

**THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**INVITATION FOR BID
AND
AGREEMENT
FOR
MAINTENANCE CONTRACT EMERGENCY DIESEL GENERATOR
& AUTOMATIC TRANSFER SWITCH**

DATE OF ISSUE: FEBRUARY 8, 2011

PIN: 10MI027700R0X00

AUTHORIZED AGENCY CONTACT

Bidders are advised that the Agency's authorized contacts for ALL matters concerning this IFB are:

**Primary Contact: Mark Hillers
NYC Department of Health and
Mental Hygiene
Division of Informatics and Information
Technology
22 Cortlandt Street, 28th Floor
New York, NY 10007
212-313-5171**

**Alternate Contact: Stacy Wu
NYC Department of Health and
Mental Hygiene
Division of Informatics and Information
Technology
22 Cortlandt Street, 28th Floor
New York, NY 10007
212-313-6868**

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The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor/provider who believes that there has been unfairness, favoritism or impropriety in the bid process, should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007 (212-669-3870).

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NOTE TO BIDDERS:

YOU MUST READ THE ENTIRE DOCUMENT. HOWEVER, COMPLETE AND SUBMIT ONLY THE BID PACKAGE (SECTION IV).

RETAIN THE REMAINING PARTS FOR YOUR INFORMATION. READ SECTION IV FOR DETAILED INSTRUCTIONS ON BID SUBMISSION.

SECTION I: TIMETABLE

1. Release Date of this IFB: February 8, 2011
2. **Questions Due:** N/A

Proposers shall have an opportunity to submit questions regarding the contents of the Project Definition before proposals are due. All questions must be submitted in writing by e-mail or fax to:

Stacy Wu
E-mail: swu@health.nyc.gov
Phone: 212-313-6868
Fax: 212-788-4638

3. Delivery of Bids Prior to Bid Opening – All bids must be complete and must be delivered to the following address by the due date and time:
New York City Department of Health and Mental Hygiene
Office of the Agency Chief Contracting Officer
93 Worth Street, Room 812, New York, NY 10013
Attention: Monica Collins

4. **Bid Due Date and Time and Public Bid Opening Location:**

Date: March 2, 2011
Time: 11:00 AM (Eastern Daylight Savings Time)
Place: New York City Department of Health & Mental Hygiene
Office of the Agency Chief Contracting Officer
93 Worth Street, Room 812 (8th Floor), New York, NY 10013

NOTE: Failure to submit complete bids to the correct address and room by the time noted above may result in rejection of the bid.

5. Anticipated Start Date: April 1, 2011, 2010 through December 31, 2015

SECTION II - SCOPE OF SERVICES

The New York City Department of Health and Mental Hygiene (DOHMH) seeks an American Power Conversion Corporation (APC) Licensed Field Service Technician for Software Proprietorship who is also an APC Factory Authorized Certified and APC Product Manufacturer Certified vendor, to furnish all labor and materials necessary and required to provide **Maintenance Services for the Emergency Diesel Generator (EDG) and Automatic Transfer Switch (ATS)** on an as needed basis. The purpose is to establish a requirements contract with firm pricing and delivery under which the DOHMH may place orders for services stated in the specifications below.

NOTE: Bidder must show that he or she is currently performing and has had at least three (3) years experience in comparable work. The bidder must also provide a list of at least five (5) references for whom work, as specified, has been performed and who can verify the quality of workmanship. Proof of ALL above mentioned American Power Conversion Corporation (APC) Licenses and Certifications **must be provided with bid submission.**

DURATION OF CONTRACT: The period of work for this contract shall commence upon written notice to proceed and continue for Five (5) Years or such previous time when the monies allocated for work are exhausted. There shall be no renewal of this contract when expiration is reached.

I. SCOPE OF WORK

1. The Contractor shall furnish complete inspection, testing, preventative maintenance, incidental servicing, major repair, emergency service, installation of software updates and all parts for the Emergency Diesel Generator (EDG) and Automatic Transfer Switch (ATS) and all ancillary equipment as specified herein installed at the Data Center Facility, located at 22 Cortlandt Street, New York, NY 10007. The contract shall provide all requisite qualified labor, supervision, transportation means (where and when required); establishment and maintenance of records; and all parts, tools, equipment, and interior cleaning. The maintenance records shall itemize testing and repair work performed and parts utilized.

2. The equipment covered by this Contract (the "**covered equipment**") is as follows, and includes all ancillary equipment not mentioned herein but deemed to be covered under this contract at the discretion of DOHMH's Director of Facilities.

750kW Cummins Emergency Diesel Generator Model 7500 DQFAA (Serial Number G070087300)

- Engine
- Electrical System (Battery)
- Cooling System (Engine and Radiator)
- Lubricating System (Oil and Filters)

1200A Cummins Automatic Transfer Switch Model BTPCE-5872733 (Serial Number G070086321)

Refer to Operation & Maintenance Manuals for exact quantities and location of equipment and field devices. The Director of Facilities will supply all Operation & Maintenance Manuals

3. Reporting Requirements:

(i) The Contractor shall provide written reports of all inspections, tests and repairs and callback services within forty-eight (48) hours of the event, excluding Saturdays, Sundays, and holidays. The reports shall contain detailed information on each repair or callback including but not limited to:

Date and Time of Call.	Description/serial # of parts replaced and parts utilized.
Caller's name, (if given).	Technician's Name.
Service requested by caller.	Time of completion of repair work.
Date and Time of Dispatch.	Number of hours to complete repair work.
Time of arrival at building.	Deficiencies in equipment.
Project reference / detailed description of repair work performed.	

(ii) The Contractor shall provide and maintain inspection and testing records acceptable to the DOHMH covering the services hereunder. Records of all inspection and testing activity by the Contractor shall be kept on site in a location to be designated by the DOHMH for the period of the contract, complete and available to the DOHMH during the performance of this Contract and to the date of final payment under this Contract.

(iii) Contractor shall maintain and keep current at all times a preventive maintenance schedule which shall be posted in the Facility Manager's Office and on which regular entries shall be made to indicate the status of all scheduled items of maintenance work performed and the date. The Contractor shall properly indicate that the work has been accomplished and when.

(iv) The Contractor shall whenever notified of any damage to or malfunctioning of equipment make and maintain reports thereof. Copies of these reports shall be issued to DOHMH and to all other agencies having jurisdiction, as may be required by law, regulation, or local rule. Reports shall include:

Date and Time of Call.	Description/serial # of parts replaced and parts utilized.
Caller's name, (if given).	Technician's Name.
Service requested by caller.	Time of completion of repair work.
Date and Time of Dispatch.	Number of hours to complete repair work.
Time of arrival at building.	Deficiencies in equipment.
Project reference / detailed description of repair work performed.	

4. The contractor shall test and service all covered equipment regularly and as needed to ensure that the reliability and proper operation of the individual items and the system as a whole are maintained throughout the term of this Contract without degradation.

5. The contractor shall provide without interruption during the term of this contract twenty-four (24) hour dispatching service yielding a prompt response to emergency requests by telephone otherwise from the Contracting Officer or his authorized representative in the even of a malfunction in any equipment covered by this contract. The contractor shall respond to such emergency service calls by dispatching a qualified factory-trained technician or electrician to perform, on an emergency basis, such adjustments, resets, or changes in programming as are necessary to restore the equipment to service. The Contractor shall respond within ninety (90) minutes during regular business hours (8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and holidays) and within one hundred and twenty (120) minutes if such call is received outside regular business hours.

6. The callback services shall be performed as part of this Contract without additional charge. The purpose of the callback service is to repair any unsuccessful, damaged, malfunctioned or unfinished work recently caused by the contractor.

7. The Contractor shall regularly and systematically examine, clean, troubleshoot, adjust, test, and when conditions warrant, repair or replace necessary parts with manufacturer parts to the covered equipment. When warranted the manufacturer shall do software updates and field modifications on an as-needed basis on the machines. The contractor shall also assign a designee to operate the individual sub-systems in an integrated overall system fashion to verify individual sub-system software and hardware system operation. General testing/inspection areas shall include (but are not limited to) the following:

Specific Maintenance Tasks and Schedules for the 750kW Cummins Emergency Diesel Generator Model 7500 (EDG):

Monthly (EDG):

Drain Exhaust Condensate Trap
Check Starting Batteries
Start and run Generator for one (1) hour to allow for fuel movement

Semi-Annually (EDG):

Change Air Cleaner Element
Check Radiator Hoses for wear and cracks
Check drive belt tension
Drain fuel filters
Check Anti-Freeze and DCA Concentration
Change Crackcase oil and filter
Change Coolant Filter
Change Crankcase Breather
Change Fuel Filters
Clean Cooling System
Fuel Oil Pumps

Inspect pump housing, rotor, idler gear and idler pin
Check that pump motor is clean and properly ventilated. Check all electrical connections
Verify that differential pressure across the strainer does not exceed 5 psi
Record discharge setting
Record fuel oil pump relief valve set point
Record amperage and voltage with unit operating
Check pump shaft seal
Check motor/pump flexible coupling and alignment
If applicable, lubricate motor bearings in accordance with manufacturer's instructions

Annually (EDG):

Test Generator Insulation Resistance
Lubricate Generator Bearing
Test Rupture Basin Leak Detect Switch
Start and run the Generator for four (4) hours at full load – coordinate with ATS testing
Specific Maintenance Tasks and Schedules for the 1200A Cummins Automatic Transfer Switch Model BTPCE-5872733 (ATS):

Monthly (ATS):

Inspection of the entire emergency power system including the transfer switch
Verify that all indicating lamps are functional
Verify that all control switches are in proper (automatic) position
Check for obvious indications of faulty operation

Semi-Annually (ATS)

Inspect for mechanical or physical damage
Where applicable, check tightness of control, normal, load and emergency connections
Where applicable, examine control and power contacts for wear or arcing
Where applicable, inspect the transfer mechanism and interlock mechanisms for wear

Annually (ATS):

Check for overheating connections using an infra-red detector
Inspect for mechanical or physical damage
Check that panel cover indicating lamps or LED's are functional
Where applicable, check the solid state logic panel(s) cards for alarm lights
Where applicable, check tightness of control, normal, load and emergency connections
Where applicable, examine control and power contacts for wear or arcing
Where applicable, inspect the transfer mechanism and interlock mechanisms for wear
Lubricate as recommended by the manufacturer
When applicable, perform simulated power failure test and ensure correct operation

Test the entire emergency power system (in conjunction with EDG testing using the transfer switch to initiate an exercise sequence
Verify that the transfer switch signals the generator to start
Verify that load is transferred to the genset
Verify that after the genset test, the transfer switch transfers the load back to normal service
Verify shutdown of genset after a cool-down period

8. The Contractor shall notify the DOHMH when any component of the Units is to be taken out of service for either maintenance or repairs. The Contractor, upon discovery by its own personnel, or oral or written notice by the DOHMH, that a malfunction has occurred, shall, within twenty-four (24) hours of such discovery or receipt of notice, correct such malfunction and restore all covered equipment to service. If the Contractor fails to restore the affected equipment or any part thereof to service within the time specified in this paragraph, the Contractor shall compensate the DOHMH for the actual cost of correcting such malfunctions as are necessary to maintain the full, normal operations of the Data Center Facility. Such actual cost shall be deducted from the subsequent invoice(s) submitted to DOHMH

9. The contractor shall submit upon the start of the contract a proposed maintenance schedule, indicating the months, dates, times and hours required to complete the **Required Maintenance**.

10. In addition to standard testing, the Contractor shall conduct such other tests and inspections as are necessary to insure the reliability of the system and compliance with applicable laws and regulations.

11. The Contractor shall maintain in an area on DOHMH premises designated by the DOHMH for the storage of parts, a spare parts inventory sufficient to ensure that repairs and replacements can routinely be completed without disruption or delay. The Contractor shall notify DOHMH of any special storage requirements and environments for spare parts. Spare parts are to be rotated. Parts utilized from the spare parts inventory shall be promptly restocked. All spare parts furnished and added from time to time to the spare parts inventory and paid by the DOHMH, shall be the sole property of the DOHMH upon the expiration and/or termination of the maintenance agreement.

The Contractor shall maintain a supply of replacement parts, under the Contractor's custody and control, available for express delivery in case of emergency. The Contractor's failure to make adequate provision for promptly obtaining spare parts in order to perform the work under this Contract shall constitute a default. The contractor shall maintain the spare parts inventory as recommended by the manufacturer.

Not later than ninety (90) days prior to the expiration of this Contract, or within thirty (30) days of a termination for cause, the Contractor shall provide to the DOHMH a Final Spare Parts Inventory List, based on a physical inventory of the spare parts located on the premises of the DOHMH.

12. Between ninety (90) and one hundred twenty (120) days prior to the termination of this contract, the Contractor shall, together with a representative of the DOHMH, make a thorough maintenance inspection and test of all equipment covered under this Contract. All deficiencies found as a result of this inspection shall be corrected and all defective parts which come within the scope of this Contract shall be replaced by the Contractor.

13. Should it appear that there is real or apparent discrepancy between different sections of specifications concerning nature, quality or extent of work to be furnished, it shall be assumed that the Contractor has based his bid on the more expensive manner. Any and all apparent discrepancies shall be directed to the Department for resolution and the final decision will rest with the Owner.

II. GENERAL CONDITIONS:

1. Examination of Work Sites

Upon notification from the Assistant Commissioner, or designee, the Contractor shall visit the site of the proposed work to become fully acquainted with all related conditions.

2. Workmanship

The Contractor shall provide experienced, capable personnel to direct and complete work in a manner satisfactory to the Director of Facilities, or designee. The Contractor shall supervise all workmanship to ensure that it be of the highest grade and according to best standard practice. All Contractors' workers shall wear plastic laminated identification cards bearing the name of the employee and the name of the company for which he works. Cards may not contain any official City, State or Federal logo nor imply that the bearer of the card is a government worker.

The contractor shall protect all buildings, appurtenances and finishing from damage that might be done or caused by work performed under this contract. Such damages shall be repaired and/or replaced by approved methods so as to restore the damaged areas to their original condition at the expense of the Contractor.

The Contractor shall be entirely responsible for any loss or damage to its own materials, supplies, equipment, and to the personal property of his employees while they are maintained on the work site. The Contractor shall take every precaution to prevent fire from any cause whatsoever.

For every trade and for every product, the installation and application techniques shall be in strict accordance with the highest quality prescribed by the applicable trade standards and by such recommendations as are called for by the manufacturer.

The Contractor shall, at all times, keep the premises and adjacent areas free from

accumulations of waste material or rubbish. At the completion of work, the Contractor shall remove from and about the premises all rubbish, tools, surplus materials, temporary structures and equipment and shall leave the work area clean and ready for use. The Contractor shall on a daily basis maintain a clean work site, to remove debris by his work and to dispose of it properly on a daily basis at the Contractor's expense. The Contractor shall maintain the work area in such a manner so as to avoid any fire, safety or health hazard to the public and to Department of Health staff.

The Contractor shall coordinate the operations of all trades or materials suppliers engaged under this contract.

3. Guarantee

After final acceptance by the Assistant Commissioner, or designee, all materials and workmanship shall be guaranteed for a period of twelve (12) months. The Contractor, at his/her expense shall make any repairs necessary due to a failure of materials or workmanship during the twelve (12) month period.

III. WORK AND ITS PERFORMANCE:

1. Unless otherwise expressly provided in the Contract Drawings, Specifications and Addenda, the work shall be performed in accordance with the best modern practice for work of this character and in accordance with industry standards, to the Satisfaction of the Assistant Commissioner, or designee.
2. The Contractor shall move furniture, office equipment, pictures, tack boards, shades, Venetian blinds and all items required for proper performance of the work. The Contractor shall handle this task in a satisfactory manner and return all furniture and equipment, etc., where they were situated prior to the required work. Furniture, equipment and floors located in the area of the work, shall be properly covered with a drop cloth during the working phase. Upon completion of the work, the area shall be made ready for occupancy by returning all furniture and equipment to its original location. The Contractor shall also restore all parts of the premises disturbed by their work to its original condition at their expense. Any damage to the building and its contents caused by the Contractor shall be made good at their expense. All cutting, patching, restoration or replacement shall be made by the Contractor in a manner satisfactory to the Assistant Commissioner, or designee.
3. All equipment, materials and articles used in the work covered by the contract, shall be of the most suitable grade of their respective kind. All material shall be delivered in new original packaging. Any materials showing evidence of being opened or unsealed before delivery shall not be used and shall be removed at once from the work-site. All materials shall be used without adulteration and in full compliance

- with the manufacturer's instructions.
4. The Assistant Commissioner, or designee, retain the right to select and approve the type, brand or grade of materials, supplies, devices, fixtures or components to be used in all the facilities.
 5. All work shall be performed during normal working hours between 8:00 a.m. 5:00 p.m. Monday through Friday, unless prior approval is obtained from the Assistant Commissioner, or designee. Instances where the work cannot be performed during regular business hours of Monday through Friday from 8:00 A.M. to 5:00 P.M., the contractor agrees to perform the work during off hours as scheduled between the parties. The Contractor may be asked to perform work on weekends and evenings so as not to disrupt the daily operation of the facility. Overtime hours shall apply for work requested and authorized by the DOHMH for performance outside of normal working hours and on weekends and holidays. Overtime shall be paid to the contractor based upon the rates bid for regular hours. The Contractor shall be responsible for all costs associated with after-hours work. Testing at the DOHMH shall be conducted during the hours determined by the Facility Manager, DOHMH. Testing conducted during normal working hours, shall avoid adversely affecting the operation of the building.
 6. During the progress of the work and up to the date of final acceptance, all materials and workmanship shall be subject to inspection or examination by the Assistant Commissioner, or designee, at any and all times. Inspection by the DOHMH does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements which may be discovered. The Department shall have the right to reject defective material or workmanship, if in the opinion of the Assistant Commissioner, or designee, it is deemed necessary. Rejected workmanship or material shall be satisfactorily corrected and be replaced with proper materials without additional expense to the City. The Department may by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost, thereof, to the contractor, or may terminate the contract, as provided elsewhere in these specifications.

IV. DRAWINGS/SPECIFICATIONS:

1. The Department may not provide drawings and specifications for all projects. Where drawings are provided, work not specified in the specifications nor detailed on the Contract Drawings but required in carrying out their intent or in the complete and proper execution of the work, is required, and shall be performed by the Contractor.
2. Conflicts between the Drawings and Specifications, or within themselves, or discrepancies of any nature including between field conditions, shall be resolved on the premise that the Contractor is deemed to have estimated on the most expensive way of doing the work unless he has asked for and obtained a decision in writing from the Assistant Commissioner before the submission of the estimate, as to what

shall govern.

3. **V. PROTECTION OF WORK AND OF PERSONS AND PROPERTY:**

1. During the performance and up to the date of final acceptance, the Contractor must take all reasonable precautions to protect the persons and property of the City and of others from damage, loss or injury resulting from the Contractor's operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, replace and adequately maintain at or about the site suitable and sufficient guards, lights, barricades and enclosures.
2. The Contractor shall notify the City of any damage to the work or work area or any accident on the site within twenty-four hours of the occurrence. Within three days after notice, of any such loss, damage or injury to work, or damage to persons' property, the Contractor shall provide a full and complete report thereof in writing to the Assistant Commissioner, or designee.
3. If persons, City property or property of others sustains a loss, damage or injury resulting from the negligence or carelessness of the Contractor, in the performance of this Contract, or from his or their failure to comply with any of the provisions of this Contract or of law, the Contractor shall indemnify and hold the city harmless from any and all claims and judgments for damages, cost and expenses to which the City may be subjected or which may suffer or incur by reason thereof.

VI. **SAFETY:**

The Contractor shall ensure that its employees observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.

The Contractor shall erect, install and maintain all temporary public walks, warning signs, barricades and other protective means as may be necessary for the protection of DOHMH employees and the public from injury.

The Contractor shall make use of fume and/or dust control, extraction or isolation devices as necessary to provide a safe environment for the occupants of affected facilities.

The Contractor shall protect all work areas from damage(s). Drop cloths, ladders, materials, tools or other equipment shall not be placed so that they pose a danger to clients or staff. When necessary, all furniture and equipment shall be covered with clean drop cloths. At close of business, all materials shall be removed from premises or stored in an area designated by prior arrangement between the contractor and the site custodian. After the work is completed, the Contractor shall remove all of its materials and equipment and belongings.

VII. **PROTECTION OF EQUIPMENT:**

The Contractor shall take necessary precautions to protect all floors, windows, partition glass, shades, blinds, hardware and lighting fixtures from damages. The Contractor shall be held responsible for any such damage and shall, at the Department's option, either repair all damage and perform all work or reimburse the Department for the costs of such repair.

VIII. SUPERINTENDENCE BY CONTRACTOR:

The Contractor shall have a representative to provide supervision of the work that his/her employees are performing, to insure the complete and satisfactory performance of the work in accordance with the terms of the contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions, from the General Supervisor of Building or the Assistant Commissioner. A confirmation, in writing, of such orders or directions will be given by the Assistant Commissioner, or designee, when so requested by the contractor.

IX. SUFFICIENCY OF PERSONNEL:

If the General Supervisor of Building Maintenance or the Assistant Commissioner are of the opinion that the services required by the specifications are not satisfactorily performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel or take such steps necessary to perform the services satisfactorily, at no additional cost to the City.

X. PERMITS, NOTIFICATIONS AND INSURANCE REQUIREMENTS:

1. The Contractor shall test and maintain all covered equipment in safe operating condition as required by applicable statutes and regulations. All services, including inspections, testing and repair work, shall be performed in compliance with Local and State Building and Electrical Codes. The Contractor shall give all notices, obtain all permits necessary for the Work, pay all costs and fees for applications, permits, tests, and inspections, and obtain all certificates of tests and inspections and approvals for the Work and promptly deliver the same to the Contracting Officer. Periodic inspection and testing of the 750kW Cummins Emergency Diesel Generator, the Cummins Automatic Transfer Switch units and all ancillary equipment as specified, including all covered equipment, shall, at a minimum, be performed to the extent required by the equipment manufacturers' maintenance requirements and as directed by DOHMH.
2. The Contractor shall promptly pay all incidental charges, and meet all the incidental expenses necessary for the most rapid and satisfactory progress of the work under this contract. Nothing under these specifications is to be construed as not to conform to codes and regulations. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, the contractor shall bear all costs arising from them.

3. Upon receipt of notification to proceed with the work as specified, from the Assistant Commissioner, the Contractor shall expedite the work with minimal interruption to daily operation of the facility and the execution of this contract. The Contractor shall consider other notifications as specified, and shall be governed by decisions of the Assistant Commissioner, or designee, with respect to the scheduling of the work.
4. During the term of this contract, the contractor must maintain Worker's Compensation, Employer's Liability and other insurance as required in the Appendix A of this document. The cost of such insurance shall be borne by the Contractor.

XI. COMPLIANCE WITH LAWS:

1. The Contractor shall comply with all local, State and Federal laws, rules and regulations applicable to this Contract and to the work to be done herein including but not limited to the Federal Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969, as amended.
2. All components shall be in accordance with all applicable New York City and State laws, codes and rules.
3. Material Safety Data Sheets (MSDS) shall be provided for all products used under this contract.

XII. CODES AND STANDARDS:

The contractor shall comply with all relevant codes and standards as follows:

New York City Building Code
New York City Fire Prevention Code
N. Y. State Uniform Fire Prevention and Building Code
NFPA (National Fire Protection Association)
New York City Electrical Code
Federal OSHA Standards

XIII. BID ITEMS AND METHOD OF BIDDING:

FOR EACH CONTRACT YEAR (12 MONTH PERIOD)

1. **LABOR:** The bidder shall bid an *hourly cost* to include all overhead and profit for one trades person (**Item 1**) and one helper (**Item 3**). The Bidder shall then multiply the hourly rates by the Estimated Labor Hours per year to calculate the **Labor Cost per Contract Year (Item 5)**
2. **MATERIALS:** The bidder shall bid a *percent mark-up on materials (Item 6)*. The bidder shall then multiply Item 6 by the Materials Allowance per year (**Item 7**) to obtain the **Markup on Materials Allowance (Item 8)**.
3. **COST OF MATERIALS AND LABOR FOR EACH CONTRACT YEAR:** The Bidder shall add Item 5, Item 7, and Item 8 to determine the **Cost of Materials and Labor (Item 9)**.

THE TOTAL BID PRICE FOR FIVE CONTRACT YEARS (60 MONTHS)

The Bidder shall sum the cost of materials and labor for each contract year (Item 9 for each of the five years) to calculate **THE TOTAL BID PRICE**.

The Total Bid Price shall be used only to determine the low bidder. Payments for work done shall be made in accordance with the Invoices submitted for parts installed and labor performed by the low bidder.

XIV. TERMINATION OF CONTRACT:

The Bureau of Operations at its option may terminate this contract at any time and for any reason with written notice to the Contractor, in which event the Bureau shall be liable to the Contractor only for the cost of all work satisfactorily completed up to the time of termination.

XV. INVOICING AND PAYMENT:

1. Each Invoice will show where maintenance work was performed clearly indicating:

Job number and contract number,
Date(s) service(s) was/were performed,
Location(s) where service(s) was/were performed,
Number of trades persons and helpers working and the hours each worked,
Detailed description of each job performed,
The cost of parts and materials used for each job listed and

The total amount due for work performed and materials installed.
Invoices for PM services will not be processed or approved without copies of updated PM schedule and reports being delivered to the contracting officer.

2. Invoices for payment shall be submitted once monthly for all work performed. Payments will be made upon receipt of an invoice. A representative from the Division of Informatics and Information Technology (DIIT) at the location shall sign the invoice or work ticket verifying the date, time, work description, and that the work was satisfactorily completed as specified. Payment will be made for each job invoice for all work submitted and approved by the Assistant Commissioner, or designee. The Contractor is cautioned that payment will not be made for any work that is not authorized by the Department of Health.
3. Request for payment shall be submitted to:

New York City Department of Health
Bureau of Operations
125 Worth Street, Room 1020
New York, NY 10013
Attn.: Mark Hillers
Director of Facilities

4. Liquidated Damages

a. After work is complete, the Assistant Commissioner, or a designee, shall make one (1) inspection and one (1) re-inspection. If said work is not completed satisfactorily after the first inspection, the Contractor will be given a Punch List of what work remains to be done. If said work is not completed satisfactorily after the re-inspection, One Hundred Dollars (\$100.00) will be deducted from the invoice submitted for each additional inspection made until the work is completed to the satisfaction of the Director of Facilities and the Assistant Commissioner or their designee.

b. Failure to meet the agreed upon completion date will result in One Hundred Dollars (\$100.00) deducted from the invoice for each calendar day until completion of that particular project.

c. The amounts set forth in this section, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of the failure to comply, is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failures, and not as a penalty. In the event that the amount which may become due to the Contractor under this Agreement shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference upon demand by the Department.

SECTION III - BID PROCEDURES AND REQUIREMENTS

ARTICLE 1: Status of Information

1.01 DOHMH shall not be bound by any oral or written information released prior to issuing the Invitation for Bids.

1.02 DOHMH shall not be bound by any oral or written representations, statements or explanations other than those made in this Invitation for Bids, in DOHMH written responses to bidder inquiries, or in a formal written addendum to this Invitation for Bids.

ARTICLE 2: Communication with DOHMH

2.01 From the date this Invitation for Bids is issued until the award of the contract, no contact with DOHMH personnel related to this solicitation is permitted, except as shall be authorized by the Authorized Agency Contact Person.

2.02 All inquiries regarding this solicitation shall be addressed in writing to the Authorized Agency Contact Person.

2.03 DOHMH shall respond to all inquiries in writing.

ARTICLE 3: Pre-Bid Conference

3.01 A bidder's failure to attend a mandatory pre-bid conference (when applicable) shall constitute grounds for rejection of the bid.

3.02 Nothing stated at the pre-bid conference shall change the terms or conditions of the Invitation for Bids unless a change is made by written amendment as otherwise provided herein.

3.03 Bidders are requested to notify the Agency Contact Person of the number of representatives from the firm that will attend the conference at least five City working days before the date of the conference

ARTICLE 4: Addenda to the Invitation for Bids

4.01 Prior to the Bid Due Date, DOHMH shall issue corrections or amendments to the Invitation for Bids that it deems necessary, in the form of written addenda.

4.02 Prior to submitting a proposal, the bidder must verify with the designated Agency Contact Person that all addenda have been received. It is the bidder's responsibility to ensure that it has received all addenda. Bidders shall acknowledge in writing the number of addenda received as part of their proposals (See Section IV).

ARTICLE 5: Site Visits

5.01 Where the Invitation for Bids involves performance of services in City facilities, all bidders are expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the Contract. In no event will a failure to inspect a site constitute grounds for withdrawal of a bid after opening or for a claim after an award of the Contract.

5.02 A site visit can be arranged by contacting the Authorized Agency Contact Person.

ARTICLE 6: Form of Bid

6.01 Each bid must be submitted upon the prescribed form(s) and must contain all information required therein. Failure to submit all required documents with the bid will render the bid incomplete and non-responsive and will result in the disqualification of the bidder

6.02 The completed bid must be submitted in a sealed envelope on or before the time and at the place indicated in this Invitation for Bids. The bid envelope must be marked with name of the person, firm or corporation presenting the bid as well as with the bid opening date, bid number and bid title. The bid and all other documents requiring signatures must be signed and notarized.

6.03 Bid Bonds are not required with this bid.

6.04 The bid must be typewritten or computer-printed or written legibly in ink. Each alteration to the printed document must be initialed by the signer in blue ink.

6.05 Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested in the Invitation for Bids. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of

this contract. The City shall not be responsible for the safeguarding of any samples or descriptive literature submitted.

6.07 Faxed or e-mailed bids shall not be accepted.

6.08 A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any contract between the City and the Bidder. The Bidder may be barred from participating in future City contracts and may also be subject to criminal prosecution.

6.09 The prices set forth in the bid cannot be revoked and shall be effective until the award of the contract, unless the bid is withdrawn, as provided for below.

ARTICLE 7: Proprietary Information, Trade Secrets

7.01 A bidder shall identify those portions of its bid that it deems to be confidential, proprietary information or trade secrets, and provide justification as to why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the top and bottom of the pages on which such information appears with the word "Confidential". Such materials stamped "Confidential" must be easily separable from the non-confidential portions of the bid.

7.02 All materials indicated as "Confidential" shall be reviewed by DOHMH and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. Prices, makes and model or catalog numbers of the items offered, deliveries and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

ARTICLE 8: Modification or Withdrawal of Bids, Late Bids

8.01 Bids may be modified or withdrawn by written notice received in the office designated for the delivery of bids in Section I before the time and date set for the bid opening.

8.02 Should a bid be withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

8.03 Any bid received, or request for withdrawal or modification received, after the time and date set for receipt of bids, is late and shall not be considered. The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received.

8.04 Except as provided for in paragraph 11.01 above, a bidder may not withdraw its bid before the expiration of forty-five (45) days after the date of the opening of bids, after which a bidder may withdraw its bid only in writing and in advance of an actual contract award.

8.05 If within sixty (60) days after the registration of the contract by the Comptroller, the Agency fails to fix the date for commencement of work by written notice to the bidder, the bidder may request, by written notice to the Commissioner, to be relieved of its obligation to perform the work called for. If such request is made, the bidder waives all claims in connection with this contract.

ARTICLE 9: Mistakes in Bids

9.01 A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Article 11, above.

9.02 In accordance with Section 3-02(m) of the Procurement Policy Board Rules, if a bidder alleges a mistake in bid after bid opening and before an award, the bid may be corrected or withdrawn upon written approval of the Agency Chief Contracting Officer and Agency Counsel if the following conditions are met:

- a. **Minor Informalities:** Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer (as defined in the PPB Rules of the City of New York) may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City.
- b. **Mistakes Where Intended Correct Bid is Evident:** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- c. **Mistakes Where Intended Correct Bid is Not Evident:** Mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw a low bid where a unilateral error or mistake has been discovered in the bid and the contracting officer makes the following determination, which shall be approved by the ACCO:
 - i the mistake was known or made known to the agency prior to supplier selection or within three days after the opening of the bid, whichever period is shorter;
 - ii the price bid was based on an error of such magnitude that enforcement would be unconscionable;
 - iii the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;

- iv the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
 - v it is possible to place the City in the same condition that had existed prior to the receipt of the bid.
- d. Mistakes Discovered After Award: Mistakes shall not be corrected after an award of the contract except where the City Chief Procurement Officer subject to the approval of Corporation Counsel makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

ARTICLE 10: Bid Evaluation and Award

10.01 This contract shall be awarded, if at all, to the responsible bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and whose bid price is either the lowest responsive and responsible bid price or, if the Invitation for Bids so states, the lowest responsive and responsible evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bid.

10.02 In accordance with Section 3-02 (o)(2) of the Procurement Policy Board Rules, negotiations with the lowest bidder who is also responsive and responsible, shall be allowed to take place in those circumstances in which such negotiations result in terms which are more favorable to the City.

10.03 Nothing in this Section shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if that bid is not also the most favorable bid.

10.04 When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation for Bids, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:

- e. Award to a certified New York City small minority or woman owned business entity bidder; then
- f. Award to a New York City bidder; then
- g. Award to a certified New York State small, minority or woman owned business bidder; then

- h. Award to a New York State bidder.
- i. Should two or more bidders remain equally eligible after application of this section, award shall be made by drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

10.05 The Agency may reject a bid if the bidder is determined to be not responsible or non-responsive pursuant to the Procurement Policy Board Rules. The bidder has the right to appeal a determination of non responsiveness or non responsibility and has the right to protest a solicitation and award, pursuant to Sections 2-08 and 2-10 respectively, of the Procurement Policy Board Rules.

10.06 The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to re-solicit bids in accordance with the Procurement Policy Board Rules or by other method authorized by such rules.

ARTICLE 11: Unit Price Contracts

11.01 Comparison of Bids: Bids on Unit Price Contracts will be compared on the basis of a total estimated price, arrived at by taking the sum of the estimated quantities of such items multiplied by the corresponding unit prices, and including any lump sum bids on individual items, in accordance with the Estimate of Quantities set forth in the Bid Form.

11.02 Variations from Estimates: Bidders are warned that the Estimate of Quantities of the various items of work and materials is approximate only, given solely to be used as a uniform basis for the comparison of bids, and is not being considered a part of this Contract. Work may be less or more than so estimated, and if so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof. If during the progress of the work, the actual quantity of items required to complete the work of any unit item approaches the estimated quantity, and due to errors, site conditions, changes in design or any other reason, it appears that the actual quantity necessary to complete the work will exceed the estimated quantity by 25 percent, the Contractor shall immediately notify the Agency of such anticipated overruns. The Contractor shall not be compensated for work performed in excess of one hundred twenty five (125) percent of the estimated quantities in the bid schedule without written authorization from the Agency.

11.03 The Contractor will be paid at the unit price bid for quantities up to one hundred twenty five (125) percent of the estimated quantities listed in the bid schedule. If quantities on any item exceed one hundred twenty five (125) percent of the estimate, the City reserves the right and the Contractor agrees to renegotiate the unit price bid to a new unit price for such quantities. If the City and Contractor cannot agree to a new price then the City, if it requires additional units of the item, shall order the Contractor and the Contractor agrees to perform the additional work on a time and material

basis for the actual and reasonable cost as determined by the Agreement but in no event at a cost exceeding the bid price.

ARTICLE 12: Failure to Execute Contract

12.01 The successful bidder must execute the contract and furnish required security and insurance(s) within ten (10) days after notice of the contract award has been given by the City. Should the successful bidder fail to do so, the bidder's deposit, or so much as shall be applicable to the award made, may be retained by the City and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between its bid price and the price for which the contract is subsequently re-let, including the cost of such re-letting and less the amount of the original deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon the accepted bid.

12.02 Should the bidder's failure to comply with Section 16.01 above cause any funding agency, body or group (Federal, State, City, Public, Private, etc.) to terminate, cancel or reduce the funding on this project, the bidder shall also be liable to the City for the amount of actual funding withdrawn by such agency on this project less the amount of the forfeited deposit.

ARTICLE 13: Vendor Requirements

13.01 Financial Qualifications

a. In addition to the experience questionnaire required to be submitted with the bid, after the opening of bids, if directed by the Commissioner, the bidder may also be required to submit a sworn statement setting forth such information as the Commissioner may require including but not limited to information regarding his financial condition, present and proposed plant and equipment, personnel and qualifications of his organization, prior experience, performance record.

b. DOHMH may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status, responsibility, and capability to perform the contract.

c. If the bidder fails or refuses to supply any of the documents or information set forth above, or fails to comply with any of the DOHMH requirements, DOHMH may reject the bid.

d. When directed by DOHMH, the bidder or a responsible officer, agent or employee of the bidder, must submit to an oral examination to be conducted by the DOHMH in relation to his

proposed tentative plan and schedule of operations, and such other matters as the Agency may deem necessary in order to determine the bidder's ability and responsibility to perform the work in accordance with the Contract. If required by the ACCO, each person so examined must sign and verify a stenographic transcript of such examination, noting thereon such corrections therein as such person may desire to make.

13.02 VENDEX Questionnaires:

a. Pursuant to the New York City Administrative Code Section 6-116.2 and Section 2.08 of the Rules of the Procurement Policy Board, bidders may be obligated to submit completed VENDEX questionnaires with this bid. Generally, if this bid is \$100,000 or more, or if this bid when added to the sum total of all contracts, concessions and franchises the bidder has received from the City and any subcontracts received from City contractors over the past twelve months, equals or exceeds \$100,000, VENDEX questionnaires must be completed. Any questions concerning this requirement must be submitted to the Authorized Agency Contact Person. Bidders will be required to submit the completed reports to DOHMH within 10 days of notice.

b. The same requirements apply to all subcontractors.

13.03 Employment report:

a. In accordance with Executive Order No. 50 (1980), the filing of a completed Employment Report (ER) is required to do business with the City of New York if the contract value exceeds \$100,000, and if your firm employs 50 or more people. If your company or any of its facilities performing on the contract have fewer than 50 employees, although the contract value exceeds \$100,000, you need only submit a "Less Than 50 Employees Certificate." You will be required to submit the completed Employment report to the Agency within 10 days of notice.

b. The same requirements apply to all subcontractors.

13.04 Americans with Disability Act: This Invitation to Bid is subject to Title II of the Americans with Disabilities Act of 1990 (ADA) and regulations promulgated pursuant thereto which prohibits discrimination against individuals with a disability, as defined in the ADA, by a public entity in providing services, programs or activities to the public.

13.05 Affirmative Action & Equal Employment Opportunity: This Invitation for Bids is subject to applicable provisions of Federal, State and Local Laws and executive orders requiring affirmative action and equal employment opportunity.

13.06 Tropical hardwoods: Tropical hardwoods as defined in Section 167 b of the State Finance Law shall not be utilized in the performance of this contract except as expressly permitted by the foregoing provision of law.

13.07 Sub-Contractors

a. Documents given to a sub-contractor for the purpose of soliciting the sub-contractor's bid shall include either a copy of the bid cover or a separate information sheet setting forth the project name, the contract number (if available), the contracting agency, and the project's location.

b. If a bidder is awarded the contract and intends to use one or more sub-contractors in the performance of this contract, the bidder must obtain approval from the Department for each sub-contractor. When the bidder proposes to use one or more sub-contractors, it shall provide to the Department the name(s) of such sub-contractor(s), including a statement of work to be assigned to each sub-contractor, all relevant licenses and permits required by any governmental agency, and any other information requested by the Department.

c. Subcontractors must comply with the submission requirements for the VENDEX Questionnaires and Employment Report.

13.07 Comptroller's Certificate: This contract shall not be binding or of any force unless the Comptroller of the City shall endorse hereon his certificate that there remains unexpended and unapplied, as provided in Section 6-101 of the Administrative Code of the City of New York, a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of executing this contract as certified by the officer making the same. This contract shall continue in force only after annual appropriation of funds by the City of New York and Certification as herein above set forth.

13.08 Prompt Payment: The Prompt Payment provisions set forth in Section 4-06 of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under a contract resulting from this solicitation. The contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determinations of interest due will be made in accordance with the provisions of Section 4-06 of the Procurement Policy Board Rules and General Municipal Law 3 A.

13.09 Procurement Policy Board Rules: This Invitation for Bids is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this Invitation for Bids, the Rules shall take precedence.

[NO FURTHER TEXT ON THIS PAGE]

SECTION IV: BID PACKAGE

Instructions for submitting a bid

This package contains the following forms that must be completed and returned with the bid:

COVER SHEET/CHECKLIST

ITEM 1. Bidder Representations

ITEM 2. Bid Sheet

This form must be completed and signed by an authorized person representing the bidder, the corporate seal must be affixed, and the form must be notarized

ITEM 3. Acknowledgement of Addenda

This form must be completed and signed by an authorized person representing the bidder

ITEM 4. Experience Questionnaire

This form must be completed and signed by an authorized person representing the bidder and the form must be notarized

ITEM 5. List of Sub-Contractors

The following three items, supplied by the Bidder, must also be included with the Bid Submission

ITEM 6. Insurance Certificates

See Appendix A for Insurance Requirements for this bid

ITEM 7. List of References

ITEM 8. Audited Financial Statement

Most recent audited financial statement or, if not available, an equivalent financial statement reasonably indicating the financial stability of the vendor.

The following items must be completed and returned within 10 days of notice by DOHMH of the winning Bidder

ITEM 9. VENDEX Questionnaires

Required for bids exceeding \$100,000

ITEM 10. Employment Report

Required for bids exceeding \$100,000

Do not return Sections I, II, or III of this Invitation for Bids.

Do not return the attached Agreement with the Bid Submission

Upon award of this contract, DOHMH will send the entire Bid/Agreement to the winning Bidder for execution. It will contain this entire Bid Package as part of the contract.

THE CITY OF NEW YORK
Department of Health and Mental Hygiene
Bid Submission for:
MAINTENANCE CONTRACT EMERGENCY DIESEL GENERATOR & AUTOMATIC
TRANSFER SWITCH
PIN 10MI027700R0X00

Cover Sheet / Checklist

Name of Bidder: _____

Date Submitted: _____ 2010

- | | | |
|----------------|------------------------------------|------------|
| ITEM 1. | Bidder Representations | [] |
| ITEM 2. | Bid Sheet | [] |
| ITEM 3. | Acknowledgement of Addenda | [] |
| ITEM 4. | Experience Questionnaire | [] |
| ITEM 5. | List of Sub-contractors | [] |
| ITEM 6. | List of References | [] |
| ITEM 7. | Insurance Certificates | [] |
| ITEM 8. | Audited Financial Statement | [] |

ITEM 1 - Bidder Representations p.1

Name of Bidder: _____

Place of Business: _____

Telephone #: _____ Fax #: _____

E-mail address: _____ Tax ID #: _____

Date of Bid: _____

Bidder is: Individual () Partnership () Corporation ()

A) If Bidder is Individual

Home address of Bidder: _____

If Bidder is Partnership

Name and Home Addresses of Partners:

Bidder Representations p.2

If Bidder is Corporation

Organized under the Laws of the State of:

Name and home address of
President: _____

Name and home address of
Secretary: _____

Name and home address of
Treasurer: _____

The above-named Bidder affirms and declares:

1. The several matters stated and information furnished herein are in all aspects true
2. The said Bidder is of lawful age and the only one interested in this bid, and that no person, firm, or corporation other than herein before named has any interest in this bid, or in the contract proposed to be taken
3. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief: (1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor or potential competitor; (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other bidder or to any competitor or potential competitor; and (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
4. That no councilman or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits.
5. That said bidder is not in arrears to the City of New York upon debt, taxes or contract, and is not a defaulter, as surety or otherwise, upon any obligation of the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except

6. The bidder, as an individual, or as a member, partner, director or officer of the bidder, if the same be a firm, partnership or corporation, executes this document expressly warranting and representing that should this bid be

accepted by the City and the Contract awarded to such bidder, the bidder and his subcontractors engaged in the performance: (1) will comply with the provisions of Section 6-108 of the Administrative Code of the City of New York and the non discrimination provisions of Sect. 220a of the NYS Labor Law as more expressly and in detail set forth in the contract form; (2) will comply with the provisions of Section 6-109 of the Administrative Code of the City of New York in relation to minimum wages and other stipulations as more expressly and in detail set forth in the Agreement; (3) have complied with the provisions of the aforesaid laws since their respective effective date, and (4) will post notices to be furnished by the City, setting forth the requirements of the aforesaid laws in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the Contract can readily view it, and will continue to keep such notices posted until the supplies, materials and equipment, or work labor and services required to be furnished or rendered by the Contractor have been finally accepted by the City. In the event of breach or violation of any of the foregoing, the bidder may be subject to damages, liquidated or otherwise, cancellation of the Contract and suspension as a bidder for a period of three years. (The words, "the bidder", "he", "his", and "him" where used herein shall mean the individual bidder, firm, partnership or corporation executing this bid).

7. Compliance Report: The bidder, as an individual, or as a member, partner, director or officer of the bidder, if the same be a firm, partnership, or corporation, (1) represents that their attention has been specifically drawn to Executive Order No. 50, dated April 25, 1980, on Equal Employment Compliance of the contract, and (2) warrants that they will comply with the provisions of Executive Order No. 50. The bidder, as an individual, or as a member, partner, director, or officer of the bidder, if the same be a firm, partnership, or corporation, executes this document expressly warranting that they will comply with the provision of this contract in providing records, Chapter 8.
8. By submission of this bid, bidder certifies that it now has, and will continue to have, the financial capability to fully perform the work required for this contract. Any award of this contract will be made in reliance upon such certification. Upon request therefore, the bidder will submit written verification of such financial capability in a form that is acceptable to the Department.
9. That said bidder has visited and examined the site of the work and has carefully examined the Contract in the form approved by the Corporation Counsel, and will execute the Contract and perform all of its items, covenants and conditions, and will provide, furnish and deliver all the work, materials, supplies, tools and appliances for all labor and materials necessary or required for the hereinafter named work, all in strict conformity with the Contract and for the prices set forth in the bid sheet.
10. That the party signing the Bid Sheet is duly authorized to sign this agreement on behalf of the Contractor.

NOTICE TO ALL BIDDERS; FAILURE TO COMPLETE THIS SECTION IN DETAIL SHALL RESULT IN REJECTION OF YOUR BID.

This contract does not obligate the Department of Health to issue a required number of work assignments or to provide a minimum number of hours of work or request a minimum amount of parts. The Estimated Quantities are for calculating the Total Bid Price. The Total Bid Price shall be used to determine the low bidder. Payments for work done shall be made in accordance with the Invoices submitted for parts installed and labor performed by the low bidder. The Contractor is advised that such compliance will be closely monitored. The undersigned agrees, if this bid is accepted, that they will within 10 days of receipt of notice of an award submit executed copies of insurance policies as may be required, execute the Agreement set forth in this Invitation for Bid, and will proceed, when directed to do so, with the work required hereunder in strict compliance with the terms and conditions set forth in this Bid AT THE FOLLOWING PRICE:

MAINTENANCE SERVICES FOR FIVE YEARS (60 Months)

EMERGENCY DIESEL GENERATOR & AUTOMATIC TRANSFER SWITCH

First Contract Year (12 Month Period)		
Item	Description	Bid Price
1	Hourly cost of one trades person (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
2	Labor Hours (Item 1) X (1000)	\$
3	Hourly cost of one helper (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
4	Labor Hours (Item 3) X (1000)	\$
5	Labor Cost per Contract Year = (Item 2) + (Item 4)	\$
6	Percent Markup on Materials	%
7	Materials Allowance per Year	\$30,000
8	Markup on Materials Allowance = (Item 6) x (Item 7)	\$
9	Cost of Materials and Labor for the First Contract Year (12 Month Period) = (Item 5) + (Item 7) + (Item 8)	\$

Second Contract Year (12 Month Period)		
Item	Description	Bid Price
1	Hourly cost of one trades person (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
2	Labor Hours (Item 1) X (1000)	\$
3	Hourly cost of one helper (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
4	Labor Hours (Item 3) X (1000)	\$
5	Labor Cost per Contract Year = (Item 2) + (Item 4)	\$
6	Percent Markup on Materials	%
7	Materials Allowance per Year	\$30,000
8	Markup on Materials Allowance = (Item 6) x (Item 7)	\$
9	Cost of Materials and Labor for the Second Contract Year (12 Month Period) = (Item 5) + (Item 7) + (Item 8)	\$

Third Contract Year (12 Month Period)		
Item	Description	Bid Price
1	Hourly cost of one trades person (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
2	Labor Hours (Item 1) X (1000)	\$
3	Hourly cost of one helper (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
4	Labor Hours (Item 3) X (1000)	\$
5	Labor Cost per Contract Year = (Item 2) + (Item 4)	\$
6	Percent Markup on Materials	%
7	Materials Allowance per Year	\$30,000
8	Markup on Materials Allowance = (Item 6) x (Item 7)	\$
9	Cost of Materials and Labor for the Third Contract Year (12 Month Period) = (Item 5) + (Item 7) + (Item 8)	\$

Fourth Contract Year (12 Month Period)		
Item	Description	Bid Price
1	Hourly cost of one trades person (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
2	Labor Hours (Item 1) X (1000)	\$
3	Hourly cost of one helper (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
4	Labor Hours (Item 3) X (1000)	\$
5	Labor Cost per Contract Year = (Item 2) + (Item 4)	\$
6	Percent Markup on Materials	%
7	Materials Allowance per Year	\$30,000
8	Markup on Materials Allowance = (Item 6) x (Item 7)	\$
9	Cost of Materials and Labor for the Fourth Contract Year (12 Month Period) = (Item 5) + (Item 7) + (Item 8)	\$

Fifth Contract Year (12 Month Period)		
Item	Description	Bid Price
1	Hourly cost of one trades person (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
2	Labor Hours (Item 1) X (1000)	\$
3	Hourly cost of one helper (Including but not limited to cost of tools, equipment, trucking, insurance, travel time, overhead and profit)	\$
4	Labor Hours (Item 2) X (1000)	\$
5	Labor Cost per Contract Year = (Item 2) + (Item 4)	\$
6	Percent Markup on Materials	%
7	Materials Allowance per Year	\$30,000
8	Markup on Materials Allowance = (Item 6) x (Item 7)	\$
9	Cost of Materials and Labor for the Fifth Contract Year (12 Month Period) = (Item 5) + (Item 7) + (Item 8)	\$

TOTAL BID PRICE FOR FIVE YEARS (60 Months) (Sum Item 9 from each of the Five Contract Years)	\$
--	----

TOTAL BID PRICE (price in words)

In the case of any discrepancy between the price in words and that in figures, the lowest price will be considered the bid price.

The undersigned, in submitting this bid, expressly states and represents that it is made in good faith, and that Calculations were made on reasonable estimates. The undersigned hereby certifies to the truth and accuracy of all figures and answers contained herein, and authorizes the Department to make any necessary examination of the books of account, records and vouchers of the bidder or other investigation to determine its responsibility.

Bidder: _____
(Full Legal Name of Company)

By: _____
(Signature of Person Authorized To Sign the Bid)

Attest: _____
(Secretary of Corporate Bidder)

(CORPORATE SEAL)

TO BE NOTARIZED:

Sworn to before me this ____ day
of _____, 2009

(Notary Public or Commissioner of Deeds)

ITEM 3: Acknowledgement of Addenda

Complete Part I or Part II, whichever is applicable:

PART I: Listed below are the dates of issue for each Addendum received in connection with this Invitation for Bids:

ADDENDUM #1 Dated _____, 20____
ADDENDUM #2 Dated _____, 20____
ADDENDUM #3 Dated _____, 20____
ADDENDUM #4 Dated _____, 20____
ADDENDUM #5 Dated _____, 20____
ADDENDUM #6 Dated _____, 20____

PART II: No Addendum was received in connection with this Invitation for Bids

Dated: _____, 2011

BIDDER (NAME): _____

BIDDER (SIGNATURE): _____

ITEM 4: Experience Questionnaire

Bidders Name _____

Telephone No: _____ Federal Tax Identification No: _____

Fax No. _____ E-Mail Address: _____

Submitted by Corporation () Partnership () Individual ()

Date: _____, 2011

Address of Principal Office:

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

1. How many years experience in work relevant to this bid has your organization had:

(a) As a Prime Contractor Type of work: _____

(b) As a Subcontractor Type of work: _____

2. Have you ever failed to complete any work awarded to you? _____

If so, where and why? _____

3. Have you or any organization of which you have been a partner or officer ever been declared in default by any City, State or Federal Agency? YES () NO ()

(If YES, give details) _____

4. Have you or any member of an organization of which you have been a member, partner, director or officer when called before a Grand Jury to testify, refused to sign a Waiver of Immunity or answer and relevant questions or have been indicted for any reason whatsoever? YES () NO ()

(If YES, give details) _____

5. Names of corporations or companies that you have ever been connected with other than the above as a member, partner, director or officer.

6. Have you ever appeared before the Board of Responsibility of the City of New York?

YES () NO ()

(If YES, give details) _____

7. Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a city contract or other governmental contract?

YES () NO ()

If YES, state the name of individual, other organization and reason therefore:

8. Has any officer or partner of your organization ever failed to complete a city or other governmental contract handled in his own name?

YES () NO ()

If YES, state name of individual, name of Owner and reason therefore:

9. In what other business are you financially interested?

10. For what organizations have you performed the type of work called for under this Invitation for Bids and to whom do you refer?

11. For what Cities, Counties, or States have you performed the type of work called for under this Invitation for Bids and to whom do you refer (include bureaus and / or departments)?

12. Have you ever performed any of the work called for under this contract for the U.S. Government?

YES () NO ()

If YES, state when and state contract reference number and the name and telephone number of the government contract administrator for such federal contract:

13. Have you filed Performance Record Reports with the Bureau of Contract Information Inc., Washington, D.C

YES () NO ()

If YES, give date: _____

14. What similar contracts has your organization had within the last five years?

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Scheduled Completion Date _____ Actual Completion Date: _____

If not completed by original scheduled completion date, give reasons therefore:

Project Identification and Nature of Project: _____
Name and Address of Owner: _____
Contract Amount: \$ _____ Date Started: _____
Scheduled Completion Date _____ Actual Completion Date: _____
If not completed by original scheduled completion date, give reasons therefore:

Project Identification and Nature of Project: _____
Name and Address of Owner: _____
Contract Amount: \$ _____ Date Started: _____
Scheduled Completion Date _____ Actual Completion Date: _____
If not completed by original scheduled completion date, give reasons therefore:

15. What projects does your organization currently have under contract?

Project Identification and Nature of Project: _____
Name and Address of Owner: _____
Contract Amount: \$ _____ Date Started: _____
Contract time: _____ Pct of Contract Time elapsed as of this date: _____
% Work completed as of this date: _____
If Percent of elapsed time excess of work completed, give reasons therefore:

Project Identification and Nature of Project: _____
Name and Address of Owner: _____
Contract Amount: \$ _____ Date Started: _____
Contract time: _____ Pct of Contract Time elapsed as of this date: _____
% Work completed as of this date: _____
If Percent of elapsed time excess of work completed, give reasons therefore:

ITEM 5: List of Sub-Contractors

Name of Sub-Contractor & Work to be done

ITEM 6: List of References

Name of references for whom work has been performed. Include address and telephone numbers.

1. _____

2. _____

3. _____

4. _____

5. _____

SECTION V AGREEMENT

AGREEMENT dated the _____ day of _____, 2011 between the CITY OF NEW YORK (“CITY”) acting through the City Department of Health and Mental Hygiene (“Department” or “DOHMH”) having its principal office located at 125 Worth Street, New York, New York 10013 and _____, (“Contractor”), a corporation having its principal office located at _____

WITNESSETH:

That the parties hereto, in consideration of the mutual promises herein contained, agree as follows:

Except for titles, subtitles, headings, running headlines, tables of content and indices (all or which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Contract:

NO FURTHER TEXT ON THIS PAGE

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

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

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” shall mean 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” shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

D. “City Chief Procurement Officer” or “CCPO” shall mean 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” shall mean 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” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

H. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

J. “Law” or “Laws” shall mean 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” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

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

M. “State” shall mean the State of New York.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties 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 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 Paragraph 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.

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 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 which 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.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 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 2.06 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 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this

Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

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

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 VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency 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 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. The Contractor shall not enter into any subcontract for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. 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 4.07 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.

D. 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.

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

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City

in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all 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.

G. 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.

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this 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 engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

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 (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative 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 shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. 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 New York State 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 Fifty Dollars (\$50) 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.

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

Section 4.06 Non-Discrimination: 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 New York City Administrative Code § 6-108, that:

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

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

D. 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 shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

A. 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:

1. 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;

2. 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;

3. 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;

4. 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;

5. 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 City Department of Small Business Services, Division of Labor Services (“DLS”); and

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

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this 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:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

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

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting

employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

ARTICLE 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, which 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, and other documents 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 records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

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, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents 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 and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

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.

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.

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.

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 data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during 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 data 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. 1. 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.

2. 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 (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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 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 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. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. 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 twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 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 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

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 not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

C. The Contractor shall ensure that each subcontractor adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such subcontractor under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

Section 7.03 Professional Liability Insurance

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least Five Million Dollars (\$5,000,000) per claim. The policy or policies shall include an endorsement to 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.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least Five Million Dollars (\$5,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on

cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit 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 ISO Form CA0001, ed. 10/01.

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

C. 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.

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

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

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain the following endorsement: “This policy may not be cancelled, terminated, modified or changed for any reason other than non-payment unless thirty (30) Days prior written notice is sent by the Insurance Company to the Named Insured, the Commissioner [insert Agency], and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. For non-payment, at least ten (10) Days written notice must be provided.”

Section 7.08 Proof of Insurance

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

1. C-105.2 Certificate of Workers’ Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers’ Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers’ Compensation Insurance, Disability Benefits Insurance, Employer’s Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor’s general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed “Certification by Broker” in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

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

E. 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 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

Section 7.09 Miscellaneous

A. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Contractor’s own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that “this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged, or lost. 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.

B. The Contractor’s failure to maintain any of the insurance required by this Article 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 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. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

**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 damage, loss or injury 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 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

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event 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 which the City may reasonably require of the Contractor.

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

Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City 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. In the event that 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 further 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 setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 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 shall not be 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 officers 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. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this 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, AND REDUCTIONS IN FUNDING

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. If the City terminates this Agreement pursuant to this Section, 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 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 Paragraph 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 thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

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

causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

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 (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

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. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

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, 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, 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. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates 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 forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (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 ninety (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; 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, 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 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

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. 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 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section 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 is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) 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

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, 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.

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 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 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 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 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 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 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, 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 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 thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the 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 thirty (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 as the Contractor initiating the dispute.

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to 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. 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 thirty (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 thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

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 fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (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 ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of 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 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, 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 thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the 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 thirty (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 its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of 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 thirty (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 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, 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 (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this 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. In the event of 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 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). In the event that 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 (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

Section 13.06 Voter Registration

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

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, 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 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 are material conditions of this Agreement.

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

Section 13.07 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 13.08 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 13.09 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 applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. 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 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 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 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 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.

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 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 vary 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 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 fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section 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.

IN WITNESS WHEREOF. The Agency Chief Contracts Officer, on behalf of the City of New York, and the Contractor, have executed this agreement in triplicate.

**THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

By: _____
Agency Chief Contracts Officer

(Print full legal name of Contractor)

By: _____
(Partner, Member of Firm or Officer of Corporation)

(Place Seal Here)

Approved as to Form

Certified as to Legal Authority:

Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY AGENCY CHIEF CONTRACTING OFFICER

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this _____ day of _____, 20____ before me personally came **Patricia Thomas**, to me known and known to me to be the Agency Chief Contracting Officer (“ACCO”) of the Department of Health and Mental Hygiene of the City of New York, the person described in whom, as such ACCO, executed the foregoing agreement, and she duly acknowledged to me that she executed the same on behalf of the City of New York and the Department of Health and Mental Hygiene for the purpose herein mentioned.

=====

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY CORPORATION

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this _____ day of _____ 20_____ before me personally came _____, who being by me duly sworn, did depose and say that (s)he resides in the City of _____; that (s)he is the _____ of the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

=====

Notary Public or Commissioner of Deeds

APPENDIX A

Schedule of Insurance Requirements

If checked (XXX), the following requirements must be met by the Contractor:

Item	Minimum Coverage	Required
Workers Compensation	Statutory Requirements	(XXX)
Comprehensive General Liability	\$1,000,000 per occurrence	(XXX)
Combined Single Limit	\$2,000,000 aggregate	
Bodily Injury and Property Damage		
Professional Liability	\$1,000,000 per occurrence	(OMIT)
Automobile Liability <i>(If vehicle is used in performance of obligations under the contract)</i>		
	\$1,000,000 per occurrence	(XXX)
Combined Single Limit	\$2,000,000 aggregate	
Bodily Injury and Property Damage		
The following coverage must be provided:		
	Comprehensive Form	(XXX)
	Owned	(XXX)
	Hired	(XXX)
	Non-Owned	(XXX)

*Only required if the Total Bid Price exceeds \$100,000

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201__

NOTARY PUBLIC

APPENDIX B

Tax 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 contracts except:

Full name of proposer or bidder: _____

Address: _____

City _____ State _____ Zip _____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

() A Individual or Sole Proprietorship SS# _____

() B Partnership, Joint Venture or
other unincorporated organization EIN# _____

() C Corporation EIN# _____

By: _____

Signature Title

If a corporation, place seal here: _____

Date

Must be signed by an officer or duly authorized representative.

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



The City of New York
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Michael R. Bloomberg
Mayor

Thomas R. Frieden, M.D., M.P.H.
Commissioner

nyc.gov/health

APPENDIX C: Local Law 35 Certification

COMMISSIONER CERTIFICATION

INVITATION FOR BIDS FOR

**MAINTENANCE CONTRACT EMERGENCY DIESEL
GENERATOR & AUTOMATIC TRANSFER SWITCH**

PIN # 10MI027600R0X00

Pursuant to the Charter of the City of New York, Section 312, subsection 2, a. 1, I hereby certify that this procurement will not result in the displacement of any city employee.

Patricia A. Thomas, Agency Chief Contracting Officer

APPENDIX D:

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER FORM

 <p>FINANCE NEW YORK THE CITY OF NEW YORK DEPARTMENT OF FINANCE nyc.gov/finance</p>	CITY OF NEW YORK • DEPARTMENT OF FINANCE • TREASURY DIVISION
	DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

INSTRUCTIONS: Please complete all sections of this Enrollment Form and attach a voided check or a copy of an enclosed deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

Mail to: NYC Department of Finance, Treasury Division, One Centre Street, Room 727, New York, NY 10007
- Attention: EFT, or Fax to: EFT at 212-669-4656.

SECTION I - VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)		<input type="text"/>
2. VENDOR NAME (AS IT APPEARS ON W-9 FORM):		
<input type="text"/>		
3. VENDOR'S PRIMARY ADDRESS:		
<input type="text"/>		
4. VENDOR'S EMAIL ADDRESS:		
<input type="text"/>		
5. CONTACT PERSON NAME:	CONTACT PERSON TELEPHONE NUMBER:	
<input type="text"/>	<input type="text"/>	

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:	2. ACCOUNT NAME:	
<input type="text"/>	<input type="text"/>	
3. BANK NAME :		
<input type="text"/>		
4. BANK BRANCH ADDRESS:		
<input type="text"/>		
5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)	<input type="text"/>	6. ACCOUNT TYPE: (CHECK ONE) <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS
7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:		TELEPHONE NUMBER:
<input type="text"/>		<input type="text"/>

SECTION III - VENDOR SIGNATURE

<input type="text"/>		
VENDOR SIGNATURE	PRINT NAME	DATE

TREA-0913 Rev 03/7/207

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

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to: NYC Department of Finance, Treasury Division, One Centre Street, Room 727, New York, NY 10007 - Attention: EFT, or Fax to: EFT at 212-669-4656.

SECTION I - VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person.)

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account: (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

SECTION III - VENDOR SIGNATURE

Sign and date where indicated.

APPENDIX E: PAYROLL REPORT
(ATTACHED)

APPENDIX F: DOING BUSINESS DATA FORM
(ATTACHED)

APPENDIX G

**CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DOHMH)
OFFICE OF THE AGENCY CHIEF CONTRACTING OFFICER**

“NO BID RESPONSE”

PIN: 10MI027600R0X00

_____ HAS OPTED NOT TO BID ON
(Contractor name)

**MAINTENANCE CONTRACT EMERGENCY DIESEL GENERATOR &
AUTOMATIC TRANSFER SWITCH**

For the following reason(s):

Contact Name _____ Phone _____
(Signature)

Date ____/____/____

Please return this form to the DOHMH Authorized Agency Contact(s) or fax to (212) 219-5890, Attention Celloy Williams, no later than XXXX, 2009. **THE CITY OF NEW YORK**

APPENDIX H

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK LABOR LAW §220 PREVAILING WAGE SCHEDULE

EFFECTIVE PERIOD: JULY 1, 2010 THROUGH JUNE 30, 2011
PUBLISH DATE: 1/10/2011

Shift Wage Rate: **\$111.55**

Engineer - Heavy Construction Maintenance Engineer III

On Generators, Power Pack Light Towers

Effective Period: 7/1/2010 - 1/9/2011

Wage Rate per Hour: **\$34.44**

Supplemental Benefit Rate per Hour: **\$26.84**

Supplemental Note: \$48.03 on overtime

Shift Wage Rate: **\$55.10**

Effective Period: 1/10/2011 - 6/30/2011

Wage Rate per Hour: **\$35.48**

Supplemental Benefit Rate per Hour: **\$28.25**

Supplemental Note: \$50.60 on overtime

Shift Wage Rate: **\$56.77**

Overtime

Double time the regular rate after an 8 hour day.

Double time the regular time rate for Saturday.

Double time the regular rate for Sunday.

Double time the regular rate for work on the following holiday(s).

Paid Holidays

New Year's Day

Lincoln's Birthday

President's Day

Memorial Day

Independence Day

Labor Day

Columbus Day

Election Day

Veteran's Day

Thanksgiving Day

Christmas Day

Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK
§220 APPRENTICESHIP PREVAILING WAGE SCHEDULE**

**ADDENDUM 1 EFFECTIVE PERIOD: JULY 1, 2010 THROUGH JUNE 30, 2011
PUBLISH DATE: 1/10/2011**

ENGINEER

(Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 5)

Engineer - First Year

Effective Period: 7/1/2010 - 1/9/2011

Wage Rate per Hour: \$19.68

Supplemental Benefit Rate per Hour: \$16.59

Effective Period: 1/10/2011 - 6/30/2011

Wage Rate per Hour: \$20.33

Supplemental Benefit Rate per Hour: \$17.75

Engineer - Second Year

Effective Period: 7/1/2010 - 1/9/2011

Wage Rate per Hour: \$24.60

Supplemental Benefit Rate per Hour: \$16.59

Effective Period: 1/10/2011 - 6/30/2011

Wage Rate per Hour: \$25.42

Supplemental Benefit Rate per Hour: \$17.75

Engineer - Third Year

Effective Period: 7/1/2010 - 1/9/2011

Wage Rate per Hour: \$27.06

Supplemental Benefit Rate per Hour: \$16.59

Effective Period: 1/10/2011 - 6/30/2011

Wage Rate per Hour: \$27.96

Supplemental Benefit Rate per Hour: \$17.75

Engineer - Fourth Year

Effective Period: 7/1/2010 - 1/9/2011

Wage Rate per Hour: \$29.52

Supplemental Benefit Rate per Hour: \$16.59

Effective Period: 1/10/2011 - 6/30/2011

Wage Rate per Hour: \$30.50

Supplemental Benefit Rate per Hour: \$17.75