

City of New York

Parks & Recreation

Construction Management Services – Master Contract

Contract No. CNYG–
EPIN:

Article 1 –- General Provisions and Definitions

1.1 The City of New York ("City"), acting by and through the Department of Parks & Recreation, Capital Projects Division ("Agency", "DPR" and/or "Parks"), requires construction management consultants to provide, on an as-needed basis, CM Services for projects located throughout the five boroughs of New York City. The City of New York, "Appendix A - General Provisions Governing Contracts for Consultants, Professionals, Technical and Client Services" ("Appendix A"), is attached hereto as **Exhibit 1**, the terms of which are hereby incorporated by reference with the same force and effect as though fully set forth herein and made a part of this Agreement. Capitalized words and/or terms used herein in this Agreement that are not defined herein shall have the meanings given to them in Appendix A.

1.2 The construction management services, as more fully described in this Agreement, shall hereinafter be referred to as "CM Services" for various City-owned properties located within the five boroughs as selected by the Agency on a Work Order basis, as more fully described herein.

1.3 "Agreement" shall mean the various documents that constitute the contract between the CM and the City, including (i) Request for Proposals ("RFPs") for this Agreement, (ii) CM's Proposal for this Agreement, (iii) Mini-RFPs issued by the Agency for a specific project, (iv) CM's Proposals to Mini-RFPs issued by the Agency for a specific project ("Mini-Proposal(s)"), and (v) Work Orders and Supplementary Work Orders issued to the CM. In the event of any conflict between the RFP and the CM's Proposal, the RFP shall prevail. In the event of any conflict between the Mini-RFPs and the CM's Mini-Proposals, the Mini-RFP shall prevail.

1.4 "CM" means the entity entering into this Agreement with the Agency and defined as "Contractor" in Appendix A.

1.5 "Work Order" means the written directive from the Agency authorizing the CM Services to be performed by the selected CM for a Project that is registered with the Comptroller of the City of New York ("Comptroller").

1.6 "Construction Documents" are the final stage of "Design Documents", as defined herein. "Construction Documents" means the final plans, drawings and specifications for the construction work and all modifications thereto prepared by the Agency and consultant(s) engaged by the Agency.

1.7 "Days" shall mean calendar days unless otherwise specifically noted to mean business days.

1.8 "Design Documents" means all plans, drawings, and specifications for the construction work and all modifications thereto prepared by the Agency and/or Consultant(s) engaged by the Agency.

1.9 "Substantial Completion" means the written determination by the Agency that all required construction work for a project is substantially complete as defined in the New York City Standard Construction Contract ("SCC").

1.10 “Final Acceptance” means the written determination that all required construction for a project is accepted by the Agency as defined in the SCC.

1.11 “Consultant(s)” shall mean any person, firm, partnership, or corporation engaged by the Agency to perform landscape, architectural, engineering, environmental, design, horticulture, archaeological, construction management services by others, or any other professional services for the Agency required for a project.

1.12 "Safety Standards" means all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through “Final Acceptance” as defined in the SCC pertaining to worker safety and accident prevention applicable to a project and/or the construction work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

1.13 “General Contractor” shall mean the entity that the Agency entered into a contract for the construction of a project.

1.14 “SCC” shall mean the New York City Standard Construction Contract in effect at the time CM Services are being performed.

1.15 "Shop Drawing" means any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.

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

1.17 “State” means the State of New York.

1.18 "Subcontractor" or “Subconsultant” means any person, firm, or corporation, other than employees of the CM, who or which contracts with the CM or its subcontractors to furnish, or furnishes CM Services, labor, or labor and materials, or labor and equipment hereunder. All Subcontractors are subject to the prior written approval of the Agency.

Article 2 – Assignments, Work Orders, and Selection Process

2.1 Assignments: The assignment of CM Services shall be issued by the Agency to the CM via a written Work Order. All CM Services to be performed by the CM must be authorized by the ACCO in writing.

2.2 Work Orders: Each Work Order issued under this Agreement shall specify:

a) A description of the individual project site for which CM Services are required.
b) A description of the CM Services and/or tasks to be performed by the CM for the project(s).
c) Requirements for scheduling and/or phasing of the CM Services.
d) Estimated time for completion of CM Services and/or milestones.

e) The method of determining the Fees as set forth in Article 3 below and the final agreed-upon total fee.

f) An overall Not-to-Exceed amount for the CM Services to be performed. Such overall Not-to-Exceed amount shall be broken down into various amounts and/or allowances, including, without limitation, the following: (i) Allowance for Staffing Expenses, and (ii) Allowance for Reimbursable Services.

2.3 Project Complexity Determination: The Agency shall evaluate the CM Services requested and determine if the project is considered complex or non-complex. In making such determination, the Agency shall consider all relevant factors, including, without limitation, the factors set forth below:

a) The project scope includes the analysis and/or design of specialized technical features, stringent operational and programmatic considerations, and/or unusual project site conditions.

b) The project development and implementation involve multiple phases.

c) The project involves the participation of specialty Subconsultants.

2.4 Selection Procedure: The CM acknowledges that the Agency has contracted with multiple construction management firms ("CM Firms") to provide CM Services on an as-needed basis. The selection of the construction management firm to provide CM Services for a project pursuant to this Agreement shall be conducted prior to the issuance of the Work Order in accordance with the procedure set forth below. The Agency shall review the CM's Mini-Proposal and may direct revisions as necessary prior to issuing the final Work Order. The Agency may require the CM to attend such meetings or site visits as necessary to finalize the Work Order.

2.4.1 Non-Complex Projects – Rotation: In the event the Agency determines that a project is determined to be non-complex, the selection of a CM Firm for a non-complex project shall be on a rotational basis ("Rotational"). The order of rotation for the purpose of selection shall be established by the Agency and shall be based on the original technical rating received by each CM Firm that has been awarded a contract for CM Services.

2.4.2 Complex Projects – Competitive Selection: The Agency shall issue project-specific proposal requests (Mini-RFPs) for complex projects to the available CM Firms as the need for CM Services arises. Such Mini-RFPs shall include information concerning the individual project for CM Services required, a description of the project-specific proposal requirements to be submitted by the consultant, and the method(s) of payment for the performance of CM Services. The CM must submit specific proposals in response to the Mini-RFPs specified, and the CM shall not be entitled to compensation for any costs incurred in connection with the preparation of its project-specific proposal in response to a Mini-RFP and/or attendance at pre-proposal meetings. The CM must respond to every Mini-RFP for a project for which it is solicited. If the CM determines that it cannot submit a Mini-Proposal for a given project, the CM must provide a written explanation, which is subject to the acceptance of the Agency. The CM's failure to respond to a Mini-RFP without an adequate explanation may result in a Default as set forth in Appendix A.

2.4.3 Technical Evaluations: An Agency evaluation committee will review, evaluate, and score all project-specific proposals based upon the technical criteria set forth in the Mini-RFP. This

evaluation and scoring will determine each CM Firm's technical rating. The CM Firm with the highest technical rating will be issued a Work Order for the individual project. The Agency evaluation committee will also evaluate the projects issued on a rotational basis.

2.4.4 Bypass/Exclusion: The Agency reserves the right to bypass the CM and select the next CM Firm on the list, for selection by rotation, or to exclude the CM from participation in the Mini-RFP by competition, if:

a) It is determined by the Agency that the CM has a conflict of interest; or
b) CM has failed to complete CM Services under previously issued Work Orders in a timely fashion to the satisfaction of the City and/or not in accordance with the requirements of this Agreement; or
c) The CM has failed to submit good faith proposal(s), without an adequate written explanation, to Mini-RFPs; or
d) The CM 's workload from the Agency is such that the Agency reasonably believes that the CM will not be able to complete additional Work Orders in a timely manner to the satisfaction of the Agency and in accordance with the requirements of this Agreement; or
e) The CM's current available remaining capacity is less than the estimated value of the Work Order; or
f) The Agency and/or ACCO, in their sole discretion, determines that the CM may be unable to provide the required CM Services in a satisfactory or timely fashion.
    i. In such event, the ACCO will issue a written determination to the CM and may, in the ACCO's sole discretion, require the CM to submit a corrective action plan ("CAP") for ACCO consideration and approval. If a CAP is required by the ACCO, the CM shall not be eligible for selection for another project until an approved CAP is in place.

2.5 Clarifications: Following the receipt of a Mini-RFP or Rotational, unless the Mini-RFP or Rotational Work Order provides otherwise, the CM shall have five (5) business days to request that the Agency clarify the scope or any other issues and/or concerns and the Agency's response to said requests shall be considered as part of the Work Order and binding on the CM. The CM shall be deemed to have waived all claims arising from uncertainties that are not submitted during the clarification period.

2.6 Conflicts: In the event of any conflict between the Mini-RFP and the CM 's proposal in response to a Mini-RFP, the Mini-RFP will prevail. In the event of any conflict between a Work Order issued hereunder and any provision of this Agreement, the Agreement will take precedence, *except* that with respect to the specified CM Services to be performed set forth in a Work Order, the Work Order will take precedence.

2.7 No Right to Reject a Work Order: The CM shall have no right to reject or decline to perform any Work Order issued under this Agreement. Accordingly, any rejection of a Work Order by the CM expressly made or implied by conduct shall constitute a material breach of this Agreement and may result in a Default as set forth in Appendix A. However, the CM shall be able to decline to perform a Work Order if it is determined by the Agency that there is a conflict of interest.

2.8 Work by Others: In the event there is a need for construction management and related CM Services, the Agency reserves the right not to utilize this Agreement and to proceed with a new solicitation for the required CM Services, or to have the CM Services performed by another CM Firm, or by City employees, if the Agency, in their sole opinion, determines that it would be in the best interest of the City to do so.

2.9 Work Order Cancellation: The Agency reserves the right to cancel at any time a Work Order issued to the CM for any reason. The CM will be paid for CM Services performed on such Work Order.

2.10 Duration: If applicable, any Rotational, Mini-RFP, and/or Work Order issued under this Agreement may include the approximate duration of the anticipated design, procurement, and/or construction of a project, which shall be used only as a guide to the overall engagement period required. Under no circumstances is the CM entitled to damages and/or additional compensation for delays in the procurement and/or construction portions of the overall project. The Agency makes no representation or guaranty as to registration of any Work Order and/or when the project site or any part thereof will be available for the performance of CM's CM Services or as to whether conditions at the project site will be such as to permit the CM's CM Services to be performed thereon without interruption and shall not result in liability of any kind on the part of the Agency.

2.11 Performance Evaluation: Evaluation of the CM's performance shall be conducted on an annual basis and at the conclusion of the project. Failure to meet established schedules, to perform work within negotiated fees, to take all actions necessary to assure that contracts complete work on time and within budget, and to conform to Agency practice and procedures will result in poor evaluations. Evaluations are entered into the Citywide PASSPort System.

2.12 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Work Orders issued hereunder, the Agency may, by issuance of a Supplementary Work Order to the CM, reallocate such specific allowance amounts.

Article 3 – Fees and Payment Terms

3.1 Total Payments: Total Payments for all CM Services performed, and all expenses incurred for all projects assigned under this Agreement shall not exceed $18,000,000.00.

3.2 Guaranteed Minimum: In the event the CM is not issued any Work Orders under this Agreement, and the CM has, throughout the term of the Agreement, complied with its obligation to submit reasonable project-specific proposals, the Agency agrees to pay, and the CM agrees to accept a minimum fee of $2,500.00. The CM further agrees that under such circumstances, it has no claim and/or action for any consequential damages, including but not limited to lost profits against the Agency.

3.3 Method of Payment: The method of payment for the performance of CM Services by the CM shall be directed in writing by the Agency in the Work Order. Payment for CM Services, as set forth below, shall be through either (i) a Lump Sum Fee, (ii) Multiplier for specified titles of personnel as set forth in **Exhibit 2**, (iii) by entering Fee Negotiations with the CM, or (iv) any combination of the above.

3.4 Lump Sum Fee for CM Services: If the Agency directs that the method of payment shall be on a lump sum basis ("Lump Sum Fee"), the provisions set forth below shall apply. In such case, the request for the project-specific technical proposal shall state the fee anticipated to be paid for the work. For the performance of all required CM Services for the individual project, as set forth in Article 6, the City agrees to pay, and the CM agrees to accept a Lump Sum Fee, the amount of which shall be calculated in accordance with the terms and conditions set forth below. The Lump Sum Fee is deemed to include all costs and expenses incurred by the CM and/or Subconsultants in the performance of all required CM Services for the individual project, including all expenses related to management, overhead, and any anticipated profit.

a) The fees for CM Services on a Lump Sum Fee shall consist of all necessary and usual components and/or CM Services in connection with the Work Order.
b) The Lump Sum Fee shall not be subject to adjustment for CM Services performed during overtime hours.

3.5 Payment for CM Services on a Multiplier – Staffing Expenses:

3.5.1 General: The Work Order shall specify an Allowance for Staffing Expenses. Such allowance is provided for payment of the CM's staffing expenses for those individuals who have been assigned to the Project and are identified in the Staffing Plan approved by the Agency.

3.5.2 Limitations on Payment: Payment for staffing expenses is subject to the limitations set forth below:

(a) Inclusion in Staffing Plan: The CM shall not be entitled to payment for any individual not included in the approved Staffing Plan. The specific individuals identified in the approved Staffing Plan, whether such individuals are the CM's employees or Subconsultants, shall be considered "Assigned Personnel" for the purpose of the CM's entitlement to payment for CM Services performed by such individuals.

(b) Contract Executive: The CM shall not be entitled to payment for the CM Services of the Contract Executive. Compensation for the Contract Executive is deemed included in the applicable Multiplier.

3.5.3 Payment: For any week during which an Assigned Personnel performs CM Services for a project, payment to the CM for such employee's CM Services for that week shall be calculated as follows: Multiply the amount set forth in paragraph (a) by the number set forth in paragraph (b), and then multiply the result by the applicable Multiplier set forth in **Exhibit 2**; provided, however, such Multiplier shall NOT apply to any increase in the Assigned Personnel's Direct Salary Rate per hour for authorized CM Services performed during other than regular business hours.

(a) Assigned Personnel's Direct Salary Rate per hour, determined and approved in writing by the Agency in accordance with the provisions set forth below. In the event the CM receives written authorization from the Agency to have the Assigned Personnel perform CM Services during other than regular business hours, the Assigned Personnel's Direct Salary Rate per hour may be subject to an increase, as provided below.

(b) Total number of hours set forth on time sheets completed by the Assigned Personnel for the week(s) in question during which the Assigned Personnel performed CM Services for the project. This total number of hours shall NOT include the following: (1) any hours the Assigned Personnel spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Personnel performed CM Services for any other project; (4) any hours the Assigned Personnel spent performing CM Services for the Project for which the CM is not entitled to compensation, and (5) any non-regular business hours, unless otherwise authorized in advance, in writing by the Agency.

(c) Non-billable hours shall be defined as any hours set forth in time sheets completed by the Assigned Personnel which have been allocated to any category or function other than CM Services performed for this Project. Non-billable hours shall include, without limitation: (1) compensated absence time, including, without limitation, vacation time, sick time, personal time, and holidays; (2) performance of administrative tasks, or (3) any other timekeeping category consistent with standard accounting practices.

(d) The costs deemed included in the applicable Multiplier are set forth in Article 3.5.8 and 3.5.9 below.

(e) When federal funding regulations do not allow for the use of a multiplier, the Agency and the CM may negotiate a fixed lump sum price or all-inclusive staffing expense rates, as appropriate, upon terms that are mutually acceptable. If all-inclusive staffing expense rates are used, such rates shall not be subject to markup of any kind, including, without limitation, for overhead and profit.

3.5.4 Equitable Reduction: The amount of payment to the CM for CM Services performed for the project by an Assigned Personnel, calculated as set forth above, shall be subject to an equitable reduction if, for the week during which an Assigned Personnel performed CM Services for the project, the total number of hours for which the Assigned Personnel was actually paid by the CM for that week, less any nonbillable hours, is less than the total number of hours actually billed by the CM to all entities for the Assigned Personnel's CM Services for that week, including the number of hours billed for this Project. In such event, the amount of payment to the CM for CM Services performed by an Assigned Personnel for the week in question, calculated as set forth above, shall be reduced by multiplying such amount by the following: the fractional number resulting from the division of the number set forth in item (a) below by the number set forth in item (b).

(a) Total number of hours for which the Assigned Personnel was actually paid by the CM for the week in question, less any non-billable hours, as defined above.

(b) Total number of hours billed by the CM to all entities for the Assigned Personnel's CM Services for the week in question, including the number of hours billed for this Project.

3.5.5 Direct Salary Rate Per Hour: The Direct Salary Rate per hour for each Assigned Personnel shall be determined and approved in writing by the Agency, as set forth below. Upon approval by the Agency, the Direct Salary Rate per hour for each Assigned Personnel shall be included in the Staffing Plan.

(a) Actual Annual Direct Salary Rate per Hour: For each Assigned Personnel, the CM shall submit the items set forth below. The CM shall also submit any records or documentation requested by the Agency to verify the Assigned Personnel's actual annual direct salary, including, without limitation, the CM's payroll register for the past twelve (12) months.

(1) Actual Annual Direct Salary: The Assigned Personnel's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall *not include* any amount for the following costs or payments: (i) any payments for CM Services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (ii) any employer payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (iii) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (iv) any costs for any other fringe and/or supplemental benefits.

(2) Computation: The Assigned Personnel's actual annual direct salary rate per hour shall be computed as follows: the Assigned Personnel's actual annual direct salary, as defined above, divided by 2080.

(b) Determination of Direct Salary Rate: For each Assigned Personnel, the Agency shall determine and approve in writing the Direct Salary Rate per hour to be paid for such employee.

(i) Once determined and approved as set forth above, the Assigned Personnel's Direct Salary Rate per hour shall not be eligible for any increase whatsoever, except for the increase described in Article 3.5.6 below. Any such increase must be approved in writing by the Agency.

(ii) The Direct Salary Rate per hour for an Assigned Personnel, determined and approved by the Agency, may be adjusted in accordance with Article 3.5.7 below, in the event the CM receives written authorization from the Agency in the particular instance to have the Assigned Personnel perform CM Services during other than regular business hours.

3.5.6 Increases: An Assigned Personnel's Direct Salary Rate per hour, determined and approved by the Agency, shall be subject to an increase on a yearly basis, subject to the limitations set forth below. The first such increase shall be made one (1) year after the date on which the Work Order for the project was issued to the CM. Thereafter, for the remaining duration of the Work Order, increases in the Direct Salary Rate(s) shall be made on a yearly basis, on the anniversary date of issuance of the Work Order.

(a) Any increase in the Direct Salary Rate(s) shall be based on whatever increase may have occurred in the Employment Cost Index for Professional, Scientific and Technical CM Services, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO"). If for the prior year, EAO determines that the Index showed an increase, the Direct Salary Rate(s) shall be increased. If, for the prior year, EAO determines that the Index declined or showed no increase, the Direct Salary Rate(s) shall remain unchanged. Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only and shall have no impact on the rate paid to date.

(b) The CM shall not be entitled to payment of any increase in an Assigned Personnel's Direct Salary Rate per hour unless the total amount of such increase is actually paid in full by the CM to the Assigned Personnel, as determined by the Agency. The CM shall submit its payroll register to verify the amount actually paid by the CM to the Assigned Personnel.

(c) Any increase in Assigned Personnel's Direct Salary Rate that is more than the increase specified above shall not be payable hereunder, even if paid by the CM.

3.5.7 Night Differential / Overtime: The ACCO may authorize the CM in writing to have an Assigned Personnel perform CM Services during other than regular business hours. In the event of such authorization, the CM shall be entitled to payment of a premium or increase in the Assigned Personnel's Direct Salary Rate per hour for such CM Services, subject to the limitations set forth below. Any premium or increase payable hereunder shall not be subject to any Multiplier.

(a) The CM's policy is subject to approval by the ACCO in accordance with Article 7.

(b) The premium for Night Differential shall not exceed ten (10%) percent of the Assigned Personnel's Direct Salary Rate per hour, and the premium for Overtime shall not exceed fifty (50%) percent of such Direct Salary Rate.

(c) The CM shall not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the CM to the Assigned Personnel, as evidenced by the CM's payroll register.

3.5.8 Multiplier #1 (partial and comprehensive CM Services): Multiplier # 1, as set forth in **Exhibit 2,** shall include, without limitation, the items set forth below:

(a) Profit

(b) Overhead: Overhead shall include all costs and expenses incurred by the CM in connection with providing comprehensive CM Services for the Project, including expenses for management and administration. The CM agrees to make no claim for profit or overhead expenses more than the Multiplier provided for herein. Overhead shall include, without limitation, the items set forth below:

(i) All expenses for compensation paid to personnel of the CM (other than construction management personnel identified in the approved Staffing Plan, except for the Contract Executive). Such other personnel of the CM shall include, without limitation, all officers, principals, employees, and personnel of the CM, serving in whatever capacity, including any Contract Executive(s). Compensation for such other personnel is deemed included in the Multiplier. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.

(ii) All expenses for compensation paid to Assigned Personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include, without limitation, the items listed in item (i) above.

(iii) All expenses in connection with the performance of CM Services, including, without limitation: (1) expenses for non-reimbursable CM Services, as set forth in **Article 6**, (2) meals, and (3) lodging.

(iv) All expenses for home office general facilities, including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls related to the project, sales, accounting fees and bookkeeping expenses, electronic

data processing CM Services, including programming and rental equipment, dues and subscriptions, stationery, printing, copying, postage, and any other office expenses or overhead costs, except as otherwise expressly provided in this Agreement.

(v) All expenses for applicable taxes of any kind whatsoever, including, without limitation, federal, state, and local income tax and any franchise or other business taxes.

(vi) All expenses for insurance coverage determined by the CM to be necessary for the performance of all required CM Services hereunder, including without limitation: (1) all insurance required by this Agreement and/or Work Order; (2) all insurance required by law, and (3) all other insurance maintained by the CM, including without limitation, burglary and theft, general fidelity and payroll insurance.

(vii) All expenses in connection with losses due to theft or robbery sustained by CM.

(viii) All expenses in connection with fixed capital or money borrowed, including interest.

(ix) All expenses with respect to legal, accounting, or other professional CM Services.

(x) All management, administrative, or overhead expenses of any kind whatsoever, including such expenses in connection with providing Reimbursable CM Services.

3.5.9 Multiplier #2 (consulting CM Services): Multiplier #2, as set forth in **Exhibit 2**, shall be deemed to include the following: (1) profit, and (2) all costs and expenses for overhead incurred by the CM in connection with providing consulting CM Services for the project, including expenses for management and administration. The CM agrees to make no claim for profit or overhead expenses in excess of the Multiplier provided for herein. Multiplier #2 shall include, without limitation, the items of expense set forth in Article 3.5.8 above.

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

3.6 Payment for CM Services Based Upon Fee Negotiations: The Agency, at its sole discretion, may enter into Fee Negotiations with the CM to establish a lump sum fee based on any combination of the Method of Payment set forth in Article 3. Payments will be made to the CM based upon negotiated terms set forth in the Work Order.

3.7 Allowance for Reimbursable CM Services: "Allowance" shall mean a sum of money which the Agency may include in the total amount of a Work Order for such specific contingencies as the Agency believes may be necessary to complete the CM Services, and for which the CM will be paid on the basis of a stipulated amount, or a formula set forth in the Work Order, or negotiated

between the parties provided however, that if the CM is not directed to use the Allowance, the CM shall have no right to such money and it shall be deducted from the total amount of the Work Order. For each Work Order, the CM may be given a Not-to-Exceed Allowance. The scoping, solicitation, management, and coordination of CM Services by the CM shall not be included in the cost reimbursed for an Allowance. Allowances per project shall be determined by the Agency. In the event the Agency directs the CM to provide Reimbursable CM Services, the provisions set forth below shall apply. In such case, the Work Order shall specify an Allowance for Reimbursable CM Services. Such allowance is established for payment for Reimbursable CM Services, as set forth in Article 6. In providing Reimbursable CM Services, the CM shall comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Agency. If so directed, the CM shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds $20,000.

3.7.1 Payment: Payment for Reimbursable CM Services (except for long-distance travel) shall be as set forth below:

(a) If payment is on a lump sum basis, payment shall be based upon the percentage of completion.
(b) If payment is on a unit price basis, payment shall be based upon the number of completed units.
(c) If payment is based on actual cost, payment shall be the actual and reasonable cost, as indicated by receipted bills or any other data required by the Agency, with no markup for overhead and profit.

3.7.2 Long Distance Travel: In the event the CM is directed in advance in writing by the Agency to provide CM Services which require long-distance travel, the CM shall be reimbursed for expenses incurred in connection with such long-distance travel. Long-distance travel means travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the CM's home office. Payment for long-distance travel shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses."

3.7.3 No Mark Up: The CM shall not be entitled to any mark-up for overhead and profit on payments for Reimbursable CM Services. All costs and expenses for overhead and/or profit in connection with the provision of Reimbursable Services are deemed included in the applicable Method of Payment set forth in the Work Order.
(a) In the event that a project is federally funded, and if prohibited by the federal funding source, the CM shall not be entitled to any markup for overhead and profit on payments for Reimbursable CM Services. All costs and expenses for overhead and or profit in connection with the provisions of Reimbursable Services will be deemed included in the payment for Staffing Expenses, negotiated as a fixed lump sum price or all-inclusive staffing expense rates, as appropriate, upon terms that are mutually acceptable.

3.7.4 In the event the Agency directs the CM to provide Reimbursable Services and such Reimbursable Services require the CM, through its Assigned Personnel, to provide technical or

professional services, the CM shall be paid for staffing expenses for its personnel through the Allowance for Staffing Expenses.

3.7.5 Non-Reimbursable Services: All administrative expenses, including but not limited to those identified below, are deemed to be included in the CM's total fees for the project (whether said fees are determined by Lump Sum Fee, Multiplier, Fee Negotiations, and/or any combination as set forth in Article 3.3) and shall not be paid as an Allowance:

i. Overnight Delivery: The CM must, when requested by the Agency, provide overnight delivery of the following project documents: (a) design documents; (b) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (c) change orders; (d) documents with respect to payment, and (e) any other critical communications and/or documents.

ii. Transportation: The CM must provide transportation for all personnel performing CM Services, including, without limitation: (a) expenses for ordinary transportation, (b) expenses for time spent by personnel commuting or traveling, and (c) expenses for parking and tolls.

iii. Equipment: The CM must provide the items set forth below for all personnel performing CM Services, including but not limited to:

a) All computer hardware and software necessary for the CM to perform the required CM Services, including, but not limited to, CADD equipment and software, computer and internet usage time, and monthly costs thereof.

b) All necessary office supplies and/or tools.

c) Communications equipment and service, including, without limitation, cellular telephones. The cellular telephone numbers of all personnel must be submitted to the Agency.

d) Hard hats, safety vests, and all other necessary and required Personal Protective Equipment ("P.P.E.").

3.8 Requisitions for Payment: Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions must be in the authorized form and must set forth the CM Services performed by the CM and the total amount of partial payment requested. The CM must submit one original and three (3) copies of each requisition for payment and/or as directed by the Agency. Requisitions must be accompanied by the documentation set forth below:

(a) Project Progress Report: The CM shall submit a current report indicating (1) the percentage or milestone of completion of all required work or tasks for the Project, and (2) the CM Services the CM provided during the payment period.

(b) Staffing Expenses: For any period for which the CM is requesting payment for staffing expenses for an Assigned Personnel, the CM shall submit the documentation set forth below:

(1) Assigned Personnel's name and title.

(2) Agency approval of the Assigned Personnel, either an approved Staffing Plan or documentation approving the Assigned Personnel as a replacement.

(3) Assigned Personnel's direct salary rate determined and approved by the Agency and included in the Staffing Plan;

(4) Applicable Multiplier for Overhead and Profit set forth in **Exhibit 2**;

(5) Number of hours worked each day by the Assigned Personnel for the week(s) in question. The number of hours per day shall be broken down to indicate the number of regular business hours and the number of non-regular business hours. The Multiplier shall not apply to any increase in the Assigned Personnel's Direct Salary Rate per hour for authorized CM Services performed during other than regular business hours.

(6) Detailed time sheets completed by the Assigned Personnel for the week(s) in question. Such detailed time sheets shall reflect all hours of service and a summary of the activities performed each hour by the Assigned Personnel, including, without limitation: (1) actual hours during which the employee performed CM Services for this project;
(2) actual hours during which the employee performed CM Services for other projects;
(3) non-billable hours, as defined above; (4) actual hours, if any, during which the Assigned Personnel spent performing CM Services for this Project for which the CM is not entitled to compensation, and (5) non-regular business hours, if any.

(7) Copy of the CM's payroll register for the week(s) in question reflecting the amount actually paid by the CM to the Assigned Personnel for that week,

(8) Applicable only if CM Services were performed during other than regular business hours: (i) a copy of authorization by the Agency for such CM Services, and (ii) a copy of the Agency's approval of the CM's policy regarding payment of a premium for CM Services performed during other than regular business hours.

(c) Reimbursable Services: For any period for which the CM is requesting payment for Reimbursable Services, the CM shall submit the documentation set forth below:

(1) Description of the Reimbursable Service the CM was directed to provide.

(2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required CM Services.

(3) If payment is on a unit price basis, a report indicating the number of completed units.

(4) If payment is based on actual cost, receipted bills, or any other data required by the Agency.

3.8.1 All payments hereunder are contingent upon the CM's satisfactory performance of the required CM Services. The Agency is authorized to make deductions for any CM Services performed that are determined to be unsatisfactory.

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

3.8.3 The CM acknowledges and agrees that timely and regular submission of its requisition requests is necessary to the Agency's proper and efficient administration of the project and this Agreement. The CM will submit its requisitions for payment in accordance with this Article in

regular intervals, not less than once every six (6) weeks and no more than once per month, except for those periods where no CM Services are performed.

Article 4 – Supplemental Work Orders

4.1 Supplemental or Additional Work Orders: In the event the Agency directs the CM to perform additional CM Services, payment for such CM Services shall be based upon issuance of a Supplemental Work Order. Identification of the fee associated with the Supplemental Work Order shall be determined by the Agency, through one or any combination of the options described above in Article 3, as determined by the ACCO to be in the best interest of the City. The Supplemental Work Order shall specify an overall Not-to-Exceed amount for the CM Services to be performed. Such overall Not-to-Exceed amount shall be further broken down into various amounts and/or allowances, depending on the required CM Services and the method of payment specified in the Supplemental Work Order.

4.2 Determination Related to CM Services: If the CM is of the opinion that any directive and/or service it has been directed to perform by the Agency warrants a Supplemental Work Order that constitutes additional CM Services but has not been identified as such by the Agency, the CM shall notify the Agency in writing within five (5) business days of such directive. The Agency's determination as to whether such CM Services constitute additional CM Services will be final, conclusive, and binding upon the CM. If the CM disagrees with the Agency's determination, it may pursue a dispute in accordance with Section 12.03 – Resolution of Disputes in Appendix A.

Article 5 – Term of Agreement

5.1 The Term of this Agreement shall be 1460 consecutive calendar days ("CCDs") commencing from the date of the written notice to proceed.

5.2 Intentionally Omitted.

5.3 The Work Order for a project shall commence as of the date of the Work Order registration, unless otherwise specified in the Work Order, and shall remain in effect until (1) Final Acceptance by the Agency of all required construction work for the Project, and (2) completion of all required CM Services for the Project. The time frame for completion of all required construction work and all required CM Services for a project will be set forth in the Work Order. The project schedule submitted by the CM in its Mini-RFP Proposal shall be strictly adhered to by the CM. When appropriate and directed by the Agency, the project schedule shall be revised, subject to written approval by the Agency.

5.4 Continuation of the Agreement: In the event (1) CM Services are required for a project, (2) a Work Order for a project is issued by the Agency during the term of this Agreement, including the last day thereof, and (3) the time frame for completion of the project extends beyond the term of the Agreement, the Agreement shall remain in effect for the purposes of such Work Order through the time frame for completion of the project, as set forth in the Work Order or any Supplementary Work Order required to complete a project. For the purpose of this provision, the term of the

Agreement shall mean whichever of the following is the latest and actual final period of the Agreement: (1) the term of the Agreement, or (2) anyextended term of this Agreement.

Article 6 — CM Services

6.1 General CM Services for All Phases: The CM shall provide, to the satisfaction of the Agency, the CM Services set forth in this Article in accordance with Work Orders issued by the Agency. The projects for which the CM must provide such CM Services will be construction projects procured using the design-bid-build project delivery methodology. However, the Agency reserves its right to issue Work Orders using other authorized procurement methods.

6.1.2 The CM will perform its duties hereunder in conformance with its expert experience and with the very highest standard of care practiced by project managers and construction managers in the New York City metropolitan area, with substantial and noteworthy experience in successfully managing projects in dense urban areas. Nothing to the contrary herein will erode this standard of care, including a requirement that the CM use its best efforts to comply with any provisions hereof. The CM agrees to use its best efforts to facilitate the timely completion of each project as soon as possible. The CM shall comply with all local, state, and federal laws, rules, and regulations applicable to this Agreement and to the CM Services to be performed hereunder. The CM shall provide the CM Services set forth herein through its own employees and/or through its Subconsultants.

6.1.3 The CM shall serve as the Agency's representative at the Site, subject to review by the Agency and/or Work Order, and be responsible for the responsibilities in the Article of the SCC entitled "The Resident Engineer". The Agency shall notify the General Contractor(s) in writing that the CM has been designated by the Agency to serve as his/her representative at the Site in connection with the project. The CM shall ascertain the standard practices of the City prior to the performance of CM Services required by this Agreement. The Agency shall have the right at all times to inspect the work of the CM.

6.1.4 Communications in Writing: All recommendations and communications by the CM to the Agency that will affect the cost of the Project shall be made or confirmed by it in writing. The Agency may also require other recommendations and communications by the CM to be made or confirmed by it in writing. All recommendations relating to proposed changes in the work, work schedules, instructions to contractor(s), and all other matters requiring action by the Agency and the contractor(s) shall be made directly to the Agency, unless otherwise directed by the Agency. After approval by the Agency, the CM shall issue instructions directly to the contractor(s).

6.1.5 The CM will institute written policies and procedures to ensure that project decisions and directions on administrative matters that arise routinely throughout the project, between the CM and the Agency, and between the CM and General Contractor(s), are captured and contemporaneously recorded by the CM. Except where such a decision or direction is captured in another form acceptable to AGENCY, a contract administrative memorandum will be prepared at the resolution of each issue (e.g., interpretation of contract documents, response to contractor requests for approval under SCC, other similar routine project administration matters). The CM will maintain such memoranda as Project records and will ensure that such documents are saved electronically in searchable form, appropriately labeled, dated, and tagged.

6.1.6 The CM and its assigned personnel shall be responsible for the strict enforcement of SCC and represent to the Agency that all assigned personnel are fully versed with the terms of the SCC.

6.1.7 During the term of this Agreement, the CM shall, upon demand, promptly deliver such material, records, or documents to the Agency, or make such records available to the Agency or his/her authorized representative for review and reproduction at such place as may be designated by the Agency. Thereafter, the City may utilize such material, records or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the CM. Should such documents prepared under this Agreement be re-used by the City for other than the project originally created, it is understood that the CM bears no responsibility whatsoever for such re-use except in those instances where it is re-employed for re-use of the documents.

6.2 Comprehensive CM Services: The CM shall provide all CM Services necessary and required for the inspection, management, coordination, configuration, closeout, and administration of the project, so that the required construction work is properly executed, completed in a timely fashion, and conforms to the requirements of the construction contract and to good construction practice. The CM will be responsible for the proper and efficient management of the project(s) whether or not the details of its management responsibilities are further specified elsewhere in this Agreement and/or the Work Order, including but not limited to being familiar with and comply with all Agency and procedures related to managing the Agency's Capital Projects Program including without limitation, cost and schedule management, quality assurance, safety management, risk management, document management, communication, and payments. The CM shall prepare correspondence or other communications to the Consultant(s) and/or General Contractor(s) as required in order to advance a project.

6.3 Partial Construction Management (CM) CM Services: The CM shall provide CM staffing as directed by the Agency to supplement construction management CM Services provided by the Agency's in-house staff or by another firm on an Agency project as specified in the Work Order.

6.4 Consulting CM Services: If requested in the Work Order, the CM shall provide consulting CM Services as specified in the Work Order. Consulting CM Services may include, without limitation, studies, audits, reviews, delay damage analysis, insurance risk and policy analysis and recommendations, preparation of various manuals, or design services to facilitate Agency's Capital Projects Program. The CM represents that it has the requisite expertise to provide a broad range of consulting CM Services related to all disciplines in the construction and construction related construction industries.

6.5 Federal Funding: If necessary, due to the funding source, and as directed by the Agency, the CM must comply with the applicable federal riders included in the Work Order.

6.6 Reimbursable Services: The CM shall provide Reimbursable Services as directed in writing by the Agency. Reimbursable Services are described in Article 3.

6.7 Non-Reimbursable Services: Throughout the Agreement, the CM shall be responsible for providing the non-reimbursable items and/or CM Services set forth in Article 3 below. All costs for providing such items and/or CM Services are deemed included in the applicable Lump Sum Fee, Multiplier and/or Negotiated Fee.

6.8 CM Services During Pre-Construction Phase: The CM Services to be provided by the CM during the Pre-Construction Phase ***may*** include without limitation the CM Services set forth below. All Pre-Construction Phase CM Services described below shall be identified in the Work Order by its respective Article number(s) below. For example, if a "Constructability Review" is required, the Work Order will identify "Article 6.9.6" of this Agreement.

6.8.1 Develop familiarity with the structure, personnel and functions of Agency, Consultants, applicable sponsor agency, and other stakeholders in connection with the project.

6.8.2 Make an initial site visit to observe existing site conditions, and research existing conditions and utilities that may be present at the Site and identify site constraints that may impact scope, cost, schedule, or construction. If directed by the Agency in writing, the CM shall prepare a detailed site logistics plan to be incorporated into the bid documents.

6.8.3 Review and evaluate all available project data and reports, including, but not limited to, the capital project scope development final report, front end planning report, project objectives, schematic design report, commissioning plan, geotechnical reports, and environmental assessments. Advise the Agency of project risks and any inconsistencies, discrepancies, or budget shortfalls that should be addressed in the next phase of design.

6.8.4 Review and evaluate the overall budget for a project, taking into account all funds available or to be made available, and identify amounts, including contingencies, available for each major activity, including design, construction, and construction management. The budget for the project must take into consideration any anticipated increases in the cost of labor and/or material.

6.8.5 Attend design progress meetings. The CM shall provide critical and technical feedback regarding design impact to scope, cost, schedule, risk, and constructability. The CM shall review meeting minutes for accuracy, communicate necessary revisions, and ensure revisions are made.

6.8.6 Constructability Review Report: The CM shall provide a constructability review ("Constructability Review") of a project's contract drawings, including analysis of the contract drawings, and as necessary the contract specifications, and address at minimum the following categories:

(i) Buildability: Whether the design can be realistically constructed as shown, and whether the contract drawings accurately capture the existing site conditions including (1) identify any issues that may generate problems during construction; (2) make recommendations for any changes in the work it considers necessary or desirable, and (3) make any observations or raise any concerns it may have concerning the design or the structural integrity of the same. Notwithstanding anything to the contrary contained in this Article, the CM shall have no obligation to correct professional errors or omissions in the Design Documents prepared by others.

(ii) Biddability: That the documents are sufficiently clear to allow for accurate bids.

(iii) Risk Factors and Accessibility: Report if there are obvious environmental, permitting, accessibility, or utility conflicts that may impact budget or schedule. This should include takeoffs to confirm accurate quantities for unit prices items.

(iv) Compliance: The design complies with applicable codes and regulations; verify required agency and utility submissions and approvals.

6.8.7 The CM shall use Bluebeam Revu (or a functionally equivalent PDF-based construction document markup platform) for a Constructability Review Report to perform all drawing reviews and to record comments, flags, and responses directly on drawing sets as annotations. These annotations must be cross-referenceable to a table which lists each annotation as an item to be fixed by the Agency between reviews. The Report can be formatted at the discretion of the CM provided that it includes a system to track comments from prior reviews and ensure they have been addressed at each subsequent review. The Report should ensure that the Agency has proper information to address and catalog necessary changes prior to bid.

6.8.8 The CM shall provide a list of recommended alternatives for each bid package and shall establish a bidding strategy commensurate with the Project goals and objectives.

6.8.9 The CM shall provide an independent detailed cost estimate for the Project, based upon design documents prepared by the Agency's Consultant and/or in-house designers, at 80% DD, 90% CD, and 100% CD. The CM shall compare and reconcile the quantities in its estimate with the quantities and prices in the estimate prepared by the Agency and/or its Consultant.

6.8.10 Following the receipt of bids, review bid tab and bid breakdown of lowest bidder and make recommendations to the Agency as to the capabilities and qualifications of bidders for the project, as well as any subcontractors and/or suppliers of equipment and materials proposed by them. The CM shall analyze the bid results for potential errors, review the apparent low bids for General Contractor responsiveness and compliance with bid requirements. At the Agency's request, the CM shall review the bid results for bidding climate issues, adequacy in the number of bidders, and the spreading or groupings of bid results.

6.8.11 The CM shall review design submissions by the Agency's Consultant(s) and/or in-house designers to ensure conformance with the project's planning and initiation documents, such as the front-end planning report, the project objectives, and the most current version of Agency's design guidelines. The CM shall perform quality assurance and quality control reviews of the deliverables associated with each milestone submission produced by the Agency's consultants and/or in-house designers and provide written comments with respect to Design Documents prepared by the Agency's consultants and/or in-house designers for the project. Design document reviews shall be completed by the CM within fourteen (14) calendar days of each design milestone, unless otherwise specified in the Work Order. All design document reviews performed by the CM are solely for the benefit of the Agency, and any benefits derived by the Consultant(s) shall be merely incidental. The CM's review and comments must address the issues set forth below:

(a) Compliance with the required scope of work
(b) Technical adequacy and completeness
(c) Coordination, including elimination of conflicts and/or overlaps (utilizing BIM clash detection)
(d) Design errors and omissions to reduce change orders during construction
(e) Constructability and an adequate level of development to ensure a competitive bidding process

(f) Economy and efficiency of design
(g) Construction methods and materials
(h) Availability of materials and labor, including alignment of construction schedule with proposed specifications and implied construction means and methods
(i) Minimalization of impact on agency operations
(j) Minimalization of impact on neighboring property owners
(k) Division of the construction work for the purpose of bidding, taking into account such factors as the type or scope of construction work to be performed (utilizing BIM scope delineation when required or applicable), time of performance, availability of labor, community relations, and other pertinent data relating to the various trades involved
(l) Time of performance and Project schedule, identifying opportunities to compress or reduce the project schedule
(m) Compliance with criteria set forth in the Work Order
(n) Compliance with review comments made by the CM, Agency, and other project participants, including but not limited to sponsors, stakeholders, commissioning agents, or Consultants
(o) Avoidance of possible conflicts and overlapping jurisdiction among the Subcontractors performing work for the Project, including proposed and recommended solutions for the elimination of such conflicts or overlaps
(p) Avoidance of inconsistencies, problems, delays, and change orders during the construction process
(q) Risk registers associated with the Project, risk analysis, and risk assessment register log with identified risks with the schedule and cost estimates.
(r) Opportunities to reduce construction impacts on the surrounding community
(s) If applicable, compliance with sustainability and climate goals, including but not limited to LEED, energy, and water use requirements
(t) If applicable, compliance with commissioning requirements as outlined in the Agency's design guidelines.

6.9 CM Services During Construction Phase: The CM shall serve as the administrative focal point for all activity and information between the Agency, the Consultant(s), and the General Contractor(s). The CM Services to be provided by the CM during the Construction Phase shall include, without limitation, the CM Services set forth below, unless provided otherwise in the Work Order.

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

6.10.2 If requested in the Work Order, provide or cause to be provided all temporary facilities and utilities as necessary for the performance of the construction work.

6.10.3 The CM shall provide and maintain throughout the project a cloud-based digital data management system and collaboration platform for communication and sharing of all project files. The data management system, including the categories into which the data is organized, is subject to prior written approval by the Agency. Such data management and collaboration platforms shall have

varying levels of access for all project participants, including General Contractor(s), sub-contractors, Consultant(s), end-users, and the Agency's project management staff. The CM will provide all necessary licenses to ensure cloud-based access to Project participants. Provide the Agency's Representative with full viewing access rights. Such data management and collaboration platforms shall be organized to manage all project-related data in a manner consistent with industry practice and/or the Agency's direction. Upon completion of the project, the CM shall deliver the entire contents of the cloud-based digital data management system to the Agency on a clearly labeled USB drive.

6.10.4 SWPPP Inspector: If requested in the Work Order, CM shall perform site inspections and complete all reports required to conform to the requirements set forth by the project's Stormwater Pollution Prevention Plan (SWPPP) per New York City's Department of Environmental Protection's (NYC DEP) Unified Stormwater Rule (USWR) and/or New York State Department of Environmental Conservation (NYS DEC) Pollution Discharge for Construction Activities (SPDES Inspector), as required. The SWPPP Inspector shall hold an active certificate from the NYS DEC Soil and Water Conservation District. (The certificate shall state the individual has been trained in the principles and practices of erosion and sediment control and has completed the four (4) hours of training that is active for 3 years from the day training is completed. The certificate must be active for the full length of the project. The Inspector must be a NYS licensed Professional Engineer (PE) or Landscape Architect (RLA) that has also registered on NYC DEP's SWPTS Portal as a Professional User and verified their professional certification. It is expected that the Inspector will handle the entire SWPPP inspection and reporting process on behalf of the Agency.

6.10.5 Undertake the following responsibilities with respect to submittals and approvals:

(a) Implement procedures to be followed by General Contractors for the expeditious processing of submittals, including, without limitation, shop drawings, material samples, and catalogue cuts. Such procedures require the General Contractors to submit shop drawings in hard copy, as well as in digital form.

(b) Review and track submittals to ensure that the products, systems, equipment, and/or materials are submitted, ordered, fabricated, and delivered within the construction schedule, and conform to the material specifications of the Construction Documents. Make recommendations to the Agency regarding the approval of proposed subcontractors and material vendors.

(c) Review construction document bulletins for compliance with Project requirements, regulatory agency requirements, and constructability. Ensure timely and accurate amendment packages to agencies having jurisdiction for compliant as-built conditions and responsible project closeout.

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

(a) Provide technical inspection, supervision, and coordination of the work on the Project until final completion of the construction work and Final Acceptance thereof by the Agency, verifying that the materials furnished and work performed are in accordance with all requirements of the Construction Documents, and that work on the Project is progressing on schedule.

(b) Provide off-site plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Agency, to ensure conformance with the material specifications of the Construction Documents.

(c) Take appropriate action to prevent the installation of work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the Construction Documents, and inform the Agency promptly of such action and the reasons for and outcome of such action.

(d) Supervise the performance of all inspections, quality control tests, commissioning tests, or any other tests required by law, rule, or regulation or by the Construction Documents, to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include, without limitation, semi-controlled or off-site inspections and controlled inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel, or any other material or equipment. If directed by the Agency in writing as a reimbursable service, the CM shall retain the CM Services of a qualified laboratory to provide any required testing. Compensation for such laboratory CM Services will be provided to the CM pursuant to the Allowance for Reimbursable CM Services.

(e) Inspect the project in conjunction with the Consultant and the Agency's Representative prior to Substantial Completion, occupancy by the City, or Final Acceptance. The CM shall furnish a detailed report to the Agency and/or the Consultant, setting forth any discrepancies or deficiencies in the finished work.

6.10.7 Undertake the following responsibilities with respect to the construction Progress Schedule:

(a) Review and coordinate proposed Progress Schedule(s), and any updates thereto, submitted by the General Contractor(s) and direct revisions to the Progress Schedule(s) as required by the Agency. Support review of baseline construction schedule submitted by contractor(s) and assist with baseline construction schedule approval process. For all commissioned Projects, such a schedule review shall be coordinated with the commissioning agent.

(b) Make recommendations to the Agency regarding approval or disapproval of the construction Progress Schedule(s). Compare the current Progress Schedule to the approved baseline construction schedule and prepare variance analysis and critical path analysis.

(c) If necessary, prepare a combined Progress Schedule for the Project in the form of a Gantt Chart or equivalent.

(d) Monitor compliance with the Progress Schedule(s) by the contractor(s).

(e) Prepare and update resource-loaded critical path method (CPM) and schedule narrative using software systems as directed by the Agency.

(f) Prepare a two (2) week look-ahead schedule on a biweekly basis, or as directed by the Agency.

(g) Ensure contractor compliance with the submission requirements outlined in the Agency's General Conditions in the Construction Contract Documents.

(h) Review the adequacy of the personnel, including equipment of the contractor(s), and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule(s).

(i) Notify the Agency of any anticipated delays in fabrication, erection, or construction.

(j) If performance of the work by the General Contractor(s) falls behind the Progress Schedule(s), advise the Agency of the same and make recommendations as to what methods should be adopted to make up for lost time.

(k) Render assistance when required to minimize delays to the Project caused by labor disputes during construction.

(l) Support the Agency in delay analysis and review of allegations and notice of delays submitted by the General Contractor, including maintaining a delay log showing all delays, the alleged source of each delay, and the CM's analysis of which party is responsible for the delay and/or whether the delay is concurrent. The CM shall also maintain copies and track responses/actions responsive to delay notices submitted by the contractor(s). Ensure that impacts to the schedule are properly recorded with attention to the correct assignment of responsibility for any delays. At Substantial Completion, the CM shall tally all the Days of delay attributable to each party (i.e., the City, Consultant, CM, and/or General Contractor) and submit the same with the CM's documentary support and analysis for the Agency's review.

6.10.8 Review and evaluate the means and methods of construction proposed by the General Contractor and advise the Agency in the event the CM reasonably believes that such proposed means and methods of construction will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the Construction Documents.

6.10.9 Undertake the following responsibilities with respect to the safety of the Site:

(a) Review Site Safety Plan submittals from General Contractors for compliance with the Agency's Safety Requirements. Approve the General Contractor's Site Safety Plan submittal, including CHASP, or direct revisions until the General Contractor's Site Safety Plan submittals conform with the Agency's safety requirements.

(b) Monitor General Contractor compliance with its Site Safety Plan and/or CHASP and all applicable regulations that pertain to construction safety. The CM shall perform a daily inspection of the project site at the beginning and end of each day and shall issue written directives to the General Contractor(s) to correct any deficiencies that may be identified.

(c) Promptly notify the Agency and the General Contractor(s) in writing if the CM observes any hazardous conditions at the site.

(d) In the event of an emergency, provide such labor, materials, equipment, and supervision as are necessary to cure such emergency conditions. The CM shall immediately notify the Agency of any such emergency condition.

(e) Monitor the activities of the General Contractor and conditions at the Site for conformance with the Construction Documents to ensure that a clean and safe environment is maintained at the site.

6.10.10 Undertake the following responsibilities with respect to project record keeping:

(a) Keep accurate and detailed written and/or digital records of the progress of the project during all stages of planning and construction.
(b) Maintain a daily job diary or log book or report and sign-in sheet describing all activities which occurred on the project on a daily basis, including without limitation, all work accomplished, the number of workers, identified by trade, employed at the site by the General Contractor(s), the number of hours worked, material shortages, labor difficulties, weather conditions, visits by officials, decisions reached, specific problems encountered, general and specific observations, and all other pertinent data relative to the performance of the work. The daily job diary/log/report book entry and sign-in sheet must be uploaded to the CM's digital document management system daily. Obtain measurements of quantities (interim and final) and calculations for each unit item. These calculations are to be part of the Final Calculation Book. The Final Calculation Book shall be submitted to the Agency's representative for review prior to the General Contractor's Final Payment.
(c) Maintain accurate, orderly, and detailed digital and written files, records, and other documents regarding the project, including, without limitation, correspondence, minutes, and/or reports of job conferences, progress reports, shop drawings, and other submissions, construction contract documents, including all addenda, change orders, supplemental drawings, and all other project-related documents. The CM shall upload all records, documents, or information concerning the project contemporaneously as they are created or received throughout the term of this Agreement and shall provide such records, documents, or information concerning the project to the Agency as directed. With respect to work to be performed on a time-and-materials, unit cost, or similar basis, requiring the keeping of records and computation therefrom, maintain cost accounting records in accordance with the City's procedures.
(d) Ensure that General Contractors comply with the General Conditions by: (1) producing and keeping current Record Drawings (also known as "As Built Drawings") in a timely fashion, and (2) submitting such Record Drawings in hard copy, as well as in digital form. The CM shall review the Record Drawings and verify that such Drawings are accurate and complete; on commissioned Projects, such review shall be coordinated with the commissioning Consultant.
(e) All project records, including, without limitation, those specified above, shall always be available to the Agency immediately upon request, and the Agency shall have the right to remove such project records and make copies thereof.
(f) The CM shall contemporaneously upload all project records, including, without limitation, those specified above, to the CM's digital data management system. Such records shall be in a format acceptable to the Agency or portable document format (PDF). At the CM's own expense, the CM shall remove and re-upload any digital records or files the Agency determines to be illegible, corrupted, or unclear and shall organize or reorganize digital records or files on the digital document management system as directed by the Agency.
(g) Monitor compliance by the General Contractor(s) with the following requirements applicable to the work: (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA), and (3) requirements for the participation of M/WBE's and/or LBEs.
(h) Prepare correspondence or other communications to the General Contractor as required to advance the project, including, without limitation, letters for the signature of the Agency or the Agency's Representative.

(i) The CM shall be responsible for ensuring that samples of concrete (cylinders), compaction testing, and core samples are obtained and secured in accordance with the Construction Documents.

6.10.11 Undertake the following responsibilities with respect to the General Contractor(s) payments:

(a) Review and analyze the lump sum breakdowns submitted by the General Contractor. Submit this recommendation and analysis to the Agency for approval.
(b) Within five (5) Business Days of receipt from the General Contractor, or other period directed in writing by the Agency:
    (1) Review and negotiate all requisitions for payments submitted by the General Contractor(s), including, without limitation, partial payments, payments for extra work, substantial completion, and final payments.
    (2) Make recommendations to the Agency for approval or disapproval of all General Contractor requisitions for payment in accordance with the City's procedures.
    (3) Verify all estimates for payments of work performed, computations, as well as field measurements and sketches necessary for payment purposes.
    (4) With respect to each requisition for payments submitted by the General Contractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.
(c) Review and respond to questions and comments from Agency's Engineering Audit Office ("EAO") and/or Finance and Procurement Divisions within one (1) Business Day.
(d) Perform analyses and estimates as directed by the Agency.
(e) Compliance with the SCC provisions regarding payments.

6.10.12 Within five (5) Business Days, or other period directed in writing by the Agency, review all applications for extensions of time submitted by the General Contractor and make written recommendations to the Agency for approval or disapproval thereof in accordance with the City's procedures.

6.10.13 Within five (5) Business Days, or other period directed in writing by the Agency, review, evaluate, and respond to requests from General Contractor for explanatory information and/or interpretation of the meaning and intent of the Construction Documents ("RFI"). The CM shall confer with the Consultant and/or in-house designer, ascertain the Consultant's and/or in-house designer's interpretation, and prepare a response to the General Contractor's RFI setting forth the Consultant's and/or in-house designer's interpretation. The CM shall maintain and update the RFI log.

6.10.14 If directed by the Agency, undertake the responsibilities set forth herein with respect to disputes submitted by the General Contractor. Disputes means disputes of the kind delineated in the article of the SCC entitled "Resolution of Disputes". Review, evaluate, and prepare a recommended determination with respect to disputes filed by the General Contractor(s). The CM's recommendation shall be in writing and shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the General Contractor, as well as the requirements of the

construction contract and the Construction Documents. The CM shall provide, with such recommendations, relevant project records, clearly organized and labeled.

6.10.15 The Agency will make all final decisions regarding extra work and/or change orders as set forth in the SCC, modifications, and additions to the construction contract. The CM shall undertake the following responsibilities with respect to requests for change orders:

(a) Document initial discovery of a change order review cause for and need of potential change orders, and evaluate cost, schedule, and any other impacts for all requests for change orders from the General Contractor(s) and obtain proposals from the General Contractor(s).

(b) If directed by the Agency, the CM shall prepare an independent cost estimate for the proposed change order prior to obtaining fee proposals from the General Contractor(s).

(c) Prepare a report recommending approval or disapproval of the requested change order in accordance with Agency and/or City procedures. Such report shall include the CM's review and evaluation of the following: (1) the validity of the proposed change order, (2) the cost of the proposed change order submitted by the General Contractor(s), and (3) the quantities of labor, equipment, and materials necessary to perform the proposed change order. The CM must be prepared to substantiate the information contained in its report to the Agency, the Engineering Audit Officer ("EAO"), the Comptroller, and any other agency having jurisdiction in this area.

(d) If directed by the Agency, the CM shall negotiate a price, i.e., a lump sum price or unit prices, for the performance of the proposed change order work and submit the same to the Agency for its approval.

(e) Prepare and maintain a change order log, inclusive of potential change orders.

6.10.16 Schedule and conduct bi-weekly job meetings with the General Contractor, Consultant(s), representatives of the Agency, regulatory agencies, and any other entities or individuals involved with the project to discuss procedures, performance, progress, problems, coordination, scheduling, and related issues. The CM shall prepare the agenda and minutes of such meetings in a format authorized by the Agency and shall distribute such minutes to all attendees within two (2) Business Days of each meeting.

6.10.17 Undertake the following responsibilities with respect to project reports:

(a) Submit written progress reports to the Agency on a monthly basis, unless otherwise directed. Such reports shall be based upon the most current information and shall include, without limitation:

(1) Change Order Tracking Sheet, indicating the number and amount of change orders, including potential change orders

(2) Shop Drawing Log Schedule

(3) Fabrication and Delivery Schedule

(4) Risk analysis and risk assessment register log

(5) Budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete

(6) Compliance with M/WBE requirements
(7) Progress photographs
(8) Identify commissioning progress and deficiencies
(9) Compliance with sustainability requirements, including but not limited to LEED, energy, and water use requirements
(10) Monitor and track requirements for regulatory approval and sign-off
(11) Progress Schedule, including information concerning the work of the General Contractor(s) and the percentage of completion of the work, by activity and overall Project, schedule analysis and variance report comparing the current Progress Schedule to the baseline construction schedule. The CM shall also, through BIM, provide a digital model representing the progression of the work

6.10.18 Take pre-construction condition photographs and throughout construction to document the progress of the construction work. During construction, through the completion of all punch list work, the CM shall take progress photographs of the work each day work is performed on the Site. The CM shall appropriately date, title, and describe each photograph and shall upload such photographs to the CM's digital document management system no later than the following Day. Such photographs shall be referenced appropriately by title or other specific identifier in each monthly progress report.

6.10.19 Determine the need for and recommend to the Agency the institution of default proceedings against the General Contractor and/or the assessment of liquidated damages. Assist the Agency in selecting an alternate contractor(s) to perform the work and assist in evaluating back charges or other deductions to be assessed.

6.10.20 Undertake the following responsibilities with respect to Substantial Completion of a project:

(a) Inspect the project in conjunction with the Consultant and the Agency's Representative at the time of substantial completion.
(b) Verify that all commissioning activities and documents required prior to substantial completion have been completed, submitted and approved, as described in the Agency's General Conditions, specifications, and Contract Documents for the project.
(c) Manage and supervise user acceptance orientation sessions provided by the General Contractors for all equipment and/or systems installed. Such orientation sessions shall provide instructions regarding the use and navigation of project information and records in digital form if required, including As Built Drawings, and shall be coordinated with the commissioning agent for all commissioned Projects.
(d) Furnish a detailed report to the Agency setting forth any discrepancies or deficiencies in the finished work.
(e) Make recommendations to the Agency regarding a determination of substantial completion.

(f) Prepare and/or finalize all necessary punch lists, including completion dates for all items, estimated value of punch list items, and expedite execution of the same by the General Contractor.
(g) Prepare a detailed construction delay analysis at substantial completion of the project.

6.10.21 Undertake the following responsibilities with respect to Final Acceptance of the project:
(a) Inspect the project in conjunction with the Agency's designated representatives and end-users at the time of Final Acceptance.
(b) Verify that all commissioning activities and documents required prior to Final Acceptance have been completed, submitted, and approved; and that all commissioning issues have been closed.
(c) As applicable, verify that all sustainability requirements have been met, including LEED certification at the required level, constructed and configured to meet the Low Energy Intensity Building requirements via a confirmation document provided by the Agency.
(d) Furnish a detailed report to the Agency setting forth any discrepancies or deficiencies in the finished work.
(e) Make recommendations to the Agency regarding a determination of Final Acceptance, including, but not limited to, solutions to any post-occupancy issues.
(f) Assemble and deliver to the Agency all Record Drawings (also known as "As-Built Drawings"). Such Record Drawings shall be submitted in hard copy, as well as in digital form (i.e., in the form of BIMs). The CM shall review the Record Drawings and verify that such Drawings are accurate and complete. The CM shall notify the Agency of any issues, problems, or observations relative to such Record Drawings.
(g) If directed, prepare a "Lessons Learned Report" for the project.
(h) Collect warranties and/or guarantees from the manufacturer, maintenance and operations manuals, keying schedules, and other data required of the General Contractor(s), and maintain photographic records, material and equipment delivery records, visual aids, charts, and graphs.
(i) SWPPPS closeout
(j) As applicable, verify compliance with NYC Department of Transportation's Pedestrian Ramp Inspection and Sidewalk Management System (PRISM).

6.10.22 Prior to the expiration of the guarantee period set forth in the construction contract, inspect the project and furnish a report to the Agency describing in detail any finished work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

6.10.23 Prepare and submit the General Contractor performance evaluation form. Identify the areas where the General Contractor needs improvement. Such performance evaluation form shall be completed when fifty percent (50%) of the contract amount has been vouchered and at substantial completion of the Project. The form shall be submitted to

the Agency no later than fifteen (15) calendar days after each of these events has occurred.

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

6.11 CM Services During Post Construction Phase: Unless provided otherwise in the Work Order, CM Services shall include, without limitation, the CM Services set forth below: delay

(a) Conduct pre-installation meetings, and manage, ensure compliance, and supervise the delivery and installation of fixtures, furniture, and equipment for the Project, as specified by the Agency

(b) Manage and supervise user acceptance orientation sessions provided by the General Contractors for all equipment and/or systems installed. Such orientation sessions shall provide instructions regarding the use and navigation of project information and records in digital form (i.e., in BIM), including As Built Drawings.

(c) Assist the Agency in obtaining permanent Certificates of Occupancy for a project.

(d) If directed by the Agency, conduct a post-occupancy inspection and evaluation of the project prior to the expiration of one (1) year from Substantial Completion and report to the Agency any deficiencies in materials or workmanship or damage caused by such deficiencies that the General Contractor may be required to repair, replace, restore or rebuild pursuant to the Article titled "Maintenance and Guaranty" in the SCC.

(e) Submit to the Agency originals of all final project records in CM's possession, including without limitation, (1) all reports for the project, including inspector's reports, as well as laboratory and plant testing reports; (2) all certificates, warranties and guarantees from manufacturers; (3) office and/or field diaries or log books; (4) all original records with respect to General Contractor payments; (5) all Record Drawings (also known as "As-Built Drawings"), in hard copy, as well as in digital form; (6) progress photographs of the construction; (7) the final and complete "As Built" schedule, final cost report; and (8) any other project records required by the Agency.

(f) Upon completion of a project, the CM is required to produce all project records and all Data Management files in an electronic format, accessible and viewable to the Agency. The project records and Data Management files must be organized following the industry best practice, and as directed by the Agency.

6.12 CM Services for Environmental and Planning: In addition to the above CM Services set forth above, for the Agency's Environmental and Planning Division, CM Services shall include the following:

(a) All necessary planning, survey, inventory, inspection, supervision, and administrative CM Services related to tree work within City Right of Way (ROW), in parks, or work in natural areas. Such work includes, but is not limited to, tree planting, tree/stump removal, tree pruning, tree damaged site repairs, tree risk assessment, tree inventory, pest/disease inspection, data entry or management for tree information, post-storm tree-related work, storm water inspection, and special inspection coordination and monitoring.
(b) Perform inventory and basic assessment and inspection of trees, which shall include, but not be limited to, the number of trees, location or address, species, diameter at breast height (DBH), condition, risk assessment, and prescription for treatment and/or pruning or recommendations for removal or additional and/ or more advanced assessment by the Agency.
(c) Entering Tree Inventory information into the Agency's Forestry Management System (ForMS) mobile version supplied by the Agency.
(d) Inspecting sidewalk/park locations for planting.
(e) Post-storm tree inspections.
(f) Sidewalk inspections using ForMS.
(g) Closing out completed Work Orders in ForMS
(h) Stormwater Inspection.
(i) Provide personnel who have experience with Geographic Information Systems (GIS) and are capable of mapping locations and boundaries in the field using GIS-enabled tools and equipment.
(j) Provide personnel who are able to identify native trees, shrubs, grasses, and forbs and key naturalized invasive species.
(k) Provide personnel who have experience with wetland restoration and/or construction within the intertidal zone.
(l) Provide personnel to perform 11.10.1Archaeological Workplan, Site Investigations and Monitoring.

6.13 Reimbursable Services: The CM may be directed by the Agency to provide Reimbursable Services for the project. If so directed, the CM shall provide such Reimbursable Services through entities approved by the Agency. Payment for Reimbursable CM Services shall be in accordance with the terms and conditions set forth in Article 3.

6.13.1 No Reimbursable CM Services shall be provided by the CM, or reimbursed hereunder, unless expressly authorized in the Work Order and/or written directive from the ACCO. For Reimbursable CM Services in excess of $500.00, such written authorization must be provided in advance of the expenditure.

6.13.2 If so directed, the CM shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds $20,000.00.

6.13.3 Standard Reimbursable Allowance Items: Reimbursable CM Services shall be such CM Services determined by the Agency to be necessary for the project, and may include, without limitation, the following Standard Allowance items: drainage inspections, borings, including final report, environmental CM Services - inspection, testing and reporting (includes but not limited to lead, asbestos, mold, soils & water), ground penetrating radar, seismic testing, probes (i.e., building probes, civil probes, geothermal probes), LEED Consultant CM Services including LEED certification Commissioning including Enhanced Commissioning as applicable, archaeological CM Services, CEQR, Environmental Assessment Statement, Phase II Environmental Site Investigations, swimming pool/spray shower/water feature design, PLA Study, direct permit fees, topographical survey (by a licensed surveyor), SWPPP compliance, laboratory services for testing of materials and/or items of work, purchase of long lead items for the construction work, performance of general conditions items, and any other services determined by the Agency to be necessary for the project.

6.13.4 In the event the CM is directed as a Reimbursable Service to purchase any items and/or equipment, such items and/or equipment shall, unless otherwise directed by the Agency, be the sole property of the City upon delivery to the designated location. The CM shall prepare and maintain an accurate inventory of all items and/or equipment which it is directed to purchase pursuant to the Allowance for Reimbursable CM Services. Such inventory shall be provided to the City upon request. Upon completion of the required work, as directed by the Agency, the CM shall turn such items and/or equipment over to the City.

Article 7 — The CM's Personnel

7.1 General: The CM agrees, throughout the term of the Agreement, to provide personnel for the performance of all required construction management and/or consulting CM Services for the Project in accordance with Work Orders issued by the Agency. The CM specifically agrees that its employees, agents, and consultants shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform.

7.2 Staffing Requirements: Staffing requirements for personnel are set forth in **Exhibit 3**. Such staffing requirements specify the titles of personnel that the CM may be required to provide, through its own employees or through its Subconsultants. If any additional titles of personnel are required for the Project, the Work Order shall specify: (1) additional required title(s) and (2) minimum requirements per title.

7.2.1 Minimum Requirements: Personnel provided by the CM and/or its Subconsultant must satisfy the minimum requirements for the title in question, as set forth in **Exhibit 3**. The CM shall provide resumes or other documentation acceptable to the Agency to demonstrate that the personnel to be provided comply with the minimum requirements per title. In exceptional circumstances, the Agency, in its sole and absolute discretion, may modify the minimum requirements per title.

7.3 Staffing Plan: The CM shall provide personnel in accordance with the final approved Staffing Plan. Prior to finalization, the Staffing Plan is subject to review and approval by the Agency in

accordance with the process described below. The final approved Staffing Plan shall be included in the Work Order.

7.3.1 Contents of Staffing Plan: The CM's Staffing Plan shall include the items set forth below:

(a) Contract Executive, identified by the CM in its Proposal for the Agreement

(b) Key CM Personnel: Required titles of Key Personnel and specific individuals for each title identified by the CM in its Proposal for the Project.

(c) Other CM Personnel: Required titles and specific individuals for each title

(d) Direct Salary Rate per hour for each specified individual (except Contract Executive), determined by the Agency in accordance with Article __.

(e) Total estimated hours per title per Phase (Pre-Construction, Construction, and Post-Construction

(f) Total estimated amount per title per Phase (Pre-Construction, Construction, and Post-Construction

(g) Total estimated amount for all required titles

(h) An organization chart for all Assigned Personnel performing CM Services hereunder

7.3.2 Limitations on Payment: The specific individuals identified in the Staffing Plan, except for any Contract Executive(s), shall be considered assigned personnel for the purpose of the CM's entitlement to payment for CM Services performed by such individuals in accordance with Article 3. As specified therein, the CM shall not be entitled to payment for staffing expenses for: (1) any Contract Executive(s), and (2) any individual not included in the approved Staffing Plan.

7.3.3 Contract Executive: The Contract Executive, identified in **Exhibit 3**, shall serve as the CM's principal representative with respect to its obligations hereunder. Such Contract Executive shall be responsible for coordinating the activities of personnel performing CM Services and for providing, on an as-needed basis, executive or management expertise and oversight with respect to the Agreement and Work Orders issued hereunder. The CM shall not be entitled to payment for CM Services provided by any Contract Executive(s). Compensation for CM Services provided by any Contract Executive(s) is deemed included in the applicable Multiplier. Contract Executive must, at all times throughout the term of the Agreement, be a principal or officer of the CM.

7.3.4 Key Construction Management (CM) Personnel: The Key CM Personnel shall provide all CM Services necessary and required for the inspection, supervision, management, coordination and administration of the project, so the required construction work is properly executed, completed in a timely fashion, and conforms to the requirements of the Construction Documents, as well as to good construction practice.

7.3.5 Agreement to Assign: The CM specifically agrees to assign to a project for its entire duration, the specific individuals identified by the CM in **Exhibit 3** to this Agreement, as well as in its proposals for a project. Failure by the CM to provide any of the individuals identified in its proposal for a project as the Contract Executive and the Key CM Personnel shall be considered a material breach of the Agreement and grounds for Default. Replacement of such Contract Executive and/or Key CM Personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer employed by the CM, or (2) if the Agency does not direct the CM to commence work on the project within six (6) months of the date on which the CM submitted its

proposal for the project. Replacement of such Contract Executive and/or Key CM Personnel must comply with the conditions set forth below.

7.3.6 Other Construction Management Personnel: In addition to the Key CM Personnel, other CM personnel were identified by the CM in its proposal for the project. Such other CM personnel shall provide CM Services that are supportive or ancillary to the CM Services provided by the Key CM Personnel. Replacement of such CM personnel must comply with the conditions set forth below.

7.3.7 Proposed Staffing Plan: Within five (5) business days of a written request from the Agency, the CM shall submit a proposed Staffing Plan for a project. Such Staffing Plan shall include the items listed above. With respect to each individual, the CM shall provide: (1) the individual's resume, as well as any other information detailing his/her technical qualifications and expertise, and (2) direct salary information, including the individual's current actual annual direct salary, as defined in Article 3, and direct salary history for the previous year.

7.3.8 Review and Approval of Staffing Plan: The Agency shall review the CM's proposed Staffing Plan and shall direct revisions to the same, if necessary, prior to final approval thereof. As part of his/her review, the Agency shall determine the following: (1) whether the Staffing Plan includes the individuals identified by the CM as Key Personnel its proposal for the project, (2) whether each specific individual is qualified for the applicable title, and (3) the direct salary rate per hour to be paid for each specific individual, computed in accordance with Article 3. The CM shall revise the Staffing Plan as directed until such plan is approved in writing by the Agency.

7.3.9 Revisions to the Staffing Plan: Any revisions to the Staffing Plan must be specifically requested in writing by the CM, if not directed by the Agency, and approved in writing by the Agency.

(a) Replacement Personnel: No substitutions for assigned personnel shall be permitted unless the proposed replacement has received the prior written approval of the Agency. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced and, in any event, with qualifications meeting the minimum requirements, if any, set by the Agency as set forth above. Replacement of the Contract Executive and/or the Key CM Personnel will only be permitted under the circumstances set forth in Article 7.3.5.

(b) Changes by the Agency reserve the right to direct changes to the Staffing Plan, including, without limitation, modifying the titles and/or minimum requirements of personnel necessary for the project and increasing or decreasing the personnel assigned to a project, based upon the scope of the required work. The CM shall increase or decrease the personnel assigned to the project, as directed by the Agency.

(c) Removal of Personnel: At the Agency's request at any time, the CM shall remove any personnel and substitute another individual reasonably satisfactory to the Agency. The Agency may request such substitution at any time, in its sole discretion.

(d) Revisions Due to Delay: In the event completion of the project is delayed for any reason, including, without limitation, strike, work stoppage, severe weather conditions, or other circumstances not due to the fault of the CM, the Agency shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The CM shall be paid for the cost of the staffing that is directed

by the Agency to maintain. Upon cessation of the delay, the CM shall restore the level of staffing as directed by the Agency.

7.4 Night Differential / Overtime: The CM shall provide a statement describing its company policy with respect to payment of a premium for CM Services during other than regular business hours (i.e., premium for Night Differential and/or Overtime). The CM's statement describing its policy shall indicate the following: (1) whether the policy is consistently applied to all clients; (2) the designated class(s) of employees to whom such policy applies, and (3) the premium or rate of increase to be paid to employees for such CM Services. For the purpose of payment, the CM's policy regarding payment of a premium for CM Services performed during other than regular business hours is subject to approval by the Agency. Approval shall only be given if the policy is reasonable, consistently applied to all clients, and in accordance with standard practice in the industry. Payment of a premium for CM Services performed during other than regular business hours is subject to the limitation set forth in Article 3.

7.5 Subconsultants: The CM shall engage such Subconsultants as may be necessary for the performance of all required CM Services for the project. The CM shall engage the Subconsultant(s) identified in its Proposal for the project, unless otherwise approved by the Agency. Failure by the CM to provide the Subconsultant(s) set forth in its Proposal for the project shall be grounds for termination for cause. The CM shall be responsible for the performance of CM Services by its Subconsultant(s), including maintenance of schedules, correlation of their work, and resolution of all differences between them.

7.5.1 Replacement Subconsultants: No substitution for any Subconsultant shall be permitted unless approved by the Agency. Any proposed replacement Subconsultant must possess qualifications and experience substantially similar to those of the Subconsultant being replaced and is subject to the prior written approval of the Agency. In addition, at the Agency's request at any time, the CM shall remove any Subconsultant and substitute another Subconsultant reasonably satisfactory to the Agency. The Agency may request such substitution at any time, in its sole discretion. The Agency will not be required to furnish a reason for requesting such substitution.

7.5.2 Expenses incurred by the CM in connection with furnishing Subconsultants for the performance of required CM Services hereunder are deemed included in the payments by the Agency to the CM, as set forth in Article 3. The CM shall pay its Subconsultant(s) the full amount due them from their proportionate share of the requisition, as paid by the City. The CM shall make such payment not later than seven (7) calendar days after receipt of payment by the City.

7.5.3 The CM may not contract with another CM Firm holding a current contract with the Agency for construction management CM Services on a requirements basis in the same category (a) for the other consultant to perform CM Services as a Subconsultant to the CM for any Work Order issued pursuant to this Agreement, or (b) for the CM to perform CM Services as a subcontractor to the other consultant for any work order issued pursuant to the other consultant's requirements contract with the Agency for construction management CM Services.

Article 8 – Additional Provisions with Respect to Payments

8.1 All payments under this Agreement shall be subject to audit by the Agency and post audit by the Comptroller in accordance with the Administrative Code of the City of New York. All payments shall be paid by the City out of such monies as may be reserved by the Comptroller for the purposes herein provided. The Agency and any other person or agency duly authorized to act for and on behalf of the Agency shall not, by virtue of such authority or action, be liable in any manner whatsoever to the CM.

8.2 The acceptance by the CM, his successors, or assigns of any final payment due on the expiration and/or termination of this Agreement shall constitute a full and complete release of the City from any and all claims, demands, and causes of action whatsoever which the CM, his successors, or assigns have or may have against the City under the provisions of this Agreement.

Article 9 – Monies Withheld and Responsibility for Delay

9.1 When the Agency shall have reasonable grounds for believing that the CM will be unable to perform this Agreement fully and satisfactorily within the time fixed for performance, or a meritorious claim exists or will exist against the CM and/or the City arising out of the negligence of the CM, or the CM's material breach of any provision of this Agreement, then the Agency may withhold payment of any amount otherwise due and payable to the CM hereunder.

9.1.1 Any amounts withheld may be retained by the Agency against any loss and may, after written notice to the CM, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the Agency, and no person shall have any right against the Agency's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

9.1.2 The Agency may, at its option, withhold for purposes of set-off any monies due to the CM under this Agreement up to the amount of the costs the Agency incurs, including change orders in construction as a result of the CM's design errors and/or omissions.

9.2 Responsibility for Delay: In the event a project is not completed within the timeframe set forth in the CM's original project schedule (i.e., the project schedule submitted by the CM as part of its proposal for a project), the Agency shall prepare a report analyzing the causes of the delay and determining responsibility for the same.

9.2.1 If the report indicates that the CM, as a result of its actions or inactions, is responsible for the delay, or any portion thereof, the Agency shall deduct from any amount due and owing to the CM under this Agreement, the total amount of staffing expenses paid to the CM for the period of the delay, or any portion thereof, for which the Agency determines the CM is responsible. For the purpose of this deduction, staffing expenses shall mean the Direct Salary Rates for all Assigned Employees times the applicable Multiplier set forth in Article 3.

9.2.2 If the amount due and owing to the CM under this Agreement is less than the total amount of staffing expenses paid to the CM for the period of the delay, or any portion thereof, for which the

Agency determines the CM is responsible, the CM shall be liable for and agrees to pay the difference upon demand by the Agency.

9.2.3 If the CM files a dispute regarding its responsibility for the delay, or any portion thereof, the CM is obligated, while the dispute is pending, to continue performing any required CM Services pursuant to this Agreement, and, if demanded by the Agency, to pay the amount described in the paragraph above.

Article 10 – Ownership of Documents

10.1 As set forth in Appendix A, any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall, upon their creation, become the exclusive property of the City. During the term of this Agreement and at any time within the retention period set forth in Appendix A, the CM shall, upon demand, promptly deliver such material, records, or documents to the Agency, or make such records available to the Agency or their authorized representative for review and reproduction at such place as may be designated by the Agency. Thereafter, the City may utilize such material, records, or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the CM. Should such documents prepared under this Agreement be re-used by the City for other than the project originally created, it is understood that the CM bears no responsibility whatsoever for such re-use except in those instances where it is re-employed for re-use of the documents.

Article 11 – No Estoppel

11.1 Neither the City nor any Agency, official, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by the City, Commissioner, and/or ACCO from demanding and recovering from the CM any overpayment made to it, or such damages as the City may sustain by reason of the CM's failure to perform each and every part of this Agreement and the Work Orders issued pursuant to it.

Article 12 – Sub-Contracting Compliance Notice

12.1 The CM is required to utilize the City's web-based system, Payee Information Portal (PIP), to identify all Sub-consultants and/or subcontractors in order to obtain Sub-consultant and/or subcontractor approval pursuant to PPB Rule 4-13, and will also be required to enter all Sub-consultant and/or subcontractor payment information and other related information in such system during the contract term. Please refer to https://a127-pip.nyc.gov/ for more information.

Article 13 – Liquidated Damages

13.1 The Agency may negotiate liquidated damages to be assessed against the CM in the event the CM fails to perform the duties specified in the Agreement and as specified in the Work Order. The

amount of liquidated damages shall be fixed and agreed as liquidated damages that the City will suffer because of the CM's failure to perform its duties, and not as a penalty.

13.2 Liquidated damages 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 under this Agreement, or the CM's obligation to indemnify the City, or to any other remedy provided for in this Agreement or by law. The Agency may deduct and retain out of the monies which may become due hereunder, 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 CM shall be liable to pay the difference upon demand by the Agency.

Article 14 – Labor Law Requirements

14.1 The CM must strictly comply with all applicable provisions of the New York State Labor Law, as amended. Such compliance is a material term of the Agreement. Such compliance must include, but is not limited to, payment of the prevailing rate of wages, as described below.

14.1.1 Certain categories of labor for CM Services are included in the Section 220 Prevailing Wage Schedule. In accordance with the Labor Law, for any category of labor included in such Schedule, the wages to be paid for a legal day's work to such laborers must not be less than the "prevailing rate of wages" as defined in Labor Law Section 220, and as fixed by the Comptroller in the Prevailing Wage Schedule and in any updates thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the work is being performed.

Article 15 – Iran Divestment Act Compliance Rider

15.1 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 CM 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 CM 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 CM Services.

15.1.1 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.

15.1.2 A 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:

a) 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

b) The City makes a determination that the goods or CM 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 CM Services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

Article 16 – MWBE Requirements

16.1 The Agreement's MWBE requirements are set forth in "Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement M/WBE Utilization Plan – Schedule B" attached hereto as **Exhibit 4.** MWBE goals will be required for individual Mini-RFPs and/or Work Orders in accordance with Local Law 1 of 2013, NYC's Minority-Owned and Women-Owned Business Enterprise (M/WBE) program. Each mini-RFP will contain the required MWBE goals. The CM will be required to submit a completed Schedule B – M/WBE Utilization Plan for Independently Registered Work Orders that are Issued Pursuant to Master Service Agreements (MSA), unless a full waiver is obtained, with each individual Mini-RFP proposal.

Article 17 – Riders

17.1 The CM shall comply with the following Rider:

(a) Community Hiring Rider attached hereto as **Exhibit 5** and made a part hereof.

Exhibit 1 – Appendix A

General Provisions Governing Contracts for Consultants, Professionals, Technical, Human, and Client CM Services

CITY OF NEW YORK

ADDENDUM
TO
APPENDIX A JANUARY 2018 FINAL

This Addendum modifies Appendix A January 2018 Final, General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services ("Appendix A"), as set forth below.

Subsection B of Section 5.08 (Confidentiality) of Appendix A is deleted in its entirety and replaced with the following:

Section 5.08 Confidentiality

* * *

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

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

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

3. Without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of such notifications to individuals affected by the breach of security and/or other actions mandated by any Law, or administrative or judicial order, to address such breach of security, and to cover the costs of any fines or disallowances imposed by the State or federal government as a result of such breach. The City shall

also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of identity theft monitoring services for individuals affected by such breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such preventive measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

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

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

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

F. "Comptroller" means the Comptroller of the City of New York.

G. "Contractor" means the entity entering into this Agreement with the City.

H. "Days" means calendar days unless otherwise specifically noted to mean business days.

I. "Department" or "Agency" means the City agency or office through which the City has entered into this Agreement.

J. "Law" or "Laws" means the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. "Procurement Policy Board" or "PPB" means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.

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

M. "SBS" means the New York City Department of Small Business Services.

N. "State" means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq*.). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

Section 2.03 Certification Relating to Fair Practices

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Contractor acknowledges that the Department's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.

Section 2.06 Authority to Execute Agreement

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

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

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

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

Section 3.02 Subcontracting

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is $20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed $20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal (www.nyc.gov/pip).

2. Approval when subcontract is greater than $20,000.

a. The Contractor shall not enter into any subcontract for an amount greater than $20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than $20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.[1]

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

[1] Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed $25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the City and the Contractor;

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

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

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

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

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

F. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of $100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 ("Section 6-109"), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than $1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than $750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor‘s account an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of $50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:

1. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than $100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq*. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability,

marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

c. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

d. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and

f. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

2. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or

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

3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of $100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

Section 4.06 Paid Sick Leave Law

A. *Introduction and General Provisions.*

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.[2] Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

[2] Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

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

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

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

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

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

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

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

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

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

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

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

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

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

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

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;

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

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

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

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

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

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

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500.00 for a first violation, $750.00 for a second violation within two years of the first violation, and $1,000.00 for each succeeding violation within two years of the previous violation.

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

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of

the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of $100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of $100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at $100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

The Contractor agrees to maintain separate and accurate books, records, documents, and other evidence, and to utilize appropriate accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

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

observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

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

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

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

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the

Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

Section 5.06 Electronic Records

As used in this Appendix A, the terms "books," "records," "documents," and "other evidence" refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

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

B.

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

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

C.

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

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

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

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

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

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

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

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

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

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

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

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

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

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

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("disclosure

demand"), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

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

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

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

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

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

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

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

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers' Compensation, Disability Benefits, and Employers' Liability Insurance

A. The Contractor shall maintain workers' compensation insurance, employers' liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

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

1. Form C-105.2, *Certificate of Workers' Compensation Insurance*;

2. Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;

3. Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;

4. Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;

5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;

6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;

7. Form CE-200 – *Affidavit of Exemption*;

8. Other forms approved by the New York State Workers' Compensation Board; or

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

Section 7.03 Other Insurance

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

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

C. *Professional Liability Insurance.*

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

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

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

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

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

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

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

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

3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

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

C. There shall be no self-insurance program, including a self-insurance retention, exceeding $10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

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

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

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

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

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office

of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such

entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (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 Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

A. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

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

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

Section 9.02 Changes Through Fault of Contractor

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State, and/or City Funding

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of

the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

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

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

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

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

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

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

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

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

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

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

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

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

F. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

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

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

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

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

Section 11.02 Electronic Funds Transfer

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

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the

commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section 11.02 is applicable to contracts valued at $25,000.00 and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's

work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

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

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

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

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

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

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

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

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

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

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

have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

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

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

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

4. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of

time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.

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

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

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

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123*. In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of $50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status*. In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the

Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Voter Registration

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of

supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section 13.06, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. *Assistance in Completing Voter Registration Forms*. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. *Required Statements*. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.07 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 13.08 Religious Activity

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 13.09 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq*., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.10 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.11 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of $250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such

pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.12 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 ("E.O. 150"), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children's Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency's plans developed pursuant to E.O. 150.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

AFFIRMATION

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

Full name of Proposer or Bidder *[below]*

_____

Address_____

City_____ State_____ Zip Code_____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - ☐ Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____

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

C - ☐ Corporation
EMPLOYER IDENTIFICATION NUMBER _____

By_____
Signature

_____
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

SCHEDULE A

Article 7 -- Insurance	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	**Minimum Limits and Special Conditions**
■ Workers' Compensation §7.02 ■ Disability Benefits Insurance §7.02 ■ Employers' Liability §7.02	Statutory amounts.
■ Commercial General Liability §7.03(A)	$1,000,000.00 per occurrence $1,000,000.00 personal & advertising injury (unless waived in writing by the Department) $2,000,000.00 aggregate $0 products/completed operations Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
☐ Commercial Auto Liability §7.03(B)	$1,000,000.00 per accident combined single limit If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90
■ Professional Liability/Errors & Omissions §7.03(C)	$1,000,000.00 per claim
☐ Crime Insurance §7.03(D)	$_____ Employee Theft/Dishonesty

	$_____ Computer Fraud $_____ Funds Transfer Fraud $_____ Client Coverage $_____Forgery or Alteration $_____Inside the Premises (theft of money and securities) $_____ Inside the Premises (robbery or safe burglary of other property) $_____ Outside the Premises $_____ Money Orders and Counterfeit Money City of New York is a loss payee as its interests may appear
☐ Cyber Liability Insurance §7.03(E)	*[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]*
☐ [OTHER]	*[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]*
☐ [OTHER]	*[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]*
Section 10.07 – Liquidated Damages	
• Violation of Section 3.02(H), reporting subcontractors in the City's Payee Information Portal	**$100 per day**
• _____	**$_____**
Section 14.04 – Notice	

Department's Mailing Address and Email Address for Notices	
Contractor's Mailing Address and Email Address for Notices	

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

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

_____
[Name of broker or agent (typewritten)]

_____
[Address of broker or agent (typewritten)]

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

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

_____
[Signature of authorized official, broker, or agent]

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

State of …….)
) ss.:
County of …….)

Sworn to before me this _____ day of _____ 20___

_____
NOTARY PUBLIC FOR THE STATE OF _____

WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT

RELATING TO A NYC-FUNDED CONTRACT OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959

DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT: **New York City Department of Investigation (DOI)** **80 Maiden Lane, 17th floor** **New York, New York 10038** **Attention: COMPLAINT BUREAU** **OR FILE A COMPLAINT ON-LINE AT:** **www.nyc.gov/doi** **All communications are confidential**	**Or scan the QR Code above to make a complaint**

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law,** an employee must report to DOI − or to certain other specified government officials − information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than $100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

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

A. *Introduction and General Provisions.*

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

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

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

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

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

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

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

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

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

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

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

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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/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

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

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

G. *Enforcement and Penalties.*

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

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

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

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

Exhibit 2

Multiplier for Overhead and Profit for Partial and Comprehensive CM services

Exhibit 3

Staffing Requirements, Key Personnel, Titles and Minimum Requirements

IDENTIFICATION OF KEY PERSONNEL

Submission: The proposer must submit Identification of Key Personnel as part of the Technical Proposal.

Key Personnel: Key Personnel shall include the following personnel of the Consultant and/or any of its Sub-consultants performing services pursuant to a Work Order: (1) Principal, (2) Project Manager, (3) any personnel performing services in a title for which the minimum experience requirement, is five (5) years or more.

The proposer may identify multiple individuals for each title; provided, however, it must only identify those individuals it has the ability to provide. The proposer may re-type this form to add or delete lines as necessary, depending on the number of individuals identified per title. Any individual proposed for a title of Key Personnel by the proposer and/or subconsultant must satisfy the minimum requirements per title set forth in the contract document.

Title	Name	Years of Experience	Education	NYS License/Cert

Certification: By signing in the space provided below, the proposer certifies that if the proposer is selected for the Contract, it will assign such individuals to the Contract as Key Personnel. The proposer understands that if it is selected, the City was induced to make such selection based upon the proposer's certification that it will assign to the Contract the individuals proposed as Key Personnel. The proposer further understands that failure to provide such individuals as Key Personnel will be considered a material breach of the Contract and grounds for termination for cause. If the proposer is unable to make the certification set forth above, it must attach a signed statement indicating why it is unable to make the certification.

_____

Name of Proposer

By:_____ _____

Signature of Partner or Corporate Officer — Date

_____ _____

Print Name — Title

_____

Firm

Minimum Requirements per Title

Principal (Partner or Officer) *
Project Manager **
Assistant Project Manager **
Senior Resident Engineer (1.1)
Resident Engineer (1)
Administrative Resident Engineer (1.2)
Field Inspector (2)
Structural Inspector (3)
Electrical Inspector (3)
Plumbing/Drainage Inspector (3)
Boiler Inspector (3)
Roofing Inspector (3)
HVAC Inspector (3)
Estimator
Junior Estimator
Engineer *- Any Discipline
Environmental Engineer *
Geotechnical Engineer *
Marine Structures Engineer *
LEED Certified Professional
Architect *
Landscape Architect *
Surveyor *
Survey Party Chief
Survey Instrument Person
Survey Rod person
Arborist (4)

* N.Y. State Professional License in area of discipline relevant to Project scope and requirements solicited through Selection Procedures as set forth in the Contract.

** Must demonstrate the need for these Consultant Staff to be utilized—in addition to Resident or Senior Resident Engineers—on any specific Project solicited through Selection Procedures as set forth in the Contract.

(1) Degree in technical area; Certified Construction Manager (CCM) preferred but not required; and must demonstrate relevant experience to Project scope and requirements solicited through Selection Procedures as set forth in the Contract.

(1.1) All of (1) but requires Certified Construction Manager (CCM); and must demonstrate extensive relevant experience to Project scope, minimum 8 years, and requirements solicited through Selection Procedures as set forth in the Contract.

(1.2) All of (1) and assists Senior Resident Engineer and/or Resident Engineer in the field and/or office on administrative tasks and must demonstrate relevant experience, to Project scope and requirements solicited through Selection Procedures as set forth in the Contract.

(2) Degree/Training in appropriate technical field relevant to Project scope and requirements solicited through Selection Procedures as set forth in the Contract.

(3) Must possess a professional license and/or certificate in respective discipline and must demonstrate expertise in respective field.

(4) Certified Arborist by the International Society of Arboriculture, New Jersey State Tree Expert, or equivalent as determined by the Chief of Forestry and Horticulture; an associate degree or higher from an accredited college in forestry, arboriculture, horticulture management, or similar program. The person shall have a minimum of one (1) year of full-time professional experience in the practical use of knowledge involved in tree inventory or surveying, diagnosis and treatment of tree problems (health and structure) and use of electronic data recording devices.

Exhibit 4

Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

M/WBE Utilization Plan – Schedule B

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

Section 6-129 of the Administrative Code of the City of New York ("Section 6-129") establishes the program for participation in City procurement ("M/WBE Program") by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan") and are detailed below. Contracts solicited through the Procurement and Sourcing Solutions Portal (PASSPort) will contain a Schedule B in the format outlined in the Schedule B – M/WBE Utilization Plan & PASSPort rider. The provisions of this notice will apply to contracts subject to the M/WBE Program established by Section 6-129 regardless of solicitation source.

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

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

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

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

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

PART A

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

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

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

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

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

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

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part 2 (see Pages1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by

MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

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

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part 2 (see Pages 1-2) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART 2). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART 3). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE

VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

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

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of city-certified MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6451, or by visiting or writing DSBS at One Liberty Plaza, New York, New York, 10006, 11th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where

applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

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

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

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

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part 3 of Schedule B **and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency Contact Person listed in Schedule B, Part 1**. **Full or partial waiver requests that are received later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due may be rejected as untimely**. Bidders, proposers, or contractors, as applicable, who have submitted timely requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

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

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of

subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

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

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

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

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

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

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

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

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

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

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

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

12. If the Contractor was required to identify in its bid or proposal the MBEs and/or WBEs they intended to use in connection with the performance of the Contract or Task Order, substitutions to the identified firms may only be made with the approval of the Agency, which shall only be given when the Contractor has proposed to use a firm that would satisfy the **Participation Goals** to the same extent as the firm previously identified, unless the Agency determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such determination, the Agency shall require evidence of the efforts listed in Section 11(a) above, as applicable, along with any other relevant factors.

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

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

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

PART B

MISCELLANEOUS

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

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

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

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

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

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

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

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements

Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

(a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;

(b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Contractor is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Contractor to be in breach of Contract;

(f) withholding payment or reimbursement;

(g) determining not to renew the Contract;

(h) assessing actual and consequential damages;

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

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

(k) taking any other appropriate remedy.

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

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

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

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

Exhibit 5

Community Hiring Rider

Community Hiring Rider

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

Version: February 20, 2025

Program Description

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

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

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

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

Community Hiring Requirements

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

A. Community Hiring Goal

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

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

B. Advertising Employment Opportunities

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

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

C. System Enrollment and Reporting

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

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

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

Records

A. Retention

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

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

B. Access to Records

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

Compliance

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

A. Best Efforts

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

B. Corrective Action

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

C. Civil Penalties

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

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

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