REQUEST FOR PROPOSALS

FOR

CONTRACT

Contract: GI-PSE-Design 1-3: Task Order Contract for Design Services for Green Infrastructure *at various New York City Parks (DPR) and NYC DOT owned street ends*

PIN: 82627P0002

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

Purpose of RFP	With this RFP, DEP wishes to engage Consultants to provide design services on a Rotational Task Order basis for the Department's green infrastructure ("GI") projects. Each Task Order will consist of design services for a site or group of sites within New York City. The Department anticipates awarding up to three contracts from this RFP. The Task Orders resulting from this contract will provide design services for GI projects in partnership with the City's Department of Parks and Recreation (DPR) and at various NYC DOT owned street ends.
A Pre-Proposal Conference has been scheduled for:	**When: October 28, 2026 at 10:00AM** **Where:** via TEAMS mtg. **Join:** https://teams.microsoft.com/meet/284908367652622?p=FwD2udaJlKpHs765Ok Meeting ID: 284 908 367 652 622 Passcode: ff72Qr2Y
Questions	All questions and requests for additional information concerning this Request for Proposals ("RFP") must be directed to the Authorized Agency Contact Person, through the *Discussion Forum Tab* in PASSPort by the Question Deadline.

SECTION I: PROJECT INFORMATION

A. Project Description

The Department continues to implement an extensive system of GI practices to be built over the next several years to capture and manage stormwater runoff from impervious surfaces. These practices include but are not limited to bioretention systems, permeable pavement, synthetic turf, wetlands, green roofs, subsurface detention/retention systems, and/or any combination thereof. The scale and costs of each task order will range from small to extensive retrofits of city-owned properties depending on available space and favorable conditions. The Rotational Task Orders resulting from this contract will provide design services for GI projects at sites owned by the City's Department of Parks and Recreation (DPR) and at various NYC DOT owned street ends.

At the time of this RFP, preliminary locations of GI on DPR property and publicly owned street ends have been identified. However, the full list cannot be finalized at this time and will be assessed throughout the contract duration as DEP is conducting continuous spatial analysis in close coordination with DPR and community stakeholder groups as new site opportunities become available. DEP will continue to update the initial list of contract sites as these analyses continue for the duration of the contract prior to the issuance of specific Task Orders.

B. Detailed Scope of Services

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

1) Provide design and design services during construction:

    a. project planning services, including conducting Project kick-off meetings, providing monthly progress reports, conducting progress meetings, performing stakeholder coordination, preparing project management, performing permit management services, reviewing existing conditions, performing site evaluations, and developing preliminary location plans;
    b. design phase services, including contract plans and specifications, performing permit management services, conducting site selections, performing geotechnical investigations and topographic, utility and vegetative surveys, developing other technical reports, developing construction contract documents, specification development, and conducting design coordination meetings;
    c. construction procurement phase services, including attending pre-bid conferences, preparing addenda, attending pre-award meetings, evaluating construction contractor substitutions, developing conformed drawings, and conducting permit

management.

d. Design services during construction, including conducting site visits, reviewing all construction contractor submittals, evaluating and responding to the Request for Information, and conducting construction project meetings.
e. Assist in Construction close-out

SECTION II – SUMMARY OF KEY REQUIREMENTS

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

A. Anticipated Contract Term

The anticipated term of the contract awarded from this RFP is for one thousand, eight hundred and twenty-five (1,095) consecutive calendar days. There will also be two 1-year contract renewal option.

B. Anticipated Payment Structure

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

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

C. Work Assignment Protocol:

DEP anticipates awarding (3) contract(s) for providing Rotational on-call Task Order services in connection with green infrastructure projects at various locations.

Assignments under these Contracts will be made on an alternating/rotational basis. The first assignment will be given to the Consultant whose contract registers first and subsequent assignments will be made on an alternating basis between the Consultants based on contract registration dates.

Exceptions: If DEP is not able to reach an agreement (regarding scope and costs) with a Consultant on a particular Task Order, DEP may request a proposal from the next rotational Consultant and negotiate a final proposal with such other Consultant by following Task Order process as outlined below.

DEP reserves the right to not issue a Task Order Request or Task Order Assignment to a rotational Consultant(s) and to have the work performed by another Consultant(s) or by City employees, if DEP determines that the rotational Consultant(s) may be unavailable to provide the required services in a timely manner.

Pursuant to the above, the Consultants understand that the Task Order Assignment Procedure may result in a rotational Consultant receiving consecutive Task Order Agreements. In the event a Consultant receives consecutive Task Orders, the next Task Order assignment will be issued to the next Consultant in the rotation, unless it is determined by the Agency that such Consultant is unavailable, then the next rotational Consultant will be eligible for the Task Order assignment.

A minimum number of work assignments or dollar amount will not be guaranteed. DEP anticipates that all Task Orders will be issued within the original Contract term and completed by the end of the contract term. DEP expects that it will issue all task orders sufficiently in advance to allow the work to be completed by the end of the contract term. In the event that a Task Order(s) work is not completed at the expiration of the Contract term, the Consultant shall continue working on the Task Order, notwithstanding the expiration of the Contract, all terms and conditions of the Contract shall continue to apply to the incomplete Task Order(s). Under no circumstance will the Department issue new Task Orders during any Time Extension period.

The Consultant shall have no right to reject or decline to perform any Task Order Request as defined herein, issued under the Contract. The Consultant's shall not be entitled to compensation for costs incurred in connection with the final Task Order Agreement.

D. <u>Task Order Process</u>

For each individual Task Order, DEP will issue a written "**Task Order Request**" to the consultant. The request will describe the nature and extent of the project, its scope, preliminary schedule, rough order of magnitude cost estimate, and a due date for the consultant to submit to DEP a scope of work, schedule and fees, as well as identification of key staff assignments and potential subconsultants. This submittal shall be referred to as the "**Task Order Proposal**."

If needed, arrangements will be made for a scope meeting to be held in the most appropriate location. At the close of the meeting, if DEP decides that the due date identified in the Task Order Request for submission of the Task Order Proposal needs to be extended, DEP will extend the due date for submission of the Consultant's Proposal.

The Consultant will submit electronic copy via email of its Task Order Proposal to DEP at the time specified in the Task Order Request, or as revised by DEP at the scoping meeting.

DEP shall review the Consultant's Proposal and if necessary, within 7 days of receipt, conduct the appropriate negotiations with the Consultant that result in a final "**Task Order Agreement.**"

The final Task Order Agreement shall then be executed by DEP and the Consultant. Upon registration of the Task Order Agreement, DEP will then issue a "**Notice to Proceed**" (NTP) to the Consultant indicating when to proceed with the work set forth in the Task Order

Agreement. The NTP will include the period of performance of the Task Order Agreement, and the final negotiated cost of the Task Order Agreement.

The Consultant shall not be entitled to compensation for costs incurred in connection with preparing or negotiating the final Task Order Agreement.

E. Key Personnel Requirements

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

   Project Manager
   Project Director
   Environmental Health & Safety Professional*
   Senior Engineer
   Engineer
   Assistant Engineer*
   Senior Landscape Architect*
   Landscape Architect*
   Senior Architect*
   Architect*

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

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

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

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

6. Prime Consultant shall not subcontract the Project Manager and Project Director or Construction Manager and Resident Engineer roles.

F. Allowances

The following allowances have been identified for the Project and shall be included in Proposers' Price Proposals as part of the proposed Other Direct Costs (ODCs). The total amount for ODC's is $1,275,000.00

Description of Allowance Items	Value	Payment Term
Geotechnical Investigation		Direct Cost
CCTV Pipe investigation and cleaning		Direct Cost
Green Infrastructure infiltration testing post construction		Direct Cost

G. Participation By Minority-Owned And Women-Owned Business Enterprises In City Procurement:

The contract resulting from this Request for Proposals will be subject to Article 6-129 of the New York City Administrative Code and subsequent revisions, also known as The Minority-Owned and Women-Owned Business Enterprise (M/WBE) program. Please refer to **ATTACHMENTS B & E** for instructions on how to complete the ***M/WBE Considerations Tab*** in PASSPort.

The M/WBE Total Participation Goal for contract(s) awarded from this RFP is 30%. Failure to attain the M/WBE Total Participation Goal may subject the Contractor to sanctions.

H. Compliance With Local Law 34 of 2007

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City established a computerized database containing the name of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. For the purposes of the database, proposers are required to complete the Doing Business Data Tab (LL34 Compliance Section) within PASSPort. If the proposer is a joint venture, the entities that comprise the joint venture must each complete a Data Form which will be generated by PASSPort. If the City determines that a proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the proposer will be notified by DEP and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to DEP. Failure to do so will result

in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the proposer has provided an e-mail address or fax number), no later than five (5) days from the date of mailing, or upon delivery, if delivered by other than U.S. mail. See **ATTACHMENT C** for more information.

I. Compliance With The Iran Divestment Act

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

J. Community Hiring Rider

Compliance with Community Hiring Requirements

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

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

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

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

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

L. City's Payee Information Portal (PIP)

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

M. Basis for Contract Award:

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

SECTION III: TECHNICAL PROPOSAL

PART 1: Proposal Evaluation

A. Evaluation Criteria:

Technical proposals will be evaluated based on the following:

Experience	30%
Organizational Capability	40%
Technical Approach	30%

B. Evaluation Procedures:

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

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

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

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

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

notification.

PART 2: Technical Proposal Requirements

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

A. Experience

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

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

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

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

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

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

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

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

B. Organizational Capability

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

2. **Staffing Summary***:*

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

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

C. Technical Approach

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

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

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

SECTION IV: PRICE PROPOSAL

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

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

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

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

SECTION V - GENERAL INFORMATION TO PROPOSERS

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

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

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

D. Contract Award. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the Proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

E. Proposer Appeal Rights. Pursuant to New York City's Procurement Policy Board Rules, Proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

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

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

H. Prices Irrevocable. Prices proposed by the Proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request Proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

I. Confidential, Proprietary Information or Trade Secrets. Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.

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

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

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

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

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

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

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

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

_____ __10/13/2026_____

(Commissioner) (Agency Chief Contracting Officer) Date

Message from the New York City Vendor Enrollment Center

Get on mailing lists for New York City contract opportunities!

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

EXHIBIT 1: FORM OF CONTRACT (Draft Contract Template)

CONTRACT [INSERT TITLE]

PIN: [INSERT PIN NUMBER]

For the Engineering Design Services of

[INSERT FIRM INFORMATION]

FOR

[INSERT TITLE]

Funded by Capital Project [INSERT FUNDING INFORMATION]

CONTRACT [INSERT CONTRACT TITLE]
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Appendix A — General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services (Architects and Engineers)

CONTRACT [INSERT CONTRACT TITLE]

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Attachment No. 5 Electronic Funds Transfer Information and Form

Attachment No. 6 PMIS Rider

Attachment No. 7 Community Hiring Rider

Attachment No. 8 Schedule B [if New York City M/WBE requirements are applicable]

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

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

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

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

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

WHEREAS, the Department wishes to engage the Consultant to perform engineering design services and design services during construction for the [INSERT NAME OF PROJECT];

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

SPECIAL PROVISIONS

ARTICLE I – THE SERVICES

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

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

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

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

ARTICLE II – CONTRACT DEFINITIONS

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

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

B. "BODR" or "Basis of Design Report" shall mean a preliminary report documenting the major design criteria and selected design concepts of the Project, as set forth in Task [1.14] of Attachment No. 1.

C. "Bureau" means the Department's Bureau of Engineering Design & Construction.

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

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

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

G. "Consultant" means [INSERT FIRM NAME], the entity that will perform the Services. For the purposes of Appendix A and Attachment No. 8 [only if New York City M/WBE Requirements are applicable], the Consultant is referred to as "the Contractor." For the purposes of Attachment No. 2, the Consultant is referred to as the "Service Provider."

H. "Construction Manager" or "CM" means the entity that will perform the construction management and resident engineering services for the Project.

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

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

K. "DBE" means Disadvantaged Business Enterprise

L. "Department" means the City's Department of Environmental Protection.

M. "Design Quality Management Manual" or "DQMM" means the Bureau's guidelines document for consultants providing design services to the Bureau.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LL. "Project" means the [INSERT NAME OF CONTRACT OR BRIEF DESCRIPTION OF PROJECT].

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

NN. "Project Management Plan" or "PMP" has the meaning set forth in Task [1.2.a] of Attachment No. 1.

OO. "Quality Management Plan" or "QMP" has the meaning set forth in Task [1.2.b] of Attachment No. 1.

PP. "RFI" means a request for information.

QQ. "Risk Management Plan" or "RMP" has the meaning set forth in Task [1.2.e] of Attachment No. 1.

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

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

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

UU. "Stakeholder" means:

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

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

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

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

ARTICLE III – ENGINEER OF RECORD

The Consultant shall provide the Services set forth in Attachment No. 1 in the capacity of the "engineer of record" for the Project.

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

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

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

ARTICLE V – COMMENCEMENT OF SERVICES

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

ARTICLE VI – ORDER OF PRECEDENCE

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

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

ARTICLE VII – SUBMISSION AND APPROVAL OF DOCUMENTS

A. Submissions of Documents

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

B. Electronic Submissions of Documents

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

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

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

DEP will also accept the following file extensions:

AutoCAD	**Inventor**	**Revit**	**Recap**	**Scene**	**Navisworks**
DWG	IPT	RVT	RCP	FLS	NWC
DWT	IAM	RFA	RCS	SHA	NWD
DWS		RTE	RCC	SIG	NWF
DXF		RFT	DIFF	HLS	
SAT			LLT	LSPROJ	
WMF			E57	FPR	
DGN			PCX		
3DM			PTS		

Electronic documents should not have macros enabled.

C. Approval of Documents

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

D. Standardization of Documents

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

ARTICLE VIII – ACCEPTANCE OF THE SERVICES

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

ARTICLE IX – TASKS OF SERVICE

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

ARTICLE X – PROJECT PERSONNEL

A. Personnel of the Consultant

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

B. Subconsultants

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

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

C. Qualifications of the Consultant, its Employees and Subconsultants

1. The Consultant shall ensure that:

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

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

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

D. Project Director and Other Personnel

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

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

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

4. All replacement or additional employees must be approved by DEP. The Consultant shall notify the Bureau in writing prior to the replacement or addition of an employee of the Consultant or of a Subconsultant who is performing a portion of the Services under this Contract. For the replacement of an employee, the notification must include the name of the replaced employee, the name of the proposed replacement employee, the proposed date of the replacement, the qualifications of such replacement employee, and any other information requested by the Commissioner for the purposes of determining that the replacement employee possesses equal qualifications as the employee who is being replaced. For the addition of an employee, the notification must include the name of the proposed additional employee, the capacity in which that employee will perform Services, the qualifications of that employee, and any other information requested by the Commissioner for the purposes of determining that the additional employee possesses sufficient qualifications. If any of the required information is unavailable at the time of notice of replacement or addition, the Consultant shall indicate why such information is unavailable.

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

ARTICLE XI – LABOR LAW REQUIREMENTS

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

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

ARTICLE XII – PROFESSIONAL LIABILITY INSURANCE

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

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

ARTICLE XIII – INFORMATION TO BE FURNISHED BY THE DEPARTMENT

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

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

ARTICLE XIV – BASIC COMPENSATION FOR SERVICES

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

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

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

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

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

Phases: Project/Facility XXXX (repeat table if more than one)

Billing Item	Task/Phase # and Description	Amount	Task/Phase Amounts
	Task 1 – Facility Planning Services		**$**
1	Project Management	$	
2	Cost of Labor[1]	$	
3	ODCs[2]	$	
	Task 2 – Design Services		**$**
4	Project Management	$	
5	Cost of Labor	$	
6	ODCs	$	
	Task 3 – Construction Procurement Services		**$**
7	Project Management	$	
8	Cost of Labor	$	
9	ODCs	$	
	Task 4 – Design Services During Construction		**$**
10	Project Management	$	
11	Cost of Labor	$	
12	ODCs	$	
	Task 5 – Close Out Services		**$**
13	Project Management	$	
14	Cost of Labor	$	
15	ODCs	**$**	
		Maximum Contract Amount	**$**
		Project Management Total[3]	**$**

1. For purposes of this chart, cost of labor means cost associated with non-Project Management Services.

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

3. Project Management Services are capped at 10% of the Maximum Contract Amount (excluding the Project Management sub-Tasks 1.1, 2.1, 3.1, 4.1 and 5.1).

ARTICLE XV – PAYMENT TERMS

A. Cost-Plus Payment Terms

1. Salary Rates

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Overhead Multipliers

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

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

i. an Overhead Factor; and

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

3. Overhead Rates

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

b. Overhead Rates will be calculated as follows:

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

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

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

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

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

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

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

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

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

4. Profit

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

5. Monthly Invoices

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

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

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

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

B. Other Direct Costs ("ODCs")

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

2. ODCs include the following:

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

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

c. travel

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

d. use of motor vehicles

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

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

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

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

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

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

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

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

C. Principals' Compensation

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

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

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

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

D. Overtime Costs

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

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

   a. The maximum Overtime salary rate shall not exceed 100% of the regular salary rate of the employee performing Overtime. Payment shall only be made with approved authorization by DEP. Such authorization shall cover all employees who worked overtime during the monthly billing period.

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

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

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

E. Lump Sum Payment Terms

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

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

c. Upon DEP's request, the Consultant shall submit all documentation and justification in support of lump sum expenditures or fees, which include, but is not limited to timesheets, material and supplies, invoices, travel receipts and other proof of lump sum

expenditures. The Consultant must submit supporting documentation for any work performed by staff subject to prevailing wage regulations.

ARTICLE XVI – MISCELLANEOUS PROVISIONS

A. Field Office

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

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

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

C. Extra Services

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

D. Delivery of Materials and Equipment

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

ARTICLE XVII – TIMING OF PAYMENTS

A. Timing of Payments

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

B. Final Payment

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

ARTICLE XVIII – WITHHOLDING FOR NEGLIGENCE

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

ARTICLE XIX – DOCUMENTS FORMING THE CONTRACT

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

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

EXECUTION BY THE COMMISSIONER AND THE CONSULTANT

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

THE CITY OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By _____
Commissioner

Approved as to Form
Certified as to Legal Authority

(See Attached)

_____
Acting Corporation Counsel

Date _____

CONSULTANT
[INSERT CONSULTANT FIRM NAME]

By _____

NAME:_____

Seal and Attest

_____
Date

ACKNOWLEDGMENT BY THE COMMISSIONER

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

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

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY THE CONSULTANT

STATE OF NEW YORK)
)ss
COUNTY OF _____)

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

_____
Notary Public or Commissioner of Deeds

ATTACHMENT A: COMMUNITY HIRE RIDER

Community Hiring Rider

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

Version: February 20, 2025

Program Description

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

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

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

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

Community Hiring Requirements

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

A. Community Hiring Goal

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

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

B. Advertising Employment Opportunities

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

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

C. System Enrollment and Reporting

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

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

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

Records

A. Retention

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

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

B. Access to Records

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

Compliance

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

A. Best Efforts

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

B. Corrective Action

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

C. Civil Penalties

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

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

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

Office of Community Hiring

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1 Introduction

1.1 What is Community Hiring?

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

1.2 How does Community Hiring work?

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

1.3 How can the vendor benefit from Community Hiring?

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

1.4 Is Community Hiring in effect?

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

2 Contracts Subject to Community Hiring

2.1 What types of contracts are subject to Community Hiring?

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

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

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

The following contracts are not subject to Community Hiring requirements:

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

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

2.3 Does Community Hiring apply to subcontracts?

Yes, but Community Hiring applies differently across industries.

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

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

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

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

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

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

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

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

2.7 Are Sole Source procurements subject to Community Hiring?

Yes. Sole Source Procurements are subject to Community Hiring.

2.8 Are MWBE Small Purchases subject to Community Hiring?

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

2.9 Do Community Hiring Goals apply to Master Services Agreements?

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Community Hiring Goals

3.1 What are the Community Hiring Goals?

The Community Hiring Goal depends on the service being procured.

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

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

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

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

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

3.2 Who is a Residence-Based Community Hire?

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

3.3 What is an Economically Disadvantaged Region?

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

3.4 Who is an Income-Based Community Hire?

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

4 Vendor Compliance

4.1 How does the vendor comply with Community Hiring?

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

4.2 What are the Community Hiring requirements?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.10 Do existing employees count towards the Community Hiring Goal?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Referral Source

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

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

5.2 What is a Referral Source?

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

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

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

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

5.4 How many Community Hires are vendors required to interview?

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

6 Retention and Reporting

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

The vendor is responsible for maintaining records documenting:

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

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

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

7 Support and Resources

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

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

7.2 Where can the vendor go with questions?

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

ATTACHMENT B: **NOTICE TO PROPOSERS- PARTICIPATION BY MINORITY OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT FOR CITY FUNDED (LL1) PROJECTS**

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.

ATTACHMENT C: DBDF FAQs

Mayor's Office of Contract Services

Questions and Answers About the Doing Business Data Form

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

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

Why have I received this DBDF?

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

What individuals will be included in the Doing Business Database?

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

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

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

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

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

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

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

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

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

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

What organizations will be included in the Doing Business Database?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT D: APPENDIX A

APPENDIX A

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

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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 or judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City, or its officials or employees, of a claim upon demand, the Contractor shall reimburse the City, or its officials or employees as the case may be, for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officials and employees with a defense or reimbursement for attorney's fees.

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

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

Section 8.06 Actions By or Against Third Parties

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

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

Section 8.07 Withholding of Payments

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

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

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

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

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

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

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

Section 10.01 Termination by the City Without Cause

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

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

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

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

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

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

any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

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

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10.04 Force Majeure

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

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

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

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be

less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

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

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

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

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

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

Section 10.06 Miscellaneous Provisions

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

suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

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

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

Section 10.07 Liquidated Damages

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

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the

"EFT Vendor Payment Enrollment Form" available from the Agency or at http://www.nyc.gov/dof in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

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

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be

finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

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

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

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

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

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City

Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

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

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

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

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

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

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

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

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

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's

functions, including, but not limited to, granting extensions of time to present or respond to submissions;

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

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

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

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

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

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of

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

4. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

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

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

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

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in

any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

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

Section 12.05 No Claim Against Officials, Agents, or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Unlawful Discrimination in the Provision of Services

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

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

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

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

Section 13.06 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

Section 13.07 Voter Registration

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

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

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

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. display any political preference or party allegiance;

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

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

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

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

Section 13.08 Political Activity

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

Section 13.09 Religious Activity

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

Section 13.10 Participation in an International Boycott

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

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

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

Section 13.11 MacBride Principles

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

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

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

Section 13.12 Access to Public Health Insurance Coverage Information

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

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

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

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

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

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

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

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

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

Section 13.13 Distribution of Personal Identification Materials

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

and Recreation, Department of Probation, and Department of Youth and Community Development.

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

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

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party

may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

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

CITY OF NEW YORK

ADDENDUM
TO
APPENDIX A (Architects and Engineers) November 2018 FINAL

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

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

Section 5.08 Confidentiality

* * *

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

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

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

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

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

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

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

A. *Introduction and General Provisions.*

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

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

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

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

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

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

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

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

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

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

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

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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.

New York City Mayoral Executive Order No. 39 Rider

City Fleet and Truck Safety Requirements for City Contractors

Version: 11/19/24

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

Section 1.01 Background

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

Section 1.02 Definitions

A. Capitalized terms not otherwise defined in this rider shall have the meaning ascribed to them in the Agreement.

B. Agreement: The agreement between the City and the Contractor, to which this rider has been added and made a part.

C. City-contracted Vehicle means a Truck (as hereinafter defined) or any other motor vehicle that the Contractor anticipates providing in accordance with this Agreement or using in performing its obligations under this Agreement on a weekly or more frequent basis[1]. This includes those vehicles anticipated to be provided or used by subcontractors to fulfill the scope of a subcontract for work to be performed under a contract that is subject to the Executive Order, regardless of monetary value of the subcontract, if the vehicle is utilized on a weekly or more frequent basis.

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

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

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

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

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

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

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

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

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

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

Section 2.01 Vehicle Requirements

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

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

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

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

Section 2.02 Safety Requirements

Contractor shall provide the following:

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

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

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

Section 2.03 Vehicle Safety Plan

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

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

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

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

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

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

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

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

Section 3.01 Liquidated Damages

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

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

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

AFFIRMATION

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

Full name of Proposer or Bidder *[below]*

_____

Address_____

City_____ State_____ Zip Code_____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - ☐ Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____

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

☐ C - ☐ Corporation
EMPLOYER IDENTIFICATION NUMBER _____

By_____
Signature

_____
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

SCHEDULE A

Article 7 -- Insurance	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	**Minimum Limits and Special Conditions**
■ Workers' Compensation §7.02 ■ Disability Benefits Insurance §7.02 ■ Employers' Liability §7.02	Statutory amounts.
■ Commercial General Liability §7.03(A)	$1,000,000.00 per occurrence $1,000,000.00 personal & advertising injury (unless waived in writing by the Department) $2,000,000.00 aggregate $0 products/completed operations Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
■ Commercial Auto Liability §7.03(B)	$1,000,000.00 per accident combined single limit If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90
■ Professional Liability/Errors & Omissions §7.03(C)	$5,000,000.00 per claim $1,000,000.00 per claim for subconsultants
☐ Crime Insurance §7.03(D)	$_____ Employee Theft/Dishonesty

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

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

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

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

_____
[Name of broker or agent (typewritten)]

_____
[Address of broker or agent (typewritten)]

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

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

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

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

State of …….)
) ss.:
County of …….)

Sworn to before me this _____ day of _____ 20___

_____
NOTARY PUBLIC FOR THE STATE OF _____

WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER

REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT

RELATING TO A NYC-FUNDED CONTRACT OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959

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

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

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

ATTACHMENT E: **MWBE UTILIZATION PLAN & PASSPORT GUIDANCE DOCUMENT**

SCHEDULE B – M/WBE Utilization Plan & PASSPort

PASSPort
Procurement and Sourcing Solutions Portal

Modified July 2022

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

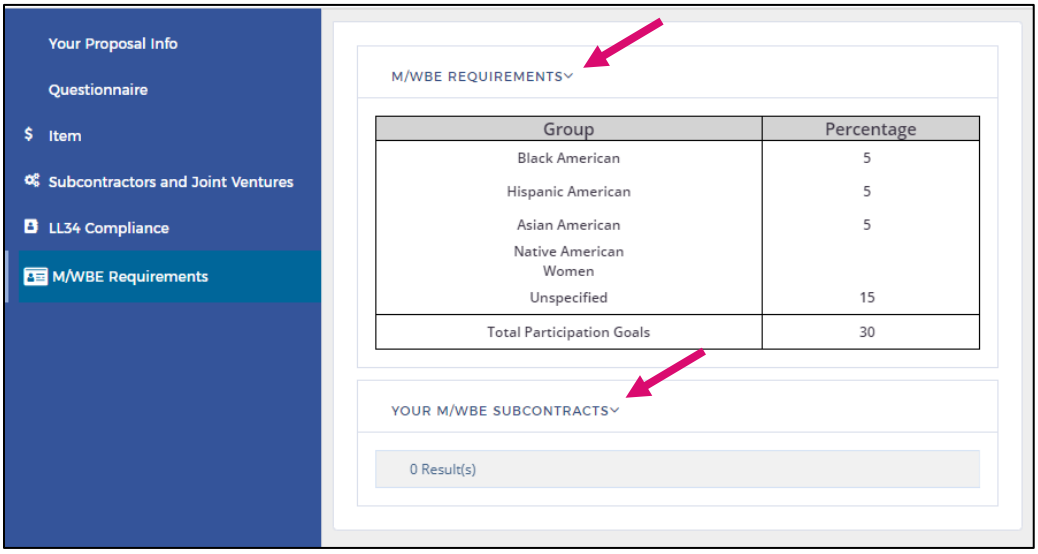
Part 1: M/WBE Participation Goals

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

1. Log in to PASSPort and click the **pencil icon** to access the RFx.

2. Click the **Manage Responses** tab of the RFx and click the **pencil icon** to access your in progress response.

3. Click the **M/WBE Requirements** tab. The M/WBE Requirements section will outline the goals for the RFx. The Your M/WBE Subcontracts section will list all subcontracting work that you've identified for certified M/WBEs. (Please see Part 2 for instructions on how to add subcontracting information in PASSPort.)



NYC Mayor's Office of Contract Services

Part 2: M/WBE Participation Plan

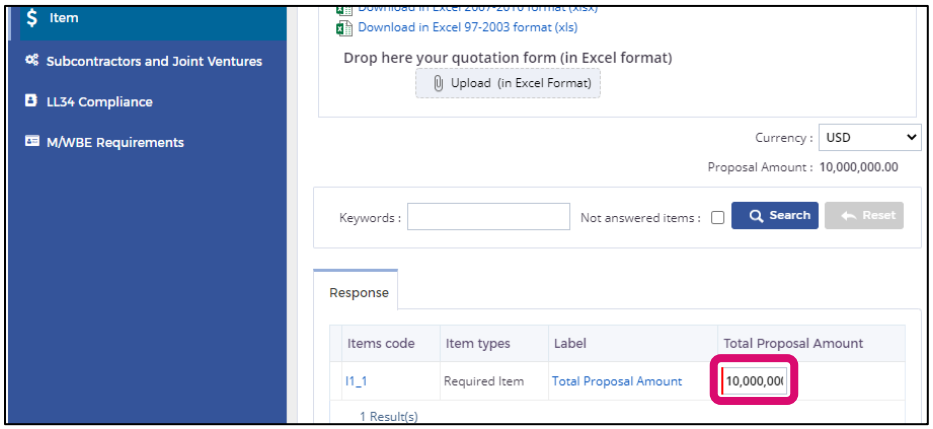
The M/WBE Participation Goals are found in both the M/WBE Requirements tab and the Subcontractors and Joint Ventures tab of your RFx (Solicitation) response in PASSPort. Please follow the instructions below to review an RFx's M/WBE Participation Goals and **enter** information in PASSPort to meet these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

1. Log in to PASSPort and click the **pencil icon** to access the RFx.

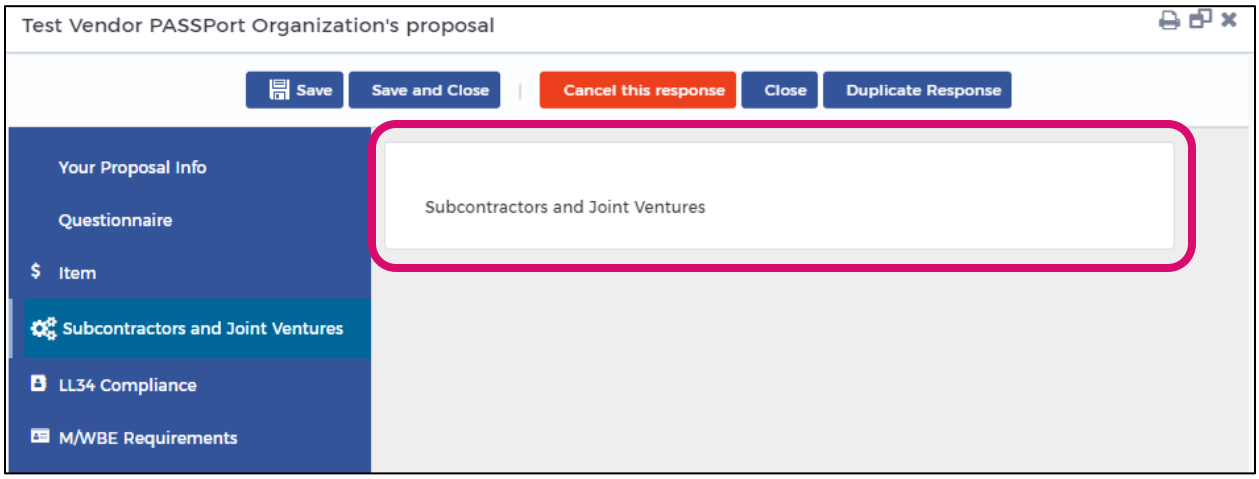
2. Click the **Manage Responses** tab of the RFx and click the **pencil icon** to access your in progress response.

3. Complete all the required sections in the Your Proposal Info, Questionnaire, Item, LL34 Compliance (if required) and all other relevant tabs in your Response.

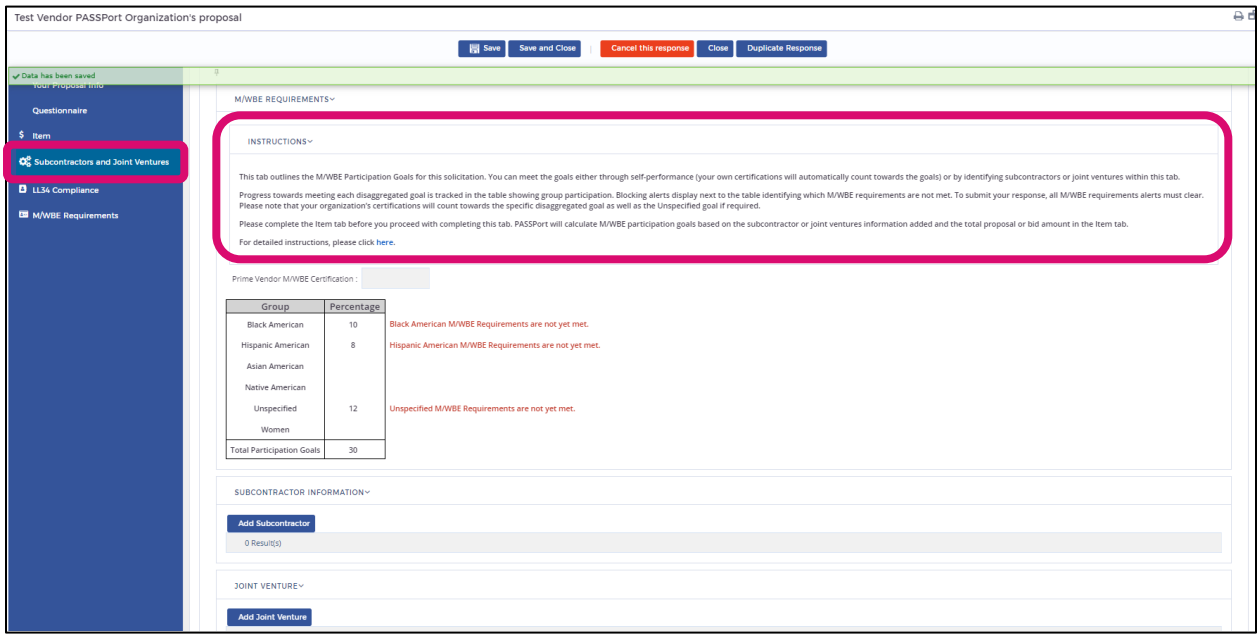
4. Be sure to complete the **Item** tab before the Subcontractors and Joint Ventures tab. Enter the **Proposal Amount** (or Bid Amount) and click **Save**.



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

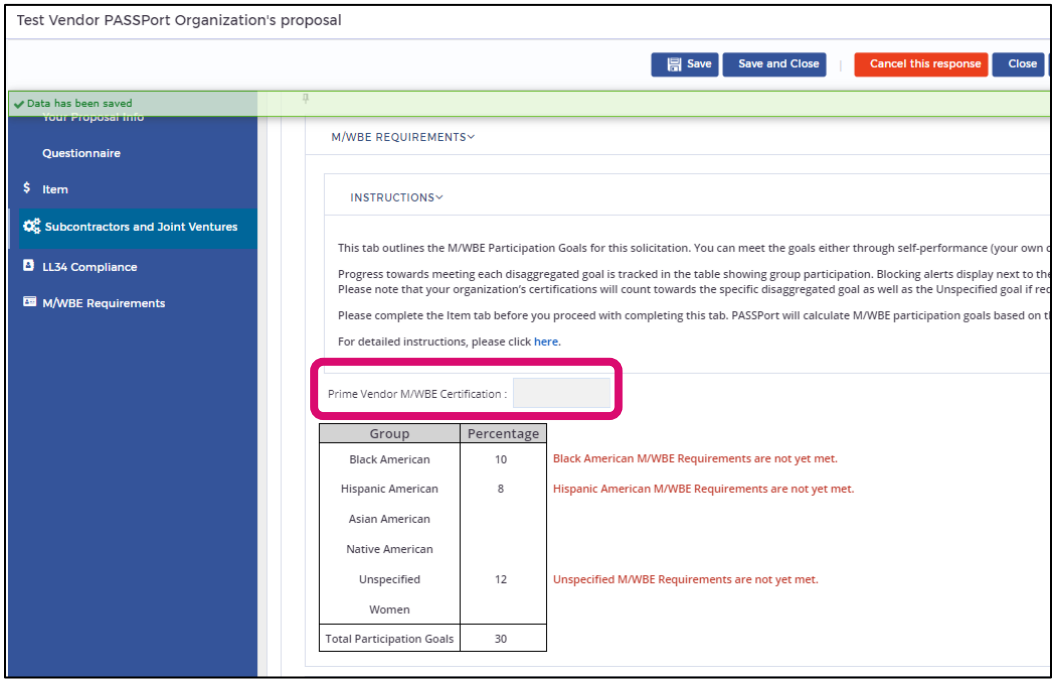


6. Read the instructions in the M/WBE Requirements section of this tab.

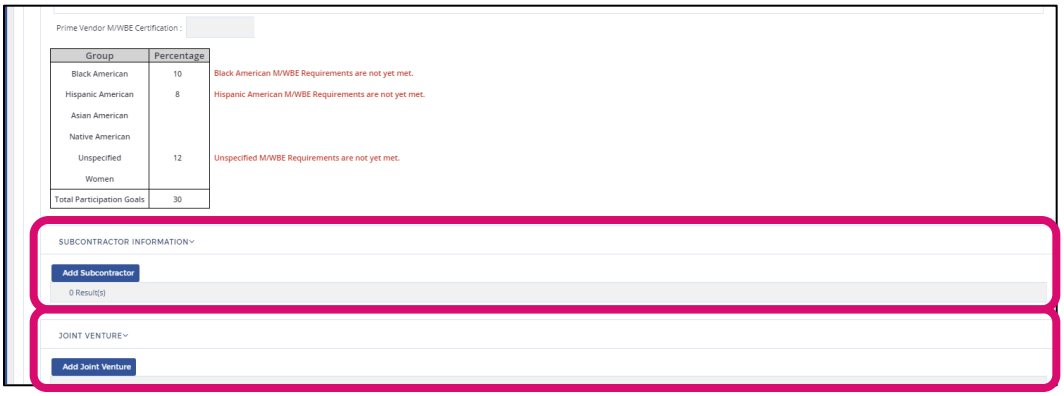


7. Your own organization's M/WBE certifications count towards the Total Participation Goals and automatically display in the field directly below the Instructions labeled as **Prime Vendor M/WBE Certification**. Any M/WBE participation goals that remain unmet are highlighted with red text alerts displaying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

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



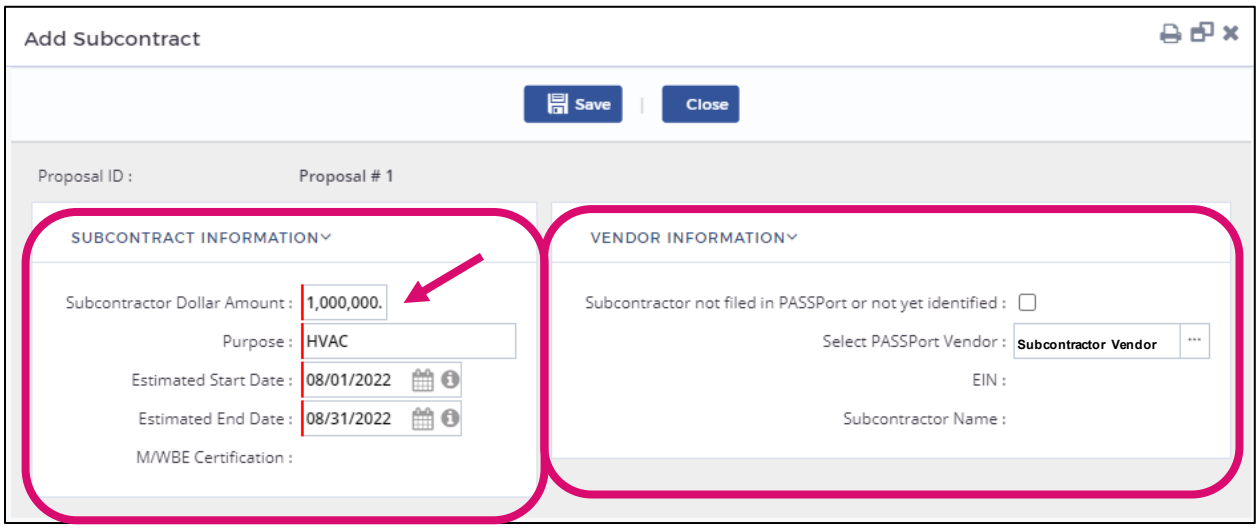
8. Any participation goal(s) your organization cannot meet through its own certification(s), must be met by identifying subcontractors and/or joint ventures with the required certifications in the **Subcontractor Information** and **Joint Venture** sections of the Subcontractors and Joint Ventures tab.



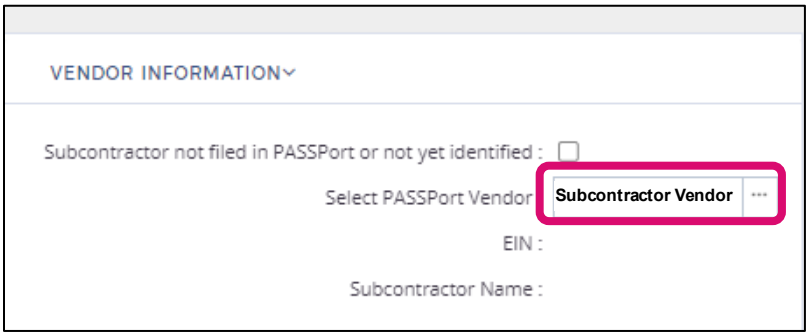
9. To add a subcontractor, click the **Add Subcontractor** button.

10. In the Add Subcontract window, complete all the fields in both the **Subcontract Information** and **Vendor Information** sections.
    Note, the **Subcontractor Dollar Amount** value entered will be calculated against the total Proposal Amount in the Item tab to determine the percentage towards your M/WBE Goal Participation for this RFx.

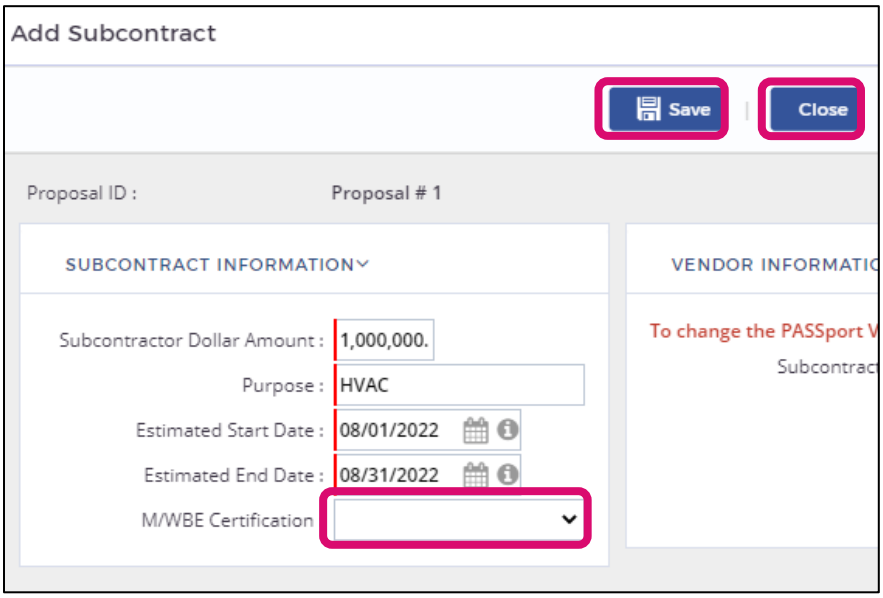
    In this example, $1 million is allocated to the **Subcontractor Dollar Amount** which is 10% of the Proposal Amount (in the Item tab) and can count towards a Participation Goal if the subcontractor is M/WBE Certified in one of the specified goals.



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



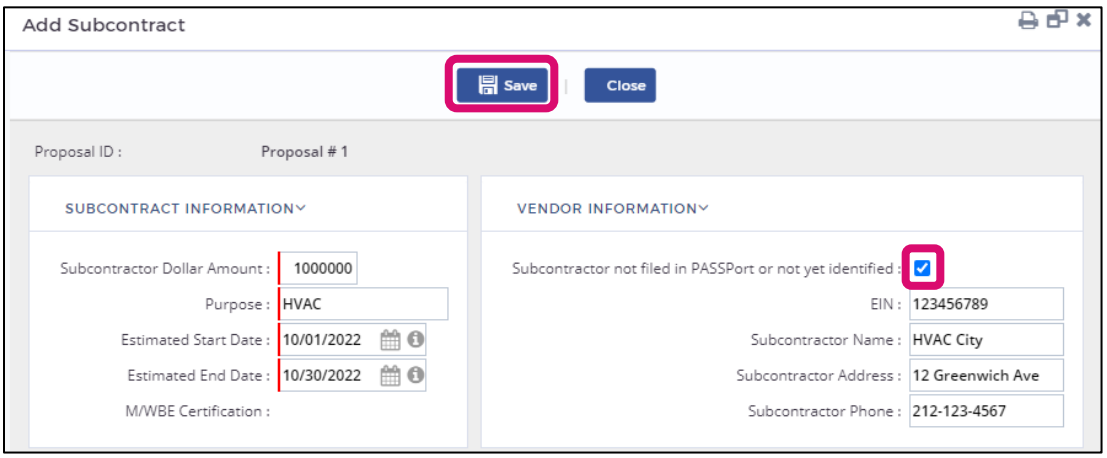
12. Choose the relevant **M/WBE Certification** from the drop-down in the Subcontract Information section of the Add Subcontract screen. Click **Save** and then click **Close** to return to the Subcontractors and Joint Ventures tab.



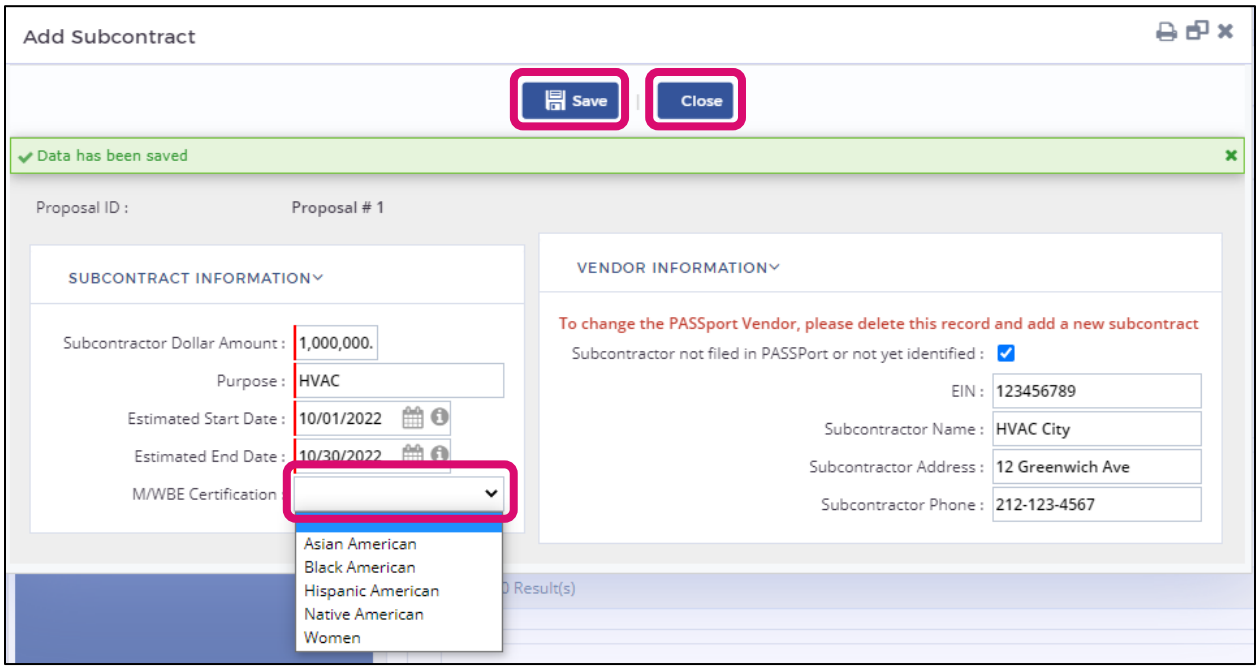
13. If the **Subcontractor is not Filed in PASSPort or not yet identified** (to be determined), click the corresponding checkbox in the Add Subcontract pop-up window. Be sure to complete all relevant fields in each section and click **Save**. The example below reflects scenarios 1 or 2.

    Scenarios to click this checkbox:

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

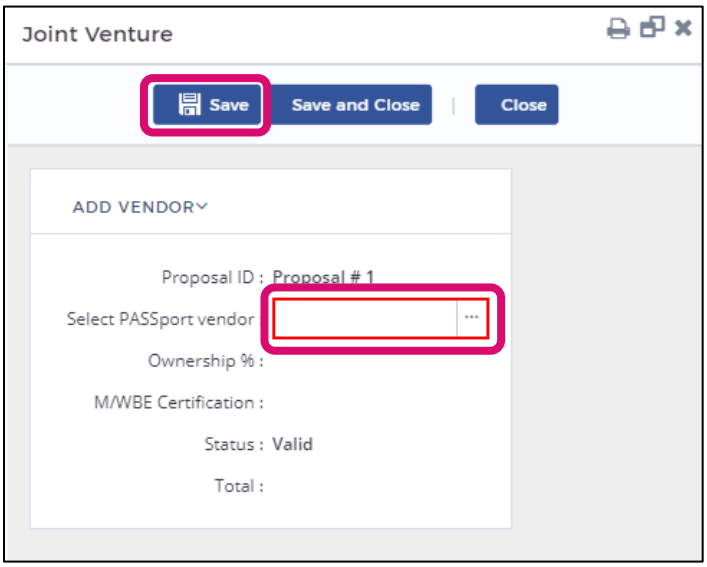


14. Choose the applicable **M/WBE Certification** from the drop-down to meet the corresponding Participation Goal for the subcontractor. Click **Save** and then **Close** to return to the Subcontractors and Joint Ventures tab.

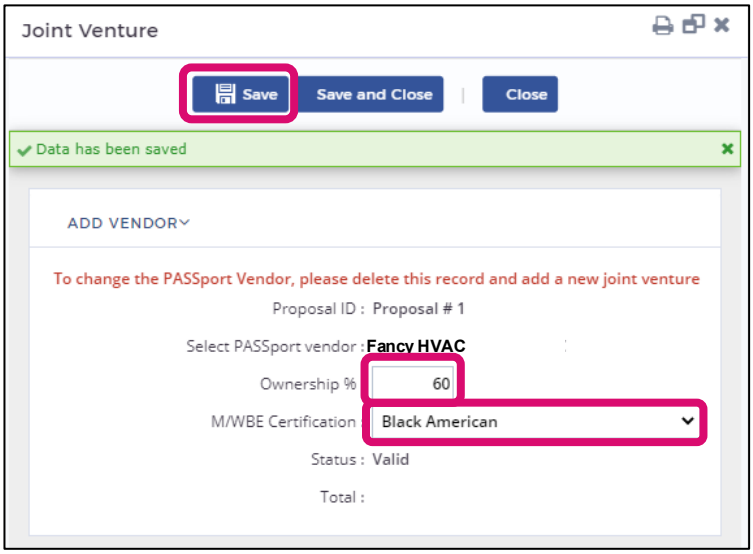


15. If you are submitting on behalf of a joint venture, click **Add Joint Venture** in the Subcontractors and Joint Ventures tab.

16. To identify a specific M/WBE certified PASSPort Vendor, type the vendor name of the joint venture partner entity in the **Select PASSPort Vendor** field or click the **ellipsis** to search for and select the vendor. Click **Save**.

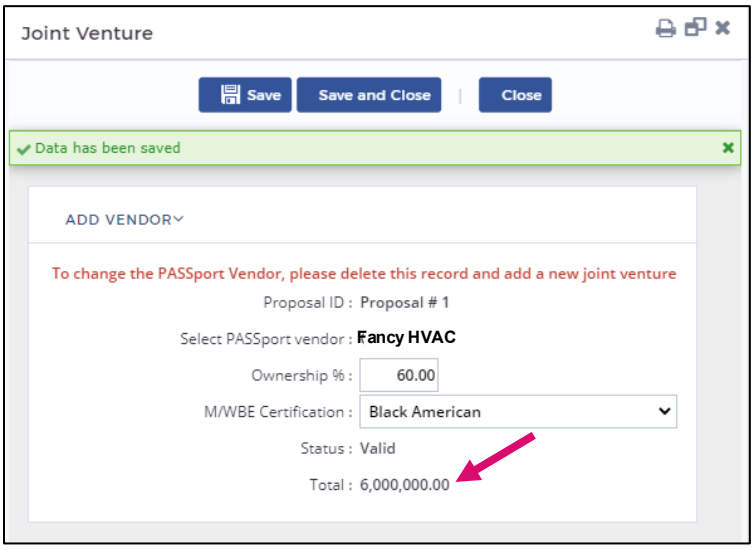


17. Complete the **remaining fields** in the Add Vendor section of the Joint Venture pop-up and click **Save**.



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

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



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

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

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

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

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

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

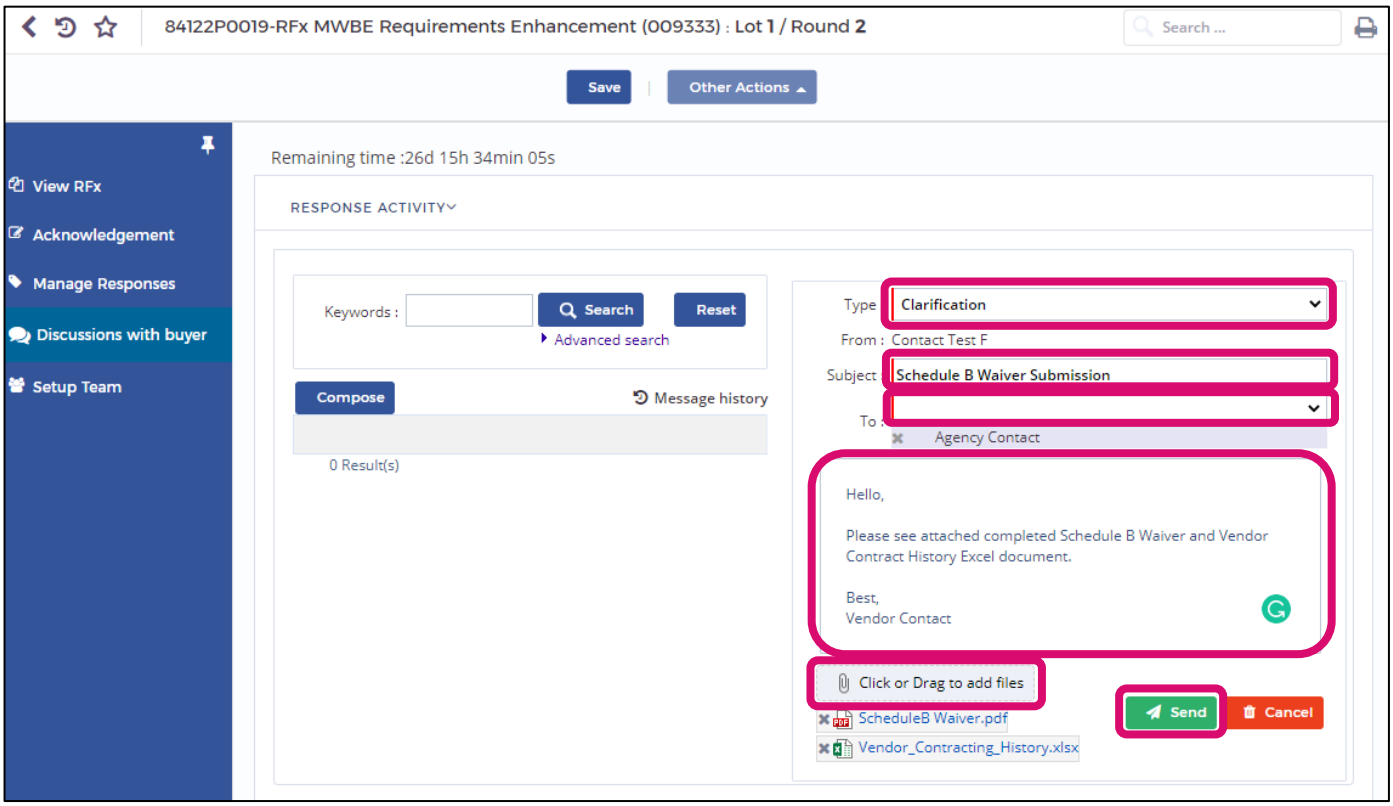
Follow these steps to submit a Waiver Request to the Agency:

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

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

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

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



Mayor's Office of Contract Services

SCHEDULE B – Part 3

Request for Waiver of M/WBE Participation Requirement

Contract Overview

Tax ID#_____ FMS Vendor ID#_____

Business Name_____ Contact Name_____

Email_____ Telephone_____

Contracting Agency_____

PASSPort PIN#_____ Bid/Proposal Due Date_____

M/WBE Participation Goals for Services

Defined by AGENCY in bid/ solicitation documents
Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified _____%
Black American _____%
Hispanic American _____%
Native American _____%
Asian American _____%
Women _____%
Total Participation Goals _____%

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

Unspecified _____%
Black American _____%
Hispanic American _____%
Native American _____%
Asian American _____%
Women _____%
Total Participation Goals _____%

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

☐ Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.

☐ Vendor subcontracts some of this type of work but at a lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. Identify your subcontracting plan in the vendor certification section below.

☐ Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal requested here. Explain under separate cover.

Vendor Contract History

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

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

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

Reference 1

Agency/Organization_____ Contract #_____

Reference Contact_____ Telephone_____ Email_____

Contract Start Date _____ Contract End Date_____ Total Contract Value $_____

Prime Contract description

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

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

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

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

_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____

Percentage of total contract value subcontracted to other vendors _____%

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

_____ $_____

For information or assistance, please contact your contracting City Agency

Reference 2

Agency/Organization_____ Contract #_____

Reference Contact_____ Telephone_____ Email_____

Contract Start Date _____ Contract End Date_____ Total Contract Value $_____

Prime Contract description

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

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

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

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

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

Percentage of total contract value subcontracted to other vendors _____%

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

_____ $_____

Reference 3

Agency/Organization_____ Contract #_____

Reference Contact_____ Telephone_____ Email_____

Contract Start Date _____ Contract End Date_____ Total Contract Value $_____

Prime Contract description

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

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

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

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

_____ $_____

_____ $_____

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_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

Percentage of total contract value subcontracted to other vendors _____%

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

_____ $_____

Reference 4

Agency/Organization_____ Contract #_____

Reference Contact_____ Telephone_____ Email_____

Contract Start Date _____ Contract End Date_____ Total Contract Value $_____

Prime Contract description

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

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

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

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

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

Percentage of total contract value subcontracted to other vendors _____ %

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

_____ $_____

Reference 5

Agency/Organization_____ Contract #_____

Reference Contact_____ Telephone_____ Email_____

Contract Start Date _____ Contract End Date_____ Total Contract Value $_____

Prime Contract description

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

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

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

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

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

Percentage of total contract value subcontracted to other vendors _____ %

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

_____ $_____

Vendor Certification

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

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

Signature_____ Date_____

Print Name_____ Title_____

☐ Partial Waiver Approved with Revised Participation Goals

Unspecified ____ %

Black American ____ %

Hispanic American ____ %

Native American ____ %

Asian American ____ %

Women ____ %

Total Revised Goals ____ %

Approvals (for Agency completion only)

ACCO Signature_____ Date_____

CCPO Signature_____ Date_____

Waiver Determination

☐ Full Waiver Approved

☐ Waiver Denied