pay and the Contractor agrees to accept, as full payment for the complete and satisfactory performance of the Services required herein, an amount not to exceed the value as stated in the C Pages of the Bid Book or, in the case of a requirement Contract, the not to exceed value as stated on a Purchase Order issued by an Agency; such amount being based upon the Contractor's bid for the Services required as set forth in the Bid Book.

12.2 Prompt Payment. The prompt payment provisions of the PPB Rules, § 4-06, in effect at the time of this solicitation, will be applicable to payments made under this Contract.

12.2.1 Proper Invoice. A proper invoice means a written request for a Contract payment, submitted in good faith and setting forth the description, price and quantity of goods, property or Services delivered or rendered, in such form and supported by such documentation as the Department may require; and any other documents required by this Contract.

12.2.2 Proper invoices, when submitted, will be payable within thirty (30) days of the invoice received and accepted date ("IRA Date"), as defined in the prompt payment provisions of the PPB Rules.

12.2.3 The Contractor shall submit a proper invoice to receive payment, except where this Contract provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

12.2.4 When periodic Services are performed during the month, such invoices will be payable within thirty (30) days after either the end of the month, the receipt of invoices or acceptance of the Services, whichever date is latest.

12.2.5 Determinations of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

12.2.6 The Department may designate this Contract and the items specified herein as subject to a longer acceptance period to afford a practicable opportunity to evaluate the Services. In such a case, the actual date of acceptance by the Department shall substitute the IRA Date.

12.3 Partial Payment. Whenever tests or analyses required on a contract for services are not complete when invoices have been duly rendered, the Contractor may be paid a partial sum for the Services performed, as shall be determined by the Agency.

12.4 Claims against Contractor. Any claim against the Contractor may be deducted by the City from any money due the Contractor under this Contract. If no such deduction or only a partial deduction is made in such fashion the Contractor shall pay to the City the amount of such claim or the portion of the claim still outstanding, on demand.

12.5 Non-performance. In the event of a question of non-performance, payment may be withheld in whole or in part, at the discretion of the ACCO or the Agency, if so delegated.

12.6 Final Payment and Estoppel.

12.6.1 Final Payment. The acceptance by the Contractor or its assignees of the final payment under this Contract, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Contract based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

12.6.2 City Not Estopped. Neither the City, nor any agency, officer or employee thereof, shall be precluded or estopped by any determination, decision, order, letter, payment or certificate made or given by any officer, inspector, employee, agent or appointee of the City, or under any provision of this Contract, from showing at any time, either before or after the complete performance and acceptance of the performance of this Contract and the last payment hereunder, the actual nature of the Services performed by the Contractor, or any person under this Contract; or from showing at any time that any certificate upon which the payment is made for any or all of the Services is untrue or incorrect, or improperly made in any particular, or that the Services or any part thereof performed by the Contractor do not conform to this Contract. The City shall have the right to demand and recover from the Contractor such damages as it may suffer by reason of Contractor's failure to comply with this Contract notwithstanding any return or certificate and payment in accordance therewith, signed by any official of the City, and such right of the City shall include recovery for any payment made for any or all of the Services performed and accepted.

12.6.3 Statement of Claim. Contractor shall not be barred from commencing an action for breach of contract under this provision provided that a detailed and verified

statement of claim is served upon the Agency and Comptroller not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items. Should the provisions of this subsection conflict with those of Part IV, Sub-section 19.4.2 (Claims and Actions), the provisions of Part IV, Sub-section 19.4.2 shall control.

12.7 Electronic Funds Transfer.

12.7.1 In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Contract, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at http://www.nyc.gov/dof in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Contract. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

12.7.2 The Agency Head may waive the application of the requirements of this Section 12.7 (Electronic Funds Transfer) to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section 12.7 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

12.7.3 This Section 12.7 (Electronic Funds Transfer) is applicable to contracts valued at twenty-five thousand dollars ($25,000) and above.

13. INDEMNIFICATION AND PROTECTION OF PERSONS AND PROPERTY.

13.1 Reasonable Precautions.

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Contract.

13.2 Indemnification. The Contractor shall defend, indemnify and hold the City, its officials and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property, except for normal wear and tear, and from costs and expenses to which the City, its officials and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the

provisions of this Contract or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

13.3 Infringement Indemnification.
The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Contract, or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Contract. The Contractor shall defend, indemnify and hold the City, its officials and employees harmless regardless of whether or not the alleged infringement arises out of compliance with the Contract's scope of Services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

13.4 Protection of City Property.
The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Contract, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Contract or of Law by the Contractor, its officers, employees, agents or subcontractors.

13.5 Indemnification Obligations Not Limited By Insurance Obligation
The indemnification provisions set forth in this Article 13 shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Contract.

13.6 Actions By or Against Third Parties.

13.6.1 In the event any claim is made or any action brought in any way relating to this Contract, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

13.6.2 The Contractor shall report to the Department in writing within five (5) business days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Contract.

13.7 Withholding Payments.

13.7.1 In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City, its officials and employees pursuant to this Contract, the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover said claim or action.

13.7.2 In the event that any City property is lost or damaged as set forth in Section 13.4 (Protection of City Property) hereinabove, except for normal wear and tear,

the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover such loss or damage.

13.7.3 The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Part III has accepted the City's tender of the claim or action without a reservation of rights.

13.7.4 The City may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Contract up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Contract.

13.7.5 The rights and remedies of the City provided for in this Section 13.7 shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Contract.

13.8 No Third Party Rights.
The provisions of this Contract shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

14. COPYRIGHTS, PATENTS, INVENTIONS AND ANTITRUST.

14.1 Copyrights.

14.1.1 Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Contract, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Contract, shall upon their creation become the exclusive property of the City.

14.1.2 Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Contract ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Contract without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

14.1.3 The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

14.1.4 The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is

in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.

14.1.5 If the Services under this Contract are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Contract.

14.1.6 If the Contractor publishes a work dealing with any aspect of performance under this Contract, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

14.2 Patents and Inventions. The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Contract. If the Services under this Contract are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

14.3 Pre-existing Rights. In no case shall Sections 14.1 (Copyrights) and 14.2 (Patents and Inventions) apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Contract that existed prior to or was developed or discovered independently from the activities directly related to this Contract.

14.4 Antitrust. The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or Services procured by the City under this Contract.

15. RECORDS AND AUDITS.

15.1 Audits. This Contract and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Contract, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

15.1.1 Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the

powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

15.1.2 The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by the Department and by the Comptroller in the exercise of his or her powers under Law.

15.1.3 The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 15.1 (Audits).

15.2 Confidentiality.

15.2.1 The Contractor agrees to hold confidential, both during and after the completion or termination of this Contract, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Contract, by using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in 15.2.2 of this Section (Confidentiality), the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section (Confidentiality) to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL").

15.2.2 The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. The Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide prompt written notice of such to the Department. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Contract are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, if any.

15.2.3 The Contractor shall restrict access to confidential information to persons who have a legitimate work-related purpose to access such information; and agrees to instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Contract.

15.2.4 The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Contract, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the Services provided or the data collected pursuant to this Contract at least twenty-four (24) hours prior to any statement to the press or at least five (5) business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 15.2 (Confidentiality).

15.2.5 At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors and shall destroy any such confidential information stored electronically and certify such destruction to the Department in writing. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in this Section 15.2 (Confidentiality).

15.2.6 A breach of this Section 15.2 (Confidentiality) shall constitute a material breach of this Contract for which the Department may terminate this Contract. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

15.3 Records.

15.3.1 Books and Records. The Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

15.3.2 Retention of Records. The Contractor agrees to retain all books, records, and other documents relevant to this Contract, including those required pursuant to 15.3.1 above, for six (6) years after the final payment or expiration or termination of this Contract, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Contract has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic

format provided that the records satisfy the requirements of New York Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

15.3.3 No Removal of Records from Premises. Where performance of this Contract involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during this Contract or after this Contract has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

15.3.4 Inspections at Site. At any time during this Contract or during the record retention period set forth in 15.3.2 above, the City, including the Department and the Department's Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Section 15.3 (Records). Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Contract shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

15.3.4.1 The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the Services being performed.

15.3.4.2 The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Sub-section 15.3.4 (Inspections at Site).

15.3.5 Electronic Records. As used in this Contract, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

15.4 Investigations.

15.4.1 The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction,

submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

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

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

15.4.3 (a) The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the Parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to 15.4.5 below without the City incurring any penalty or damages for delay or otherwise.

15.4.4 The penalties that may attach after a final determination by the Commissioner or Agency Head may include, but shall not exceed:

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

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

accrued prior to the cancellation or termination shall be paid by the City.

15.4.5 The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs 15.4.5.3 and 15.4.5.4 below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs 15.4.5.3 and 15.4.5.4, in addition to any other information that may be relevant and appropriate:

15.4.5.1 The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

15.4.5.2 The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

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

15.4.5.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph 15.4.4 above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in paragraph 15.4.3 (a) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

15.4.6 Definitions. The following definitions shall apply to this Section 15.4 (Investigations):

15.4.6.1 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

15.4.6.2 The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

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

15.4.6.4 The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

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

16. RESOLUTION OF DISPUTES.

16.1 Except as provided in Sections 16.1(a) and 16.1(b) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this Article 16 (Resolution of Disputes) and PPB Rules § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

(a) This Article 16 (Resolution of Disputes) shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or the termination other than for cause.

(b) For construction and construction-related services, this Article 16 (Resolution of Disputes) shall apply only to disputes about the scope of Work delineated by this Contract, the interpretation of Contract documents, the amount to be paid for extra Work or disputed work performed in connection with this Contract, the conformity of the Contractor's Work to this Contract and the acceptability and quality of the Contractor's Work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the Contractor disagrees.

16.2 All determinations required by this Article 16 (Resolution of Disputes) shall be clearly stated with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Article shall be deemed a non-determination without prejudice that will allow application to the next level.

16.3 During such time as any dispute is being presented, heard and considered pursuant to this Article 16 (Resolution of Disputes), the Contract terms shall remain in full force and effect and the Contractor shall continue to perform Work in accordance with this Contract and as directed by the ACCO or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the Contractor to continue the Work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Article and a material breach of contract.

16.4 Presentation of Dispute to Commissioner.

16.4.1 Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Commissioner within thirty (30) days of receiving written notice of the determination or action that is the subject

of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Commissioner all materials she or he deems pertinent to the dispute. Following initial submissions to the Commissioner, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

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

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

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

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

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

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

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

16.5.4 Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from her or his receipt of all materials referred to in 16.5.3 above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of this Contract between the Parties.

16.6 Contract Dispute Resolution Board. The CDRB is composed of:

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

(b) the CCPO or his or her designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

(c) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute.

Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

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

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

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

16.7.3 Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion,

may combine more than one dispute between the Parties for concurrent resolution.

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

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

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

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

16.8 Any termination, cancellation, or alleged breach of the Contract, prior to or during the pendency of any proceedings pursuant to this Article 16 (Resolution of Disputes) shall not affect or impair the ability of the Commissioner or CDRB to make a binding and final decision pursuant to this Article.

16.9 Notwithstanding the foregoing, for the purposes of Purchase Orders issued pursuant to this Contract, the term "Commissioner" or "Agency Head" shall, in this Article 16 (Resolution of Disputes) be defined as the Commissioner or Agency Head of a User Agency.

17. CONTRACT CHANGES.

17.1 Changes to this Contract shall be approved by the ACCO, or her or his designee, and the Contractor, in writing, and shall be reflected in a change order; which, once authorized, shall become part of the original Contract. A Contractor deviating from the requirements of an original Purchase Order or Contract, without a duly approved change order document, written Contract modification or amendment, does so at its own risk.

17.2 Contract changes will be made only for Services necessary to complete the Services included in the original scope of this Contract and non-material changes to the scope of

the Contract. Changes are not permitted for any material alteration in the scope of work/services or for the insertion of a renewal clause to the Contract.

17.3 Price Adjustments.

17.3.1 The Contractor may be entitled to a price adjustment for extra Work performed pursuant to a written change order. If any part of this Contract Work is necessarily delayed by a change order, the Contractor may be entitled to an extension of Time of Performance. Adjustments to price shall be validated by using appropriate price and cost analysis and agreed upon in writing by both Parties.

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

17.3.3 Price Adjustments for Type "C" Requirement Contracts. Where a Requirement Contract contains price adjustment provisions, Contract changes shall be made in accordance with those provisions. Where no price adjustment provisions are specified, the City may seek a price decrease where there is evidence that market pricing is lower than contract pricing. If a Contractor does not agree to the price adjustment, in addition to any other remedy of the City under this contract, the City may terminate the contract in accordance with Part IV, Article 18 (Termination) herein.

17.3.4 Except in the case of Requirement Contracts, any Contract increases which cumulatively exceed the greater of 10% of the original contract amount or $500,000.00 must be approved in writing by the CCPO. Any amendment which amends a unit price, cancels required units or adds a new type of unit item to this Contract must be approved in writing by the ACCO.

17.4 Changes Through Fault of Contractor. In the event that any change is required in the data, documents, deliverables, or other Services to be provided under this Contract because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

18. TERMINATION.

18.1 Termination by the City Without Cause.

18.1.1 The City shall have the right to terminate this Contract without cause, in whole or in part at any time.

18.1.2 If the City terminates this Contract pursuant to this Section 18.1 (Termination by the City Without Cause), the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in accordance with Section 18.5 (Procedures for Termination). The City shall pay for Services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City

in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

18.2 Reductions in Federal, State and/or City Funding.

18.2.1 This Contract is funded in whole or in parts by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of Services of this Contract caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, Services or Service components, the reduction or elimination of Contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this Section 18.2 shall be accompanied by an appropriate reduction in the Services performed under this Contract.

18.2.2 Any such notice of reduction to the Contractor, as referred to in 18.2.1 above, shall be effective as of the date set forth therein, but not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), Service(s), Service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

18.2.3 If the City reduces funding pursuant to this Section 18.2, the City shall pay for Services provided in accordance with this Contract prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

18.2.4 To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the Services contained within the scope of a program under this Contract, then the notice and effective date provisions of this Section 18.2 shall not apply, and the Department may reduce such public funds authorized under this Contract by informing the Contractor of the amount of the reduction and revising attachments to this Contract as appropriate.

18.3 Contractor Default.

18.3.1 The City shall have the right to declare the Contractor in default:

(a) Upon a breach by the Contractor of a material term or condition of this Contract, including unsatisfactory performance of the Services; or if

(b) The Contractor stops providing the Services to the City; or if

(c) The Contractor shall, without just cause, reduce its working force to a number which, if maintained, would be insufficient in the opinion of the Commissioner, to perform the Services in accordance with the terms of the Contract; or if

(d) The Contractor fails or refuses to increase sufficiently such working force when ordered to do so by the Commissioner; or if

(e) The Contractor sublets, assigns, transfers, converts or otherwise disposes of this Contract other than as herein specified; or sells or assigns a majority interest in the Contractor; or if

(f) The Contractor fails to secure and maintain all required insurance; or if

(g) A receiver(s) is appointed to take charge of the Contractor's property or affairs; or if

(h) The Commissioner shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if

(i) The Commissioner shall be of the opinion that the Services cannot be completed within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Commissioner's opinion, attributable to conditions within the Contractor's control; or if

(j) The Services are not completed within the time herein provided therefor or within the time to which the Contractor may be entitled to have such completion extended; or if

(k) Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Services, the Project, or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made; or if

(l) Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors; or if

(m) The Contractor refuses or fails to proceed with the Services under this Contract when and as directed by the Commissioner; or if

(n) The Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of this Contract under any state or federal law of any of the following:

(i) a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

(ii) fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

(iii) a criminal violation of any state or federal antitrust law;

(iv) violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(v) conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

(vi) an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City Vendor; or if

(o) The Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or if

(p) The Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

18.3.2 The right to declare the Contractor in default for any of the grounds specified or referred to in this Section 18.3 (Contractor Default) shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend Services under this Contract pending the outcome of the default proceedings pursuant to this Section 18.3.

18.3.3 If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 18.3 (Contractor Default). Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business Days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

18.3.4 After the opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default pursuant to this Section 18.3, in accordance with Section 18.5 (Procedures for Termination).

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

18.3.6 Buy Against. In the event the Contractor either (i) fails to perform or (ii) is declared in default by the Commissioner, the Commissioner may have the Services under this Contract completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules § 4-07. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. The cost of re-letting is hereby determined to be five hundred dollars ($500.00).

18.3.6.1 Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under this Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

18.3.6.2 The term of a buy-against Contract shall not exceed the balance of the term remaining on the original Contract, without renewals, or such interval necessary to complete the original Services as agreed upon by the ACCO and the new vendor, whichever is longer.

18.4 Force Majeure.

18.4.1 For the purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

18.4.2 In the event the Contractor cannot comply with the terms of this Contract (including any failure by the Contractor to make progress in the performance of the Services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate this Contract.

18.4.2.1 If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of this Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate this Contract. Such a termination shall be deemed to be without cause.

If the City terminates this Contract pursuant to this Section 18.4 (Force Majeure), the City shall not incur or pay any further obligation pursuant

to this Contract beyond the termination date and shall pay for Services provided in accordance with this Contract prior to the termination date.

Any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

18.4.2.2 If the performance of the Contractor is delayed because of a Force Majeure Event, an extension of time may be granted by the ACCO. Should a Force Majeure Event create an emergency thus necessitating the purchase of all or any part of the Contract Services elsewhere, which necessity shall be conclusively determined by the ACCO, the ACCO shall have the right to purchase such Services elsewhere without liability to the Contractor. To the extent such purchases are made, the City shall be relieved of the obligation to purchase the Services from the Contractor and the Contractor shall be relieved of the obligation to furnish such Services to the City.

18.5 Procedure for Termination.

18.5.1 The Department and/or the City shall give the Contractor written notice of any termination of this Contract. Such notice shall specify the applicable provision(s) under which this Contract is terminated and the effective date of the termination. Except as otherwise provided in this Contract, the notice shall comply with the provisions of this Section 18.5. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates this Contract in part, the Contractor shall continue the performance of this Contract to the extent not terminated.

18.5.2 Upon termination or expiration of this Contract, the Contractor shall comply with the City close-out procedures, including but not limited to:

(a) Accounting for and refunding to the Department, within forty-five (45) days, any unexpended funds which have been advanced to the Contractor pursuant to this Contract;

(b) Furnishing within forty-five (45) days, an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Contract and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

(c) Turning over to the Department or its designees all books, records, documents and material specifically relating to this Contract within forty-five (45) days that the Department has requested be turned over;

(d) Submitting to the Department, within ninety (90) days, a final statement and report relating to this Contract. The report shall be made by a certified public accountant or a licensed public accountant; and

(e) Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

18.6 Miscellaneous Provisions.

18.6.1 The Commissioner, in addition to any other powers set forth in this Contract or by operation of Law, may suspend, in whole or in part, any part of the Services to be provided under this Contract whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Contract pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Contract beyond the suspension date until such suspension is lifted. The City shall pay for Services provided in accordance with this Contract prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Contract.

18.6.2 Notwithstanding any other provisions of this Contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of this Contract, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

18.6.3 The rights and remedies of the City provided in this Article 18 (Termination) shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Contract.

19. CLAIMS.

19.1 Choice of Law. This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the laws of the United States, where applicable.

19.2 Jurisdiction and Venue.

19.2.1 The Parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be solely heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York located in the City and County of New York. The Parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum.

19.2.2 If the Contractor commences any action in breach of this Section 19.3, the Contractor shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

19.3 Claims and Actions.

19.3.1 Any claim against the City based on this Contract or arising out of this Contract, that is not subject to dispute resolution under the PPB Rules or this Contract, shall not be made or asserted in any legal proceeding, unless the Contractor

has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as herein provided.

19.3.2 No action shall lie or be maintained against the City by Contractor upon any claims based upon this Contract unless such action shall be commenced within six (6) months after the date of filing in the Office of the Comptroller of the City of the voucher for final payment hereunder, within six (6) months of the termination or conclusion of this Contract or within six (6) months after the accrual of the cause of action, whichever first occurs.

19.3.3 In the event a claim is made or an action brought in any way relating to the Contract herein, the Contractor shall diligently render to the Department and/or the City of New York, without additional compensation, any and all assistance which the Department and/or City may require of the Contractor.

19.3.4 The Contractor shall report to the Department in writing, within three (3) working days of the initiation by or against the Contractor, any legal action or proceeding in connection with or relating to this Contract.

19.3.5 No Claim against Officers, Agents or Employees. No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Contract.

19.3.6 No Waiver. Waiver by either the Department or the Contractor of a breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless and until the same shall be agreed to in writing by the Parties as required herein and attached to the original Contract.

20. NOTICE AND COMMUNICATIONS.

20.1 The Contractor hereby designates the business addresses specified in its bid and the Department hereby designates 1 Centre Street, New York, New York 10007 as the places where all notices, directions, or communications ("Communications") from one such Party to the other Party shall be delivered, or to which they shall be mailed. Either Party may change its notice address at any time by an instrument in writing executed and acknowledged by the Party making such change and delivered to the other Party in the manner as specified below. Any Communications by the Contractor to the Department must include a copy submitted to the ACCO and the Contract manager.

20.2 Any Communications from either Party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

20.3 Nothing in this Article 20 (Notice and Communications) shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the CPLR.

21. ADDITIONAL PROVISIONS.

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

21.2 Headings. Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Contract.

21.3 Political Activity. The Contractor's provision of Services under this Contract shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Contract be used for such purposes.

21.4 Religious Activity. There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of Services under this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

22. MERGER.

This written Contract contains all the terms and conditions agreed upon by the Parties, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the Parties, or to vary any of the terms contained in this Contract, other than a written change, amendment or modification duly executed by both Parties pursuant to Part IV, Article 17 (Contract Changes) of this Contract.

PART V
APPLICABLE LAWS

1. NON-DISCRIMINATION.

1.1 Equal Employment Opportunity.

1.1.1 This Contract is subject to the requirements of City Executive Order No. 50 (April 25, 1980) (§ 10-14) ("E.O. 50"), as revised and the rules set forth at 66 RCNY § 10-01 et seq. No Contract will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

(a) Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

(b) Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

(c) Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status or is an equal employment opportunity employer;

(d) Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder;

(e) Will furnish before this Contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§ 10-14), the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

(f) Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations and orders.

1.1.2 The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, such noncompliance shall constitute a material breach of this Contract and noncompliance with E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules

of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

(a) Disapproval of the Contractor; or
(b) Suspension or termination of this Contract; or
(c) Declaring the Contractor in default; or
(d) In lieu of any of the foregoing sanctions, imposition of an employment program.

1.1.3 Failure to comply with E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

1.1.4 The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or Purchase Order in excess of One Hundred Thousand Dollars ($100,000.00) to which it becomes a party unless exempted by E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or Purchase Order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

1.1.5 The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

1.1.6 Nothing contained in this Section 1.1 (Equal Employment Opportunity) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

1.2 New York Labor Law, § 220-e. This Section 1.2 applies to a contract for the construction, alteration or repair of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies.

1.2.1 In the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates;

1.2.2 Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the

performance of Work under this Contract on account of race, creed, color, disability, sex or national origin;

1.2.3 There may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of Fifty Dollars ($50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and

1.2.4 This Contract may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 1.2.

1.2.5 The provisions of this Section 1.2 shall be limited to operations performed within the territorial limits of the State of New York.

1.3 New York City Administrative Code, § 6-108. If this Contract is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale or distribution of materials, equipment or supplies, the Contractor agrees, as required by the New York City Admin. Code § 6-108, that:

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

1.3.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph 1.3.1 above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

1.3.3 Breach of the foregoing provisions shall be deemed a breach of a material provision of this Contract.

1.3.4 Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 1.3 shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars ($100.00) or by imprisonment for not more than thirty (30) days, or both.

1.4 New York City Administrative Code, § 6-123. As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Contract for an amount in excess of Fifty Thousand Dollars ($50,000.00) that such subcontractor shall not engage in any such unlawful discriminatory practice.

2. WHISTLEBLOWER EXPANSION ACT.

2.1 In accordance with Local Law Nos. 30-2012 and 33-2012, codified at Sections 6-132 and 12-113 of the New York City Admin. Code, respectively:

2.1.1 Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of

information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this 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 CCPO, ACCO, Agency Head or Commissioner.

2.1.2 If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph 2.1.1 of Section 2.1 of this Article 2 (Whistleblower Expansion Act), 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.

2.1.3 Contractor shall post a notice provided by the City in a prominent and accessible place on any site where Work pursuant to this 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 this Contract; and

(ii) the rights and remedies afforded to its employees under New York City Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with this Contract.

2.1.4 For the purposes of this Article 2 (Whistleblower Expansion Act), "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.

2.1.5 This Article 2 (Whistleblower Expansion Act) is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of $100,000.00; accordingly, Contractor shall include the language of this Article 2 (Whistleblower Expansion Act) in all subcontracts with a value in excess of $100,000.00.

2.2 Section 2.1 is not applicable to this Contract if it is valued at $100,000.00 or less. Subparagraphs 2.1.1, 2.1.2, 2.1.4 and 2.1.5 of Section 2.1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph 2.1.3 of Section 2.1 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.

3. PARTICIPATION IN INTERNATIONAL BOYCOTT.

3.1 The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

3.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Contract.

3.3 The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

4. LABOR LAW REQUIREMENTS

4.1 Section 6-109 of the New York City Administrative Code.

4.1.1 Section 6-109(a).

4.1.1.1 Except for those employees whose minimum wage is required to be fixed by Section 220 or 230 of the Labor Law of the State of New York, all persons employed by the Contractor and any subcontractor in the manufacture or furnishing of supplies, materials or equipment, or the furnishing of Work, labor or services used in the performance of this Contract will be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the sum mandated by Law.

4.1.1.2 No part of the Work, labor or services will be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this paragraph.

4.1.1.3 For any breach or violation of any of the representations and stipulations required in any Contract under the provisions of this subsection, the party responsible therefor shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any such Contracts or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damages for any other breach of such Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of such Contract.

In addition, the Department or any other Agency entering into such Contract shall have the right to cancel the Contract for any violation of this subsection and enter into other contracts for the completion of the original Contract, charging any additional cost to the original Contractor. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages in violation of the provisions of this subsection shall be held in a special deposit account and shall be paid without interest, on order of the Executive Director for Economic Development,

directly to the employees who have been paid less than minimum rates of pay as set forth in such Contracts and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

4.1.2 Section 6-109(b). The provisions of subdivision (a) of Section 6-109 shall not apply to contracts for the furnishing or purchase of agricultural or farm products processed for first sale by the original producers; nor shall subdivision (a) of Section 6-109 apply to any work performed on any contract outside of the United States or its territories.

4.1.3 If there has been a breach or violation of the aforesaid Section 6-109 or of the aforesaid rules and regulations, the Contractor must state the time, place and circumstances of such breach or violation on the bid form submitted.

4.2 Workers' Compensation Laws. If this Contract be of such a character that the employees engaged thereon are required to be insured by the provisions of the New York Workers' Compensation Law, and acts amendatory thereto, the same shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Contract such employees in compliance with the provisions of said Law.

4.3 Building Service Contracts. If the Parties are entering into this Contract for building services, the Contractor specifically agrees, as required by Labor Law §§ 231-233, that with respect to contracts for building service work:

4.3.1 Prevailing Wage and Supplements (Labor Law § 231)

4.3.1.1 The wages which the Contractor shall pay for a legal day's work and supplements to be provided to building service employees, as defined in Labor Law § 230, employed upon the whole or part of the building service work contemplated by this Contract, shall not be less than the prevailing rate of wages and any supplements required to be ascertained and determined by the Comptroller as set forth in a schedule of wage rates which is included as part of the invitation for bids documents.

4.3.1.2 No later than the first day upon which Work on this Contract is to commence, the Contractor shall post in a prominent and accessible place on the site of Work, a legible statement of the wages to be paid to the employees for the building service work contemplated.

4.3.1.3 An apprenticeship in a craft or trade may be permitted to work at a wage lower than that established for the journeyman in such craft or trade only if all of the following conditions are met:

(1) such apprentice has been individually registered in an apprenticeship program which is duly registered with the New York State Industrial Commissioner in conformity with Article 23 of the Labor Law;

(2) such apprentice's registration occurred prior to his or her employment as an apprentice on such craft or trade service work; and

(3) written proof of such individual registration is submitted to the Agency prior to such apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates. In no event shall the ratio of apprentice to journeyman employed on such service work to be greater than the lesser of the following ratios:

(a) the ratio permitted in the apprenticeship program approved by the industrial commissioner, or

(b) the ratio prevailing in the locality where the service work will be performed.

4.3.1.4 The obligation of the Contractor to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Comptroller.

4.3.2 Overtime (Labor Law § 232). All building service employees, who work more than eight (8) hours in any one day or more than forty hours in any workweek, shall be paid wages for such overtime by the Contractor, at a rate not less than one-and-one-half times his prevailing basic cash hourly rate.

4.3.3 Recordkeeping (Labor Law § 233).

4.3.3.1 The Contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by it as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he or she was employed, and the wages paid.

4.3.3.2 Where the wages paid include sums which are not paid directly to the employee weekly and which are expended for supplements, the records shall include the hourly payment on behalf of such employees, the supplement for which such payment has been made, the name and address of the person to whom such payment has been made. In all cases the Contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and list of all persons for whom such payments are made.

4.3.3.3 The records required herein shall be kept on the site of the Work during all of the time that work hereunder is being performed.

Upon a formal order of the City, the Contractor shall produce within five (5) days on the site of Work, such records subscribed and affirmed by it as true under the penalties of perjury.

4.3.4 Certification of Wage Amounts (Labor Law § 237). As a prerequisite to any payment by the City, the Contractor and its subcontractors shall file a statement in writing and in form satisfactory to the Comptroller, certifying to the amounts then due for daily or weekly wages on account of Labor performed upon the Work hereunder, setting forth therein the names of the persons whose wages were unpaid and the amount due to or on behalf of each respectively, which

statement so to be filed shall be certified by the oath of the Contractor or subcontractor, as the case may be that the Contractor or subcontractor has read such statement subscribed by him and knows the contents thereof, and that the same is true of his own knowledge.

4.4 Installations.

4.4.1 The Contractor specifically agrees, as required by Labor Law §§ 220 and 220-d, as amended, that with respect to public work contracts:

4.4.1.1 No laborer, workman, or mechanic, in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in one week, except in the emergencies set forth in the Labor Law.

4.4.1.2 The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by Law.

4.4.1.3 The minimum hourly rate of wage to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the Contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these Contract Documents.

4.4.1.4 The Labor Law provides that the Contract may be forfeited and no sum paid for any Work done thereunder on a second conviction for willfully paying less than:

(1) The stipulated wage scale as provided in Labor Law § 220, subdivision 3, as amended, or

(2) Less than the stipulated minimum hourly wage scale as provided in Labor Law § 220-d, as amended.

5. MACBRIDE PRINCIPLES PROVISIONS.

5.1 In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

5.2 The Contractor agrees that the covenants and representations in the preceding paragraph are material conditions to this Contract. In the event the contracting entity receives information that the Contractor is in violation of this Article 5 (MacBride Principles Provisions), the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this Contract for cause and procure the supplies, Services or Work from another source in any manner the entity deems proper.

5.2.1 In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and the cost to the contracting entity of completing performance of this Contract either itself or by engaging another contractor or contractors.

5.2.2 In the case of a Requirement Contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its Contract.

5.3 This Article does not apply if the Contractor is a not-for-profit corporation.

6. VOTER REGISTRATION.

6.1 Participating Agencies. Pursuant to Charter § 1057-a, if this Contract is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

6.2 Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Contract, hereby agrees as follows:

6.2.1 The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

6.2.2 The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

6.2.3 The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval

by the Department, to a link on that system where such a form may be downloaded.

6.2.4 The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

6.2.5 The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6.2.6 For the purposes of Section 6.1 (Participating Agencies) above, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

6.2.7 The provisions of Section 6.1 (Participating Agencies) above shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

6.3 Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

6.3.1 In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

6.3.2 In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

6.3.3 If, in connection with the provision of services under this Contract, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

6.3.4 The provision of Section 6.2 (Distribution of Voter Registration Forms) services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

6.4 Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

6.4.1 The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

6.4.2 No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

6.4.3 The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

6.4.4 The Contractor and the Contractor's employees shall not:
6.4.4.1 seek to influence an applicant's political preference or party designation;

6.4.4.2 display any political preference or party allegiance;

6.4.4.3 make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

6.4.4.4 make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

6.5 The Contractor, as defined above and in this Contract, agrees that the covenants and representations in this Article 6 (Voter Registration) are material conditions of this Contract.

6.6 The provisions of this Article 6 (Voter Registration) do not apply where the services under this Contract are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

7. ALL LEGAL PROVISIONS DEEMED INCLUDED.
Each and every provision required by Law to be inserted in this Contract is hereby deemed to be a part of this Contract, whether actually inserted or not.

PART VI
SPECIAL CONDITIONS

1. INFORMATION SECURITY REQUIREMENTS.
The Contractor agrees, with respect to information technology contracts, that it shall comply with all Citywide Information Security Policies and Standards ("Policies and Standards") as published by the City's Department of Information Technology and Telecommunications ("DoITT"), as it may be modified, and which are available at http://www.nyc.gov/infosec. Citywide Policies and Standards include, without limitation, a requirement that a Contractor cooperate with and ensure the successful completion of any security accreditation tasks and processes relevant to the Services and/or deliverables it provides. A Contractor must bear the cost of compliance with all such Citywide Policies and Standards. This provision shall apply to all persons in the Contractor's or subcontractors' organizations who may have access to any City information or City information assets, in the course of carrying out their responsibilities or job function while performing Work pursuant to the terms of this Contract.

2. TOXIC SUBSTANCES – SAFETY DATA SHEETS.
2.1 Pursuant to the Hazard Communication Standard (29 CFR 1910.1200, as amended effective May 25, 2012), manufacturers, importers, and distributors must develop or obtain safety data sheets ("SDS") for each hazardous chemical they produce, import or

distribute, in accordance with the provisions of 29 CFR 1910.1200(g) and Appendix D thereto. The City, in order to meet its responsibilities as an employer under the Hazard Communication Standard requires that manufacturers, distributors and suppliers submit a SDS for: (1) any hazardous chemical, as defined in the Hazard Communication Standard; or (2) any product containing a hazardous chemical, as a requirement of bid consideration, contract award, and/or purchase. Failure to submit a SDS as required may result in the rejection of a bid, contract award and/or purchase.

2.2 Material Safety Data Sheets, as required by the 1994 Hazard Communication Standard, may be submitted until June 1, 2015. After such time, only SDSs as required by the Hazard Communication Standard, as amended effective May 25, 2012, will be accepted as a condition of bid consideration, contract award and/or purchase.

3. PROHIBITION ON USE OF TROPICAL HARDWOODS.
Tropical hardwoods, as defined in the State Finance Law § 165-b shall not be utilized in the performance of this Contract except as expressly permitted by State Finance Law § 165.

4. CONTRACTOR AFFIRMATION.
By submission of its bid, each Contractor and each person signing on behalf of any Contractor 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:

4.1 No collusion. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and

4.2 Prices Not Disclosed. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Contractor and will not knowingly be disclosed by the Contractor prior to opening, directly or indirectly, to any other bidder or to any competitor; and

4.3 No Attempt to Restrict Competition. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Article 4 (Contractor Affirmation).

5. BREACH OF CONTRACT.
Any breach or violation of any of the subdivisions of this Part VI entitled “Special Conditions” shall be deemed a breach or violation of a material provision of this Contract.

6. REGISTRATION OF CONTRACT.
6.1 New York City Comptroller. This Contract shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

6.2 Approvals Not in Lieu of Other Requirements. The requirements of this Section 6 (Registration of Contract) of this Contract shall be in addition to, and not in lieu of, any

approval or authorization otherwise required for this Contract to be effective and for the expenditure of City funds

END OF DOCUMENT