

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
INVITATION FOR BIDS AND AGREEMENT
for
PILOT SERVICES for AERIAL LARVICIDING OPERATIONS
PIN#: 11AA095900R0X00
DATE OF ISSUE: May 5, 2011

AUTHORIZED AGENCY CONTACT PERSON

Bidders are advised that the Agency's authorized contact person for ALL matters concerning this Invitation for Bids is:

Primary Contact

Waheed Bajwa, Director
Office of Vector Surveillance Control
40 Worth Street, Room 1529
New York, New York 10013
Telephone: (212) 676 - 2018
Fax: (212) 676-2043

Alternate Contact

Mario Merlino, Assistant Commissioner
Bureau of Veterinary and Pest Control
40 Worth Street, Room 1604
New York, NY 10013
Telephone: (212) 442 - 5238
Fax: (212) 442-5163

====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 proposal process should inform the NYC Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007 (Telephone: 212 669 3870).

NOTE TO BIDDERS:

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

ITEM 1. Release Date of this Invitation for Bids: May 5, 2011

ITEM 2. Pre-Bid Conference (NONE)

Delivery of Bids Prior to Bid Opening – All bids must be complete and must be delivered to the following address by 11:00AM :

New York City Department of Health and Mental Hygiene
Office of the Agency Chief Contracting Officer
42-09 28th Street, 17th Floor, CN-30A,
Queens, NY 11101
Attention: Jackie Palmer

ITEM 3. Bid Due Date and Time, Public Bid Opening Location

Date: May 31, 2011
Time: 11:00 AM (Eastern Daylight Savings Time)
Location: NYC Dept of Health and Mental Hygiene
42-09 28th Street, 17th Floor, CN-30A
Queens, NY 11101
Conducted By: Jackie Palmer

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

SECTION II: SCOPE OF SERVICES

The New York City Department of Health & Mental Hygiene (DOHMH) seeks a qualified pilot to operate a helicopter, Model Bell 206B-3 (Jet Ranger III — Year of Manufacture: 1989 (the “Helicopter”) and conduct aerial larviciding on marshes and wetlands; calibrate aerial pesticide applicator/ broadcaster (Isolair model 4500-206) using standard calibration methods and procedures; and provide field logistics to DOHMH staff to maximize efficiency and effectiveness of the aerial larviciding operation in New York City.

Aerial larviciding operations will be performed for approximately 8 – 12 flight hours per day for 2 – 4 days per aerial larviciding event (resulting in a total of 16 – 48 flight hours per aerial larviciding event) in areas identified by the DOHMH. For each event, the DOHMH will provide United States Geological Survey maps, or maps of a similar scale and accuracy, with clearly marked boundaries of both the application areas and the environmentally sensitive areas to be excluded from the application. The Contractor shall ensure that each aerial larviciding application is performed in a manner consistent with all applicable City, State and Federal laws and regulations, and in accordance with manufacturer's instructions under the direction of DOHMH. Applications shall not be made in wetland areas, or wetland boundary limits set by the New York State Department of Environmental Conservation (“NYSDEC”). The Helicopter has approximately 10,100 flight hours and usage is currently estimated for the 2011 season at 120 to 240 flight hours, which is anticipated to increase by approximately 10% during each successive annual season.

Each Bidder must have the following qualifications and must meet the following minimum requirements:

- demonstrate that the Bidder is currently performing the work as specified and has had at least (3) years experience in performing comparable work;
- provide a list of at least five (5) references for whom the work, as specified herein, has been performed and who can verify the quality of workmanship;
- be an experienced helicopter pilot appropriately licensed by the Federal Aviation Administration (FAA), or must employ a pilot or pilots with the requisite experience, who individually has/have the requisite three years experience in performing comparable work;
- be certified by the NYSDEC as a commercial pesticide applicator in accordance with the requirements of Title 9 of the NYSDEC, including certification in categories 8 (Public Health) and 11 (Aerial Application).
- has, or employ a pilot or pilots who individually has/have at least one thousand (1,000) hours of pilot-in-command time in a Bell Helicopter 206B, at least twenty-five (25) hours of which acquired within the last twelve (12) months, and one thousand (1,000) hours of flight experience as pilot-in-command in dispensing public health pesticides or agricultural chemicals and a safety record with the Federal Aeronautics Administration (the “FAA”) that is satisfactory to DOHMH.

DURATION OF CONTRACT: The period of work for this contract shall commence upon written notice to proceed and shall be for three (3) years. There will be an option to renew

this contract for two (2) additional years after its termination date, at the sole discretion of the Department.

ARTICLE 2: Contractor Services. During the period of the contract, the Contractor shall provide the following services, on an as needed basis, as required by the DOHMH upon twenty-four (24) hours prior notice:

A) Pilot Services:

- The Contractor shall provide pilot services to operate a Bell Helicopter (model 206B) and apply mosquito larvicide on marshes and wetlands in New York City. Such application may consist of several land parcels that are not in one locality, but all of which will be located within New York City.
- The Contractor shall operate the aircraft in accordance with all applicable FAA requirements and safety regulations.
- The Contractor shall provide a replacement pilot should a primary pilot fail to perform satisfactorily as determined by DOHMH. Such replacement pilot must have all of the qualifications that are required for the pilot under this IFB and must be approved in writing before such replacement pilot provides any services hereunder. If a replacement pilot is necessary, the Contractor will submit the proposed replacement pilot's qualifications, including, without limitation, a copy of the license(s) and safety records of the proposed pilot, to DOHMH for written approval before the replacement pilot is assigned to any Helicopter flights. If any proposed pilot is not approved, the Contractor will continue to propose a series of pilots until a pilot is acceptable to DOHMH.
- The Contractor shall utilize weather information and shall cease operations when weather conditions fall outside the limits described on the pesticide label, or set by DOHMH.
- The Contractor's pilot must be available for all application re-assignments re-scheduling based on a change in weather that requires rescheduling;
- The Contractor shall ensure that all larvicide applications shall be done in a manner that minimizes drift of pesticide outside the designated spray zone. Applications shall not be performed during conditions that adversely affect the efficacy of the application (e.g., ambient temperature, rain, fog, mist, or wind conditions that are outside the range defined by DOHMH application protocols.
- The Contractor shall, at no additional cost to the City, re-apply larvicide in areas previously covered, which DOHMH finds to be inadequately covered, and will apply larvicide to missed areas, when DOHMH determines such re-application is necessary because of the Contractor's failure to perform. The Department shall, at its sole discretion, determine adequacy of coverage.
- The Contractor will maintain all required regulatory and operational data in automated form and computer media and provide to DOHMH all necessary records regarding such applications as required by all City, State and Federal regulations, and shall provide reports in hard copy and electronic data format to DOHMH, making periodic reports to DOHMH, and to NYSDEC in accordance with the requirements of Section 33-1205 of Title 12 of the Environmental Conservation Law of the Laws of the State of New York, as the same may be amended (the "ECL")

B) Fueling the Helicopter

- The Contractor will supply a full tank of fuel for the Helicopter on a pre-flight basis before each flight from the staging area, and on an as needed basis, unless otherwise advised by DOHMH. All fuel shall meet American Society for Testing and Materials specifications for the Helicopter. Aircraft shall not be refueled while engines are running or while propellers/rotors are turning.
- Whenever refueling is necessary, the Contractor shall be responsible for flying the Helicopter to the fueling location designated by DOHMH and refueling the Helicopter, filling the fuel tank(s), as necessary or required to enable the Helicopter to complete a spraying event without refueling and return to the staging area and/or the location designated by DOHMH as the location for maintenance and servicing of the Helicopter.
- The Contractor will cause its pilot to refuel the helicopter and to obtain a fuel receipt that sets forth the quantity of fuel, dates and time of fueling for each fueling. Each such receipt must be signed by the pilot of the Helicopter, acknowledging the number of gallons of fuel supplied. Such receipts will be submitted to the DOHMH together with the invoice therefor.
- DOHMH shall set aside the not to exceed estimated total for fuel costs, as indicated on the bid sheet, for payment of such fuel costs. Together with each invoice for fuel costs, the Contractor shall send DOHMH a copy of the receipts for all fuel expenses for which it requests reimbursement hereunder.

C) Purchase of Parts

- Whenever parts are required for minor maintenance, replacements or repairs and the pilot is qualified to make such repairs to the Helicopter and/or to peripheral equipment and/or accessories (e.g., pesticide applicator, navigation system) and if DOHMH directs the Contractor to obtain same and invoice for such items as part of the Parts allowance bid amount hereunder, the Contractor will purchase such parts at a fair and reasonable cost and will install same. Together with each invoice for such parts, the Contractor shall send DOHMH a copy of the receipt for all actual parts expenses for which it requests reimbursement hereunder. Reimbursement shall be for such actual cost with no additional mark-up by the contractor.
- Each parts receipt, for which reimbursement is invoiced, must be signed by the pilot of the Helicopter, acknowledging the incorporation of the parts into the helicopter on the date that such part(s) was/were installed.

D) Equipment Calibration and Deposit Characterization:

- Upon request by DOHMH, the Contractor shall perform calibration of DOHMH's aerial pesticide applicator/broadcaster (Isolair model 4500-206) using standard calibration methods and procedures in accordance with the applicable manufacturers' specifications.
- The calibration shall be based on deposit characterization to be calculated by the Contractor by measuring the quantity of pesticide used during an actual flight and determining if the quantity is consistent with the intended pesticide application as set by the manufacturer of such pesticide.
- The Contractor shall adjust the applicator for application rate according to the larvicide label requirements and recommendations by DOHMH Staff.

- The Contractor shall report results of equipment calibration to the DOHMH in hard copy and/or electronic format immediately after the calibration event has been completed. The results of all tests performed under this contract shall be held confidential and shall only be communicated to the DOHMH, except as may be otherwise required by applicable law.

E) Maintenance of Pesticide Application Equipment and Navigation System:

- The Contractor shall examine all equipment (Isolair 4500-206E Broadcaster — Dry Application System, broadcasting equipment, navigational system — AgNav, Global Positioning System (“GPS”) unit, and other peripherals) used to safely pilot the Helicopter and to aerially apply larvicide, all for the purpose of ensuring that such equipment is working properly and calibrated to apply such pesticides at a rate consistent with label requirements.
- The Contractor shall, when necessary, adjust equipment and make minor repairs of equipment, GPS units and other peripherals. DOHMH will pay for the actual and reasonable cost of any parts needed for the repair.
- The Contractor shall provide guidance to DOHMH Staff for proper use and maintenance of aerial application equipment during and after pesticide application.
- The Contractor shall advise DOHMH Staff on FAA approved and other maintenance necessary for the safe operation of the aircraft.

F) Reporting to Staging Area:

Prior to each spray event, the Contractor shall arrive at a DOHMH designated helicopter base to fly the helicopter to a staging site at the time designated by DOHMH. The aerial larviciding events will be scheduled to commence at any time between the hours of 5:00 a.m. and 9:00 a.m., and will end no later than 9:00 p.m.

G) Deliverables:

Within ten days after each larvaciding event, the Contractor shall evaluate each such aerial larviciding event and make written recommendations for the following:

- Revising Department protocols for more efficient application of aerial larvicide;
- Improving progress of DOHMH designated pilots in larviciding efforts;
- Reducing drift of larvicides to non-target areas;
- Improving future aerial larviciding efforts; and
- Recommending maintenance and procedures necessary for the safe operation of the aircraft and use of the peripheral equipment for application purposes.
- Providing post-treatment maps identifying the areas treated and the areas which were not treated.

H) Pilot(s) Qualifications

- The pilot performing services hereunder must meet all qualifications as set forth in Article 1 herein, and all required licenses and certifications must be maintained in full force and effect for the duration of the work to be performed hereunder.
- A copy of any licenses, certifications, permits and renewals thereof must be furnished to DOHMH upon its request therefor. Any pilot assigned by the Contractor to pilot the Helicopter must be replaced by the Contractor upon request by DOHMH.

I) Scheduling and Pre-flight Readiness: Fueling

The Helicopter will be readied for flight by the Contractor in accordance with a flight schedule to be supplied by the DOHMH. Unless otherwise advised by DOHMH, the Helicopter will be readied for flight at a staging area for aerial pesticide application currently maintained by the DOHMH at Fresh Kills in the borough of Staten Island, or at such alternative Staten Island location as the DOHMH may engage for use as a staging area.

J) Confidentiality, Protocols and Reports

In performing services pursuant to the Agreement, the Contractor must comply with, and must cause its pilot(s) to comply with, DOHMH written aviation protocols, applicable to the operation of the Helicopter and its equipment, and pesticide application protocols, as such protocols may be amended from time to time.

K) Liquidated Damages:

Failure of the Contractor to show up at a scheduled spraying or calibration event will result in liquidated damages in the amount of \$500.00 per scheduled event for which the pilot does not appear as scheduled. Such liquidated damages are set in accordance with Article 30 of the Agreement annexed hereto as Section V of this IFB. If the pilot shows up more than fifteen minutes late for the start of such scheduled events, liquidated damages of \$100 for each fifteen minute period, occurring after the time scheduled for reporting and before the pilot shows up (such cumulative amount for lateness at any event not to exceed \$500.00), and if the pilot does not show up within forty-five minutes of his scheduled start time for any event, at the option of the Department, the Department may, at its option, cancel the event and charge \$500.00 as liquidated damages in lieu of lateness charges.

SECTION III: BID PROCEDURES AND REQUIREMENTS

ARTICLE 3: Status of Information

- 3.01 DOHMH shall not be bound by any oral or written information released prior to issuing the Invitation for Bids.
- 3.02 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 4: Communication with DOHMH

- 4.01 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.
- 4.02 All inquiries regarding this solicitation shall be addressed in writing to the Authorized Agency Contact Person.
- 4.03 DOHMH shall respond to all inquiries in writing.

ARTICLE 5: Pre-Bid Conference

- 5.01 A bidder's failure to attend a mandatory pre-bid conference (when applicable) shall constitute grounds for rejection of the bid.
- 5.02 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.
- 5.03 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 6: Addenda to the Invitation for Bids

- 6.01 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.
- 6.02 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 7: Site Visits

- 7.01 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.
- 7.02 A site visit can be arranged by contacting the Authorized Agency Contact Person.

ARTICLE 8: Form of Bid

- 8.01 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
- 8.02 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.
- 8.03 Bid Bonds (if required) must be submitted with the bid, but in a separate sealed envelope, also identified as above.
- 8.04 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.
- 8.05 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.
- 8.06 Faxed or e-mailed bids shall not be accepted.
- 8.07 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.
- 8.08 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 9: Proprietary Information, Trade Secrets

- 9.01 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.
- 9.02 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 10: Modification or Withdrawal of Bids, Late Bids

- 10.01 Bids may be modified or withdrawn by written notice received in the office designated in Section I before the time and date set for the bid opening.
- 10.02 Should a bid be withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.
- 10.03 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.
- 10.04 Except as provided for in paragraph 9.01 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.
- 10.05 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 11: Mistakes in Bids

- 11.01 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 8, above.
- 11.02 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 12: Bid Evaluation and Award

12.01 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.

- 12.02 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.
- 12.03 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.
- 12.04 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:
- a. Award to a certified New York City small minority or woman owned business entity bidder; then
 - b. Award to a New York City bidder; then
 - c. Award to a certified New York State small, minority or woman owned business bidder; then
 - d. Award to a New York State bidder.
 - e. 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.
- 12.05 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.
- 12.06 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 13: Unit Price Contracts

- 13.01 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.
- 13.02 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.

- 13.03 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 14: Bonds (if required)

14.01 Bid Bonds

- a. No bid will be received or considered which is not accompanied by a Bid Bond in the form set forth in Section IV, issued by a surety company which is authorized to do business in the State of New York.
- b. The Bid Bond shall insure the City of New York to the extent of not less than 10% of the amount of the Bid Contract Price.
- c. In lieu of a Bid Bond, the bid may be accompanied by a deposit in approximately the sum of 2% of the amount of the Bid Contract Price. Such deposit shall consist of a certified check upon a state or national bank or trust company or a check of such banks or trust company signed by a duly authorized officer thereof, drawn to the City which the Comptroller shall approve as of equal value with the sum so required.
- d. The bid deposit, in whatever form, must not be enclosed in the envelope containing the bid, but must be submitted separately to the agency upon presentation of the bid.
- e. The Bid Bond, or deposit, shall assure the City of New York, and the Agency of the adherence of the bidder to its bid and the execution of the contract, in form as annexed hereto, if its bid is accepted.
- f. Within thirty (30) days after the opening of bids, the City shall return the deposits of all but the three (3) lowest bidders. Within thirty (30) days after the award, the City shall return the deposits of the remaining two unsuccessful bidders.
- g. Where all bids are rejected, the City will return the deposit of the three (3) lowest bidders at the time of rejection.

- h. Within thirty (30) days after the execution of the Contract and acceptance of the Contractor's bonds, the City shall return the Bid Deposit of the successful bidder if such deposit has been provided.

14.02 Performance and Payment Bonds - Not Required

ARTICLE 15: Failure to Execute Contract

15.01 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.

15.02 Should the bidder's failure to comply with this Section 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 16: Vendor Requirements

16.01 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

16.02 VENDEX Questionnaires:

- a. Pursuant to Administrative Code S6 116.2 and Section 5 02 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.

16.03 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 exceed \$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.

16.04 Americans with Disability Act: This Invitation to Bid is subject to Title II of the Americans with Disabilities Act of 1990 (AADA) 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.

16.05 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.

16.06 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.

16.07 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 intends to use sub-contractors to meet bid requirements in the performance of this contract, the bidder must, to the extent known, provide a list of such sub-contractors, including a statement of work to be assigned to each sub-contractor and all relevant licenses

and permits required by any governmental agency. Such information must be provided with the Bid Package. See Section IV.

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

- 16.08 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 un applied, as provided in Section 93C 3.0 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.
- 16.09 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.
- 16.10 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.

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. Bid Bond (if required)

This form must be completed and signed by an authorized person representing the bidder (the “Principal”) and the Surety, and the signature of the Principal must be notarized. The Bond is required only if so indicated in *Appendix A - Schedule of Bonds and Insurance*. Affix acknowledgements and justifications of sureties with the Bid.

ITEM 6. List of Sub-contractors

Note that subcontracting of pest control is not allowed.

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

ITEM 7. Federal Aviation Authority (FAA) Commercial Pilot’s License and Pesticide Applicator License (Category 8 Public Health Pest Control and Demonstration and Research).

A copy of the Bidder’s pilot’s FAA Commercial Pilot’s License and Pesticide Applicator certification issued by the NYSDEC (including certification in Category 8 (Public Health

Pest Control) and Category 11 (Aerial Application) must be included with the bid submission.

ITEM 8. Insurance Certificates

See Appendix A for Insurance Requirements for this bid

ITEM 9. Audited Financial Statement

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

ITEM 10. Direct Deposit/Electronic Funds Transfer Form with Sample

ITEM 11. Doing Business Data Form - Awardees

ITEM 12. VENDEX Questionnaires

Required for bids exceeding \$100,000

ITEM 13. 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 DOHMH

Bid Submission for: PILOT SERVICES for AERIAL LARVICIDING OPERATIONS

PIN#: 11AA095900R0X00

Cover Sheet / Checklist

Name of Bidder:

Date Submitted

| | | |
|-----------------|--|------------|
| ITEM 1. | Bidder Representations | [] |
| ITEM 2. | Bid Sheet | [] |
| ITEM 3. | Acknowledgement of Addenda | [] |
| ITEM 4. | Experience Questionnaire | [] |
| ITEM 5. | Bid Bond (if required) | N/A |
| ITEM 6. | List of Sub-contractors | [] |
| ITEM 7. | Federal Aviation Authority (FAA) Pilot's License | [] |
| ITEM 8. | Certificates: Insurance and Addenda, Workmen's Compensation | [] |
| ITEM 9. | Audited Financial Statement | [] |
| ITEM 10. | Direct Deposit/Electronic Funds Transfer Form with Sample | [] |
| ITEM 11. | Doing Business Data Form - Awardees | [] |
| ITEM 12. | VENDEX Questionnaires | [] |
| ITEM 13. | Employment Report | [] |

ITEM 1. Bidder Representations

Name of Bidder: _____

Place of Business: _____

Telephone #: _____

Fax #: _____

E-mail address: _____ Tax ID #: _____

Date of Bid: _____

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

A) If Bidder is Individual

Home address of Bidder: _____

B) If Bidder is Partnership

Name and Home Addresses of Partners:

Bidder Representations

C) 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 thereof.
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 him, he and his subcontractors engaged in the performance: (1) will comply with the provisions of Section 343 8.0 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 343.9.0 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 Agreement, 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 the contract Agreement in providing records, Chapter 8.

8. By submission of this bid, bidder certifies that they now have 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 therefor, 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.

10. That the party signing the Bid Sheet is duly authorized to sign this agreement on behalf of the Contractor.

ITEM 2. Bid Sheet

The acceptance of a bid, and entering into a contract with the lowest responsible and responsive bidder does not obligate the City, acting through its Department of Health and Mental Hygiene, to issue a required number of work assignments, nor does it obligate DOHMH to provide a minimum number of hours of work or to request a minimum amount of parts. The quantity and cost estimates included herein are for the purpose of calculating the Total Bid Price only.

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 Contractor. Reimbursement of costs for fuel and parts shall be limited to the fair and reasonable cost to the Contractor, as certified by the Contractor, and as documented by the Contractor by attachment of its cost data, including, without limitation, documentation of the cost to the Contractor thereof in the form of invoices, paid receipts, catalog cuts, and the like, and in the case of fuel reimbursement to the reasonable cost plus the mark-up contained in this bid. The Department reserves the right to limit the reimbursement of such costs to the fair and reasonable cost prevailing in the industry for such parts and materials, as adjusted for volume discounts, or lack thereof. The fair and reasonable cost will be determined by the Department in its sole discretion with reference to (1) the type of cost generally recognized as ordinary and necessary for the contract performance, (2) generally accepted sound business practices, (3) arm’s length bargaining, (4) deviations from the Contractor’s established practices, (5) compliance with applicable Federal, State and local laws, rules and regulations, (6) the price to the Contractor’s most favored customer, and (7) the fair market price of the item for which the cost is incurred. **The DOHMH shall provide a fuel allowance and a parts allowance, as described below, in this contract. The Contractor shall submit a copy of the original invoice for the fuel or parts, when billing the DOHMH for reimbursement of said expense.**

The contractor shall abide by all laws, wages and benefits required pursuant to Sections 220 and 230, as amended, of the New York State Labor Law. The Contractor is advised that wage rate compliance will be closely monitored.

The undersigned agrees, if this bid is accepted, that it 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 PRICES:**

I. Pilot Services for Spray Events

Per Flight Hour* Cost A) \$ _____

Estimated Total Per Year (“A” X 240 flight hours) (estimated flight hours for coverage of 1,400 breeding acres) = B) \$ _____

* Flight hours are the elapsed flight time as measured block to block. “Block to block” is the measurement of time that the pilot spends in the cockpit during actual flight, starting with the removal of chocks or other restraining device from the landing skids of the Helicopter with the intent of moving the Helicopter for whatever purpose and ending with the time that the chocks or other restraining devices are placed to once again restrain the Helicopter. Partial flight hours will be paid to the nearest fifteen minute increment. Travel time for pilots who must travel to the staging area and pre-flight preparation time will be paid at one-half of the per flight hour rate, up to a maximum of 2 x the flight hour rate for the travel time and up to a maximum of 1 x the flight hour rate for pre-flight preparation time before each event.

Total – Estimate for 3 Years (720 flight hours) (“B” X 3) = C) \$ _____

II. Fuel Costs

DOHMH Allowance: \$20,000/year X Three (3) Years = D) **\$ 60,000**
Mark-up factor (express in decimals to the nearest one/half percent) E) _____ %

Total Estimated Fuel Costs for Three (3) Years
(\$60,000 X “E”) + “E” = F) \$ _____

III. Parts Allowance

DOHMH Allowance: \$2,000/year X Three (3) Years = G) **\$ 6,000**

IV. Final Reports on Spraying Events

Cost per Report = H) \$ _____

Total Per Year (“H” X 6 reports) = I) \$ _____

Total - 3 Years or 18 reports (“I” X 3) = J) \$ _____

V. Calibration and Deposit Characterization (“CDC”) Events

Cost per Calibration = K) \$ _____

Cost of Four (4) CDCs per Year (“K” X 4) L) \$ _____

Total - 3 Years (12 CDCs) (“L” X 3) = M) \$ _____

| |
|---|
| VI. TOTAL BID PRICE (“C” + “F” + “G” + “J” + “M”) = \$ _____ |
|---|

TOTAL BID PRICE FOR THREE (3) YEARS (IN WORDS):

Bidder: _____

(Company)

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 investigations to determine its responsibility.

By: _____

(Signature of Person Authorized To Sign The Bid)

Attest: _____

(Secretary of Corporate Bidder)

(CORPORATE SEAL)

NOTARY FORMS FOR ACKNOWLEDGEMENT

A) AFFIDAVIT WHERE BIDDER IS AN INDIVIDUAL:

STATE OF _____ COUNTY OF _____ ss:
_____ being duly sworn says: I am the person described in and who executed the foregoing bid and the several matters therein stated are in all respects true.

(Signature of the person who signed the Bid)

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public

B) AFFIDAVIT WHERE BIDDER IS A PARTNERSHIP:

STATE OF _____ COUNTY OF _____ ss:
_____ being duly sworn says: I a member of _____, the firm described in and which executed the foregoing bid. I subscribed the name of the firm thereto on behalf of the firm, and the several matters therein stated are in all respects true.

(Signature of Partner who signed the bid)

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public

C) AFFIDAVIT WHERE BIDDER IS A CORPORATION:

STATE OF _____ COUNTY OF _____ ss:
_____ being duly sworn says: I am the _____ of the above named Corporation whose name is subscribed to and which executed the foregoing bid. I reside at _____. I have knowledge of the several matters therein stated, and they are in all respects true.

(Signature of Officer who signed the bid)

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public

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 _____

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: _____ 20____

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 therefor.

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 therefor. _____

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?

13. 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)?

14. Have you ever performed any of the work called for under this contract for the US Government?

YES () NO ()

If YES, when and to whom do you refer?

15. Have you filed Performance Record Reports with the Bureau of Contract Information, Inc. Washington, D.C YES () NO ()

If YES, give date: _____

16. 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 therefor:

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 therefor:

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 therefor:

17. 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 therefor:

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 therefor:

Dated at _____

This _____ day of _____, 20_____

Name of Organization

By (Name and Title of Person Signing)

STATE OF _____

ss

COUNTY OF _____

being duly sworn deposes and says that he is _____

of the above _____
Name of Organization

and that the answer to the foregoing questions and all statements therein contained are true and correct.

Sworn to before me this _____ day of _____, 20_____

Notary Public

My commission expires _____

ITEM 5. Bid Bond (NOT APPLICABLE)

ITEM 6. List of Sub-Contractors

Name of Sub-Contractor & Work to be Done

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AGREEMENT dated the 1st. day of May 1st ,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:

CHAPTER I: THE CONTRACT AND DEFINITIONS

ARTICLE 1: THE CONTRACT

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:

- 1.01 The Advertisement and Information for Bidders, or Proposal For Bids;
- 1.02 The Bid;
- 1.03 Articles 1 and 2 of Section II (Scope of Services) of this IFB;
- 1.04 Appendix A to this IFB;
- 1.05 All Addenda and Amendments issued by the Commissioner prior to the receipt of bids;
- 1.06 All provisions required by law to be inserted in this Contract, whether actually inserted or not;
- 1.07 The Notice of Award;
- 1.08 Notice to Proceed With Work.

ARTICLE 2: DEFINITIONS

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

2.02 "Addendum" or "Addenda" shall mean the additional contract provisions issued in writing by the Commissioner prior to the receipt of bids.

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

2.04 "City" shall mean the City of New York, party of the first part.

2.05 "Commissioner" shall mean the Commissioner of the Department of Health of the City of New York, or the duly authorized representative who has been delegated authority by the Commissioner.

2.06 "Comptroller" shall mean the Comptroller of the City of New York.

2.07 "Contract" or Contract Documents" shall mean each of the various parts of the contract referred to in Article 1 hereof, both as a whole and severally.

2.08 "Contractor" shall mean the party of the second part hereto, whether corporation, firm or individual, or any combination thereof, and its, their, his or her successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in the place of the party of the second part under this Contract. Contractor shall also mean contractor, provider, or consultant.

- 2.09 "Other Contractors" shall mean any contractor (other than the party of the second part or his subcontractors) who has a contract with the City for work on or adjacent to the building or site of the work.
- 2.10 "Contract Work" shall mean everything required to be furnished and done by the Contractor by any one or more of the parts of the Contract referred to in Article 1 hereof, except extra work as hereinafter defined; it being understood that, in case of any inconsistency in or between any part or parts of this Contract, the Director shall determine which shall prevail.
- 2.11 "Department" shall mean the Department of Health of the City of New York acting by and through the Commissioner thereof, or his duly authorized representative.
- 2.12 "Director" shall mean the person so designated in writing by the Commissioner to act as such in relation to this contract.
- 2.13 "Extra Work" shall mean work other than that required by the Contract at the time of its execution.
- 2.14 "Final Acceptance" shall mean final acceptance of the work by the Commissioner, as evidenced by his signature upon his certificate of completion and acceptance filed in the Office of the Comptroller, copy of which shall be sent to the Contractor. Such acceptance shall be deemed to have taken place as the date so stated in such certificate.
- 2.15 "Law or "Laws" shall mean the Constitution of the State of New York, the New York City Charter, the New York City Administrative Code, a statute of the United States or of the State of New York, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.
- 2.16 "Site" shall mean the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by the Director.
- 2.17 "Specifications" shall mean all of the directions, requirements and standards of performance applying to the work as hereinafter detailed and designated under specifications.
- 2.18 "Manager of The Facility" shall mean the designated person of the Health Department and the person in charge of the operation of the facility.
- 2.19 "Subcontractor" shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the site.
- 2.20 "Treasurer" shall mean the Finance Administrator of the City of New York.
- 2.21 "The Work" shall mean everything required to be furnished and done by the Contractor under the Contract, and shall include both Contract work and extra work.

CHAPTER II: THE WORK AND ITS PERFORMANCE

ARTICLE 3: STATEMENT OF WORK

The Contractor shall furnish all labor, services and materials and perform all work in strict accordance with the Scope of Services set forth in Section II of Information for Bidders contained in the Information for Bidders to which the Bid was offered in response and with Appendix A to this Agreement.

ARTICLE 4: CHARACTER OF THE WORK

4.01 The work must be performed in accordance with the best, modern practice, with materials and workmanship of the highest quality, to the satisfaction of the Commissioner.

4.02 Work to be done under the Contract comprises the furnishing of all labor, services, supplies, materials, equipment and other appurtenances necessary and required to complete the work in accordance with the Contract.

4.03 “DIRECTED, REQUIRED, ETC.” Wherever reference is made in the Contract to the work or its performance, the terms “directed”, “required”, “permitted”, “ordered”, “designated”, “prescribed”, “determined”, and words of similar import shall imply the direction, requirement, permission, order, designation or prescription of the Commissioner.

4.04 “APPROVED”, ETC “Approved”, “acceptable”, “satisfactory” and words of similar import shall mean and intended approved, acceptable, or satisfactory to the Commissioner

ARTICLE 5: INSPECTION

During the progress of the work and up to the date of final acceptance, the Contractor shall at all times afford the representatives of the City every reasonable, safe and proper facility for inspecting all work done or being done at the site. Inspection and approval by the Commissioner, the Director, Manager or Inspector of finished work or of work being performed, shall not relieve the Contractor of his obligation to perform the work in strict accordance with the Contract. Finished or unfinished work found not to be in strict accordance with the Contract shall be replaced as directed by the Director, even though such work may have been previously approved and paid for.

CHAPTER III: PARTIAL AND FINAL PAYMENTS

ARTICLE 6: COMPENSATION TO BE PAID TO CONTRACTOR

The City will pay and the Contractor will accept in full consideration for the performance of the Contract, subject to additions and deductions as provided herein, the total amount at which the Contract was awarded to the Contractor at a public letting thereof.

ARTICLE 7: PRICE

For the Contractor's complete performance of the work, the City will pay, and the Contractor agrees to accept, subject to the terms and conditions hereof, the lump sum price or unit prices which this Contract was awarded, plus the amount required to be paid for any extra work ordered by the Commissioner under Article 55 hereof.

ARTICLE 8: FINAL PAYMENT

8.01 After completion and final acceptance of the work, the Contractor shall submit all required certificates and documents, together with a requisition for the balance claimed to be due under the contract, less any amount authorized to be deposited for maintenance. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Commissioner.

8.02 Upon determining the balance due hereunder other than on account of claims, the Director will prepare and certify, and the Commissioner will approve, a voucher for final payment in that amount less any and all deductions authorized to be made by the Commissioner under this contract or by law. Such voucher shall thereupon be filed with the Comptroller and a copy thereof delivered to the Contractor. In the case of a lump sum contract, the Commissioner shall certify the voucher for final payment within thirty (30) days from the date of completion and acceptance of the work, provided all requests for extensions of time have been acted upon.

8.03 All prior certificates and vouchers upon which partial payments were made, being merely estimates made to enable the Contractor to prosecute the work more advantageously, shall be subject to correction in the final voucher, and the certification of the Director thereon and the approval of the Commissioner thereof shall be condition precedent to the right of the Contractor to receive any money hereunder. Such final voucher shall be binding and conclusive upon the contractor.

8.04 Payment pursuant to such final voucher, less any deductions authorized to be made by the Commissioner under this contract or by law, shall constitute the final payment, and shall be made by the Commissioner by the Comptroller within thirty (30) days after the filing of such voucher in his office.

ARTICLE 9: ACCEPTANCE OF FINAL PAYMENT

9.01 The acceptance by the Contractor, or by anyone claiming by or through him, of the final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the City from any all claims of and liability to the Contractor for

anything theretofore done or furnished for or relating to or arising out of this Contract and the work done hereunder, and for any prior act, neglect or default on the part of the City or any of its officers, agents or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Contract or by law, and excepting a claim, not otherwise waived, which is contained in the verified statement filed with the Contractor's substantial and final requisitions pursuant to Article 8 hereof.

9.02 The Contractor is warned that the execution by him of a release, in connection with the acceptance of the final payment, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the Commissioner from the final requisition or by the Comptroller from the final payment as certified by the Director and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.

9.03 Should the Contractor refuse to accept the final payment as tendered by the Comptroller it shall constitute a waiver of any right to interest therein.

9.04 The Contractor, however, shall not be barred from commencing an action for breach of Contract under this provision provided that a detailed and verified statement of claim is served upon the contracting agency and Comptroller not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items

ARTICLE 10: PROMPT PAYMENT

10.01 The Prompt Payment provisions set forth in Chapter 5, Section 5-07 of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under this contract. The Provisions require the payment to contractors of interest on payments made after the required payment date as set forth in the Rules.

10.02 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.

10.03 Determinations of interest due will be made in accordance with the provisions of Section 661 of the Procurement Policy Board Rules and General Municipal Law 3 A.

ARTICLE 11: AUDIT

11.01 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to Audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York as well as all orders and regulations promulgated pursuant thereto. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by said Department and said Comptroller so that they may evaluate the

reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.

11.02 All books, vouchers, records, reports, canceled checks and any and all similar material may be subject to periodic inspection, review and audit by the State of New York, federal government and other persons duly authorized by the City. The contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

CHAPTER IV: TIME PROVISIONS

ARTICLE 12: NO DAMAGE FOR DELAY

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

ARTICLE 13: EXTENSION OF TIME

13.01 Upon written application by the contractor, the Agency Chief Contracting Officer may grant an extension of time for performance of the contract. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of alleged delay occurred, and the total number of delay in days attributable to such cause.

13.02 The ruling of the Agency Chief Contracting Officer shall be final and binding as to the allowance of an extension and the number of days allowed.

ARTICLE 14: DATE FOR COMPLETION

Where applicable, the Contractor must complete the work within the time fixed therefor in the Specifications or within the time to which such completion may be extended.

ARTICLE 15: DETERMINING DATE OF COMPLETION

Final inspection of the work by the Director shall be made within 10 days after receipt of the Contractor's written request therefor. The work will be deemed complete as of the date of such inspection if, upon such inspection, the Director finds that no further work remains to be done. The Commissioner will then issue a certificate of completion and acceptance of the work. However, if such inspection, in the opinion of the Director, reveals items of work still to be performed, the Contractor shall promptly perform them and then request a re-inspection. If, upon any re-inspection, the Director determines that the work is complete; the date of completion shall be deemed to be the actual date of such re-inspection, which shall be made not more than 10 days after the date of the request therefor.

CHAPTER V: SUBCONTRACTS AND ASSIGNMENTS

ARTICLE 16: SUBCONTRACTS

16.01 Before making any subcontracts, the Contractor must submit a written statement to the Commissioner giving the name and address of the proposed subcontractor, the portion of the work and materials which he is to perform and furnish, the cost of the subcontract and any other information tending to prove that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this Contract. If an approved subcontractor elects to subcontract any portion of his subcontract, the proposed sub subcontract shall be submitted in the same manner as directed above. Wherever the word subcontractor appears, it also means sub subcontractor.

16.02 The Commissioner will notify the Contractor within fifteen (15) days whether the proposed subcontractor is qualified or not qualified. If the proposed subcontractor is not qualified, the Contractor may thereupon submit another proposed subcontractor unless he decides to do the work himself. No subcontractor shall be permitted on the site unless he is approved.

16.03 Before entering into any subcontract hereunder, the Contractor shall inform the subcontractor fully and completely of all provisions and requirements of this Contract relating either directly or indirectly to the work to be performed and the materials to be furnished under such subcontract, and every such contractor shall expressly stipulate that all labor performed and materials furnished thereunder shall strictly comply with the requirements of this Contract.

16.04 The agreement between the Contractor and his subcontractors shall contain the same terms and conditions as to method of payment for work, labor and materials, and as to retained percentages as are contained in this Contract.

16.05 The Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Commissioner, the Contractor shall submit satisfactory evidence that he has made such payment.

16.06 The Comptroller may, upon recommendation by the Commissioner, deduct from the amounts certified under this Contract to be due to the Contractor, the sum or sums due and owing from the Contractor, to the subcontractors according to the terms of the said subcontracts, and in case of dispute between the Contractor and his subcontractor or subcontractors as to the amount due and owing, the Comptroller may deduct and withhold from the amounts certified under this Contract to be due to the Contractor such sum or sums as may be claimed by such subcontractor or subcontractors in a sworn affidavit to be due and owing until such time as such claim or claims shall have been finally adjusted.

16.07 The Commissioner's approval of a subcontractor shall not relieve the Contractor of any of his responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the City for the acts or defaults of his subcontractor and of such subcontractor's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of his subcontract.

16.08 No subcontractor shall be permitted to perform work at the site until he has furnished satisfactory evidence of insurance covering Workmen's Compensation, Public Liability and Property Damages as required.

16.09 The Contractor shall promptly, upon request, file with the Director a conformed copy of the subcontract, with cost of contract.

ARTICLE 17: ASSIGNMENTS

17.01 The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or his right to execute it, or his right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the moneys due or to become due under this contract, unless the previous written consent of the Commissioner shall first be obtained thereto, and 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. Such assignment, transfer, or conveyance shall not be valid until filed in the office of the Department of Health and of the Treasurer with the written consent of the Commissioner endorsed thereon or attached thereto.

17.02 Failure to obtain the previous written consent of the Commissioner to such an assignment, transfer or conveyance, shall justify, at the option of the Commissioner, the revocation and annulment of this Contract. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, his assignees or transfers, and all monies thereof as may be necessary to pay the Contractor's employees, provided, however, that nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of creditors made pursuant to the statutes of the State of New York.

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

CHAPTER VI: CONTRACTOR'S SECURITY AND GUARANTY

On Contracts where Performance and Payment Bonds are executed, Article 18 does not apply.

ARTICLE 18: SECURITY DEPOSIT

The bid deposit shall be retained by the Comptroller as security for the Contractor's faithful performance of the Contract and will be returned to the Contractor only after any sums retained under this agreement equals the amount of the bid deposit, subject to the other provisions of this Contract. When no partial payments are provided, the bid deposit will be released when final payment is certified to the Comptroller for payment. If the Contractor is declared in default under Article 31 hereof prior to the return of the deposit, or if any claim be made such as is referred to in Article 21 hereof, the amount of such deposit, or so much thereof as the Comptroller may deem necessary, may be retained and then applied by the Comptroller (1) to compensate the City for any expense, loss or damage suffered or incurred by reason of or resulting from such default, including the cost of relating and liquidated damages, or (2) to indemnify the City against any of the claims referred to in Article 21 hereof. On contracts where performance and payment bonds are executed, this Article 18 does not apply.

ARTICLE 19: INSURANCE

19.01 Types of Insurance: From the date the Contractor is ordered to commence work and up to the date of final acceptance the Contractor must maintain the following types of insurance, if and as required by AAppendix A. If there is any actual or purported conflict between the insurance coverages required by this Article 19 and the insurance coverages required pursuant to Appendix A, the Appendix A requirements will govern.

- a. Commercial General Liability: Insurance (including coverage for product and completed operations) in the Contractor's name and naming the City of New York, , its officers and /or officials and employees, and the Department of Health and Mental Hygiene,as additional insureds. This insurance policy shall protect the City, the Department of Health and the Contractor and his/her subcontractors performing services hereunderfrom claims for property damage and/or bodily injury including accidental death which may arise from operations under this contract, whether such operations by him/herself or anyone directly or indirectly employed by him.
 - i. The City, its officers, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or helicopters, automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials and employees.
 - ii. The Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, and employees. Any other insurance or self insurance maintained by the Agency, its officers, officials, and employees shall be excess of and not contribute with the Contractor's insurance.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, and employees.
 - iv. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - v. Notice under the Policy of the Insured shall be addressed to the New York City Department of Health and Mental Hygiene, 93 Worth St., Rm 812, New York , NY 10013, Attn: Deputy Agency Chief Contracting Officer
 - vi. Notice of Accident shall be given by the Insured within One Hundred and Twenty (120) days after notice has been sent to the Commissioner of such accident.
 - vii. Notice of Claim shall be given to the Company within One Hundred Twenty (120) days after such notice shall be filed with the Comptroller of the City of New York.
 - viii. The policy shall not be canceled, terminated, modified or changed by the Company unless the thirty (30) days prior written notice is sent to the Insured by

Registered Mail and also sent to the Commissioner nor shall the policy be canceled, terminated, modified or changed by the insured without the prior consent of the said Commissioner.

- b. Employer's Liability Insurance: Before performing any work on the Contract, the Contractor shall procure Employers Liability Insurance affording Compensation because of bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of his/her employment by the insured. Two certificates of insurance or authority for self insurance shall be furnished to the Commissioner prior to commencement of work.
- c. Public Liability and Property Damage: Insurance to protect the Contractor and his subcontractors against claims for property damage and for personal injuries, including accidental death.
- d. Workers' Compensation: Workers' Compensation Insurance in accord with the Laws of the State of New York on behalf of all employees who are to provide a service under this contract. Subcontractors shall effect and maintain such insurance for their employees. Failure to comply with this provision shall make the Contract void. The insurer shall agree to waive all rights of subrogation against the Agency, its officers, officials, and employees for losses arising from work performed by the Contractor for the Agency.
- e. Professional Liability: OMIT
 - i. CNA DESIGN PROFESSIONALS 1 87503 A (ed. 8/83), or equivalent. Covering as insured the Contractor's Engineer(s).OMIT
- f. Automobile Liability: Contractor will provide the City with evidence of insurance covering all owned, non owned and hired vehicles to be used in connection with this contract.
- g. Builders Risk: OMIT
 - i. Before any materials are purchased under this contract, the contractor shall present the Department with certificates evidencing that the required insurance is in effect. The policy shall insure the City and the Contractor as their respective rights may appear under the contract. The policy shall provide for storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project Builders Risk Policy: Shall contain the following endorsements:
 - (1) "This policy insures against loss or damage only on work done under contract number _____ with the City in construction for the Department of Health and Mental Hygiene (PROJECT DESCRIPTION) which is susceptible to damage or loss."
 - (2) The policy must contain under the loss payable clause or by endorsement thereon, "loss, if any, payable to the City of New York."
 - ii. The omission of any of these endorsements or clauses from the policy will be considered a cause for rejection of the policy.

- iii. The policy shall be stamped PAID, or receipted bills of payment of premium shall be delivered with the builders' risk insurance policy.
- iv. If the insurance policy is that of a mutual company, it shall contain the following: "The City of New York shall not be liable for any premium or assessment under this policy of insurance. The Contractor who has entered into the contract referred to in this policy with the City of New York is solely liable."
- h. Environmental Impairment Liability: If liability coverage for asbestos removal becomes available at a price, in a form and through insurance carriers acceptable to this agency during the life of this contract, the contractor shall be required to promptly obtain such insurance upon notice from the Commissioner.
- i. Fire Insurance: Insurance protecting the work from damage, loss or injury by fire. The policy shall be payable to the City, and the proceeds thereof, when paid, except such portion or portions thereof which may be applied for loss or damage to the Contractor's temporary plant and equipment, shall be retained by the City as security for the performance by the Contractor of his obligations under Article 7 hereof, and shall be released to the Contractor in monthly payments as such performance progresses.

19.02 Minimum Scope of Insurance - Coverage shall be at least as broad as:

- a. Insurance Services Office "occurrence" form CG 0001 (ed. 10/93) covering Commercial General Liability or its equivalent.
- b. Insurance Services Office form CA 0001 (Ed. 6/92) covering Automobile Liability, Code 1 "Any Auto" and Endorsements CA 2232 (Ed. 4/92) and CA 0112 (Ed. 6/91).
- c. Workers Compensation insurance as required by Labor code of the State of New York and Employers Liability insurance.

19.03 Minimum Limits of Insurance - Under in no circumstance shall Contractor maintain limits less than:

- a. Commercial General Liability: \$ 5,000,000 combined single limit per occurrence for bodily injury and property damage. Minimum \$25,000,000 aggregate.
- b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of New York and employers Liability limits of \$1,000,000 per accident.

19.04 Satisfactory Proofs, in the form of insurance certificates (two copies of each) or insurance policy (original policies plus one copy), demonstrating that all of the insurance as required by this agreement has been obtained must be submitted to the Commissioner on or before the Contract Commencement date. Within a reasonable time after the delivery of such insurance certificates, the Contractor shall furnish to the Commissioner the original and a copy of the Owners Protective Liability and Property Damage and of the Fire Insurance Policies, together with copies of all endorsements as pertain to the requirements of this

contract. The policy shall contain no exclusions or endorsements which are not acceptable to the City and shall be of a form and by an insurance company acceptable to the City. Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Agency reserves the right to obtain complete, certified copies of all required insurance policies, at any time. Certificates confirming renewals of insurance shall be presented not less than 30 days prior to the expiration date of coverage until all operations under this contract are deemed completed.

19.05 No contractor shall commence any operation at the site or adjacent thereto unless and until all required insurance has been submitted to and accepted by the Commissioner. The Contractor shall be responsible for providing continuous insurance coverages as required by this agreement and shall be authorized to work at the site only during those times that all of such coverages are in full force and effect. In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all work at the site, and shall not again work at the site until authorized to do so in writing by the Commissioner. Upon quitting the site, the Contractor shall leave all plant, materials, equipment, tools and supplies on the site. Contract time shall continue to run during any such periods and no extensions of time will be granted. Furthermore, the Commissioner may declare the Contractor in default of the contract for failure to maintain insurance.

19.06 Contractor shall indemnify and hold the city harmless from any and all claims or judgments for damages (including but not limited to delay damages from other contractors) and from costs and expenses to which the city may be subjected or which it may suffer or incur by reason of contractor's failure to comply with insurance provisions of this contract.

19.07 Any deductibles or self insured retentions must be declared to and approved by the Agency. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Agency, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

19.08 All 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-7 or a Standard and Poor's rating of at least AA, unless prior approval has been granted by the Mayor's Office of Operations.

19.09 Contractor shall include all subcontractors as insureds under its policies or shall furnish separate Certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

19.10 Where circumstances warrant, the Agency may, at its discretion subject to acceptance by the Law Department and/or the Office of the Comptroller, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

19.11 The Contractor/Consultant agrees, and all insurance contributing to satisfaction of Schedule A insurance requirements shall provide, that "the policy shall not be canceled, terminated, suspended, voided, reduced in coverage or in limits, or modified by the company unless sixty (60) days prior written notice by certified mail, return receipt requested, (unless another period is specifically given above) is given the City of New York, Department of Health and Mental Hygiene.

19.12 The Contractor shall be solely responsible for payment of all premiums for insurance contributing to satisfaction of Schedule A requirements and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New York is an insured under the policy.

19.13 Claims made policies will be accepted for only professional liability and such other risks as are authorized by the New York State Insurance Department. All such policies contributing to satisfaction of Schedule A requirements shall have an extended reporting period option or automatic coverage if not less than two years. If provided as an option, the Contractor/Consultant agrees to purchase the extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.

19.14 The Contractor/Consultant shall promptly notify the Agency of any accidents arising in the course of operations under the contract causing bodily injury or property damage.

19.15 All insurance must contain a provision in the insurance policy that notice of a job site accident by the contractor to the insurer will be deemed notice by the municipality to the insurer.

ARTICLE 20: PROTECTION OF CITY PROPERTY

20.01 During the performance and up to the date of final acceptance of the Contract, the Contractor must take all reasonable precautions to protect the property of the City of New York, from loss, damage or destruction resulting from him or his subcontractor's operations under this Contract.

20.02 If City property is lost, damaged or destroyed as a result of the negligence or carelessness of the Contractor or his subcontractors, in the performance of his Contract, or from his or their failure to comply with any of the provisions of this Contract or by law, the Contractor shall indemnify and hold the City harmless from any and all costs and expenses to which the City may be subject to which it may suffer or incur by reason thereof.

ARTICLE 21: MONEY RETAINED AGAINST CLAIMS

21.01 If any claim shall be made by any person, firm or corporation (including other contractors with the City on this project) against the City or against the Contractor and the City: (1) for an alleged loss, damage or injury of the kind referred to in Article 20 hereof which, in the opinion of the Comptroller, may not be covered by the contingent liability, public liability or property damage insurance policy, or, which, together with previously filed claims, is in excess of the amount payable under such policies; or (2) for an infringement of patents or use of patented articles, tools, etc., as referred to in Article 43 hereof; or (3) for damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the work in strict accordance with this Contract: the amount of such claim, or so much thereof as he may deem necessary, may be withheld by the Comptroller, as security against such claim, from any money due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of such action by a Court of competent jurisdiction. The Comptroller, in his discretion, may permit the Contractor to substitute other satisfactory security in lieu of the monies so withheld. If no action is commenced upon such claim within the time limited thereof by law, the Comptroller, upon written demand by the Contractor, shall return the amount so withheld without interest.

compensation therefor. The Contractor is warned that the Director has no power to change the terms and provisions of this Contract, except where such change results in no net change in the contract price.

ARTICLE 23: THE COMMISSIONER

23.01 The Commissioner, in addition to those matters elsewhere herein expressly made subject to his determination, direction or approval, shall have the power

23.02 To review and determine any and all questions in relation to this Contract and its performance; and

23.03 To modify or change this Contract so as to require: (a) the performance of extra work (subject, however, to the limitations specified in Article 3 thereof,) or (b) The omission of contract work whenever he deems it in the interest of the City to do so; or both; and

23.04 To suspend the whole or any part or the work whenever in his judgement such suspension is required (a) in the interest of the City generally, or (b) to co ordinate the work of the various contractors engaged on this project in accordance with the applicable provisions of this agreement, or © to expedite the completion of the entire project even though the completion of this particular Contract may be thereby delayed.

ARTICLE 24: NO ESTOPPEL

Neither the City nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the City, the Commissioner, the Director or any other officer, agent or employee of the City, either before or after the final completion and acceptance of the work and payment therefor:

24.01 from showing the true and correct classification, amount, quality or character of the work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the work or any part thereof does not in fact conform to the requirements of this Contract; and

24.02 from demanding and recovering from the Contractor any overpayments made to him, or such damages as it may sustain by reason of his failure to perform each and every part of his Contract in strict accordance with its items, or both.

CHAPTER VIII: LABOR PROVISIONS

ARTICLE 25: EMPLOYEES

The Contractor and his subcontractors shall not employ on the work:

25.01 Anyone who is not competent, faithful and skilled in the work for which he shall be employed; and whenever the Commissioner shall inform the Contractor, in writing, that any employee is, in his opinion, incompetent, unfaithful or disobedient, he shall be discharged from the work forthwith, and shall not again be employed upon it; or

25.02 Any labor, materials or means whose employment, or utilization during the course of this Contract, may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of work or similar troubles by workmen employed by the Contractor or his subcontractors, or by any of the trades working in or about the buildings and premises where work is being performed under this Contract, or by other contractors or their subcontractors pursuant to other contracts, or on any other building or premises owned or operated by the City of New York, its agencies, departments, boards or authorities. Any violation by the Contractor of this requirement may, upon certification of the Commissioner, be considered as proper and sufficient cause for declaring the Contractor to be in default, and for the City to take action against him as set forth in Chapter 10 of the Contract, or such other section as the Commissioner may deem proper; or

25.03 In accordance with Section 220.3.e of the New York State Labor Law, any apprentice unless he is registered individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above shall be paid the wage rate determined by the Comptroller of the City of New York for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the contract work.

ARTICLE 26: NO DISCRIMINATION It is agreed between the parties hereto as follows:

26.01 As required by New York State Labor Law Section 220.e:

- a. That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color 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;
- b. That neither the Contractor, subcontractor, nor any person on his behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color or national origin;
- c. That there may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and
- d. That this Contract may be canceled or terminated by the City and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.

- e. The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

26.02 As required by New York City Administrative Code Section 343.8.0:

- 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 subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
- c. Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this Contract.
- 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 or by imprisonment for not more than thirty days, or both.

26.03 This contract is subject to the requirements of New York City Charter Chapter 35, Section 814(k) for employment agencies, and by signing this contract, the Seller agrees that it shall not discriminate against employees or applicants for employment pursuant to federal, state or local law.

ARTICLE 27: THE AMERICANS WITH DISABILITIES ACT

This Agreement is subject to the provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. A successful bidder shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs or activities pursuant to this Agreement. To ensure compliance with the ADA during the term of this Agreement the bidder shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail how it intends to make the services, programs or activities set forth in the scope of services herein readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, audial, or mobility disabilities, at such site(s) listed. In the event the program site is not readily accessible to and usable by individuals with disabilities, bidders shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services, programs or activities set forth herein readily accessible to and usable by individuals with disabilities. Bidders shall attach the Compliance Plan to their bids. A successful bidder 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. If a bidder fails to submit an acceptable Compliance Plan with its bid, such bid will be found non responsive and the City may reject the Bid.

ARTICLE 28: LABOR LAW REQUIREMENTS.

The Contractor must strictly comply with all applicable provisions of the New York State Labor Law, including amendments thereto, and the provisions of Section 343.9.0 of the New York City Administrative Code, as amended.

28.01 Hours of Work

- a. No laborer, workman or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by this Contract shall be permitted or required to work more than eight hours in any one calendar day, or more than five days in any one week, except in cases of extraordinary emergency including fire, flood or danger to life or property, or in case of national emergency when so proclaimed by the President of the United States of America, or in any other case provided by law.
- b. In situations in which there are not sufficient laborers, workmen and mechanics who may be employed to carry on expeditiously the work contemplated by this Contract as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the work is necessary for the preservation of the contract site and/or for the protection of the life and limb of the persons using the same, such laborers, workmen and mechanics shall be permitted or required to work more than eight hours in any one calendar day; or five days in any one week; provided, however, that upon application of any contractor the Commissioner shall have first certified to the Industrial Commissioner of the State of New York that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Industrial Commissioner shall have determined that such an emergency does in fact exist as provided in Subdivision two of Section 220 of the Labor Law.
- c. Failure of the Commissioner to make such a certification to the Industrial Commissioner shall not entitle the Contractor to damages for delay or for any cause whatsoever.

28.02 Working Conditions - No part of the work, labor or services shall be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the Contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the work is to be performed shall be prima facie evidence of compliance with this paragraph.

28.03 Prevailing Rate of Wages

- a. The wages to be paid for a legal day's work to laborers, workmen or mechanics employed upon the work contemplated by this Contract or upon any materials to be used thereon shall not be less than the "prevailing rate of wages" as defined in Section 220 of the Labor Law, and as fixed by the Comptroller in the attached Schedule of Wage Rates and in updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the work is being performed.
- b. Request for interpretation or correction under Subsection 2 of Section III in the Information of Bidders includes all requests for clarification of the classification of trades to be employed in the performance of the work under this contract. In the event that a

trade not listed in the classification of trades required to be used at the time of the award of the contract is in fact employed during the performance of this contract, the contractor shall be required to obtain from the agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this contract at the price at which the contract was awarded

28.04 Minimum Wages - In accordance with the provisions of Section 343.9.0 of the New York City Administrative Code, as amended: Except for employees whose wage is required to be fixed pursuant to Section 220 of the Labor Law, all persons employed by the Contractor and any subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the sum mandated by law.

28.05 For any breach or violation of the paragraphs on working conditions and minimum wages above, the party responsible shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any contracts with the City of such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damage for any other breach of this Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition, the Commissioner shall have the right to cancel this Contract and enter into other contracts for the completion of the original Contract, with or without public letting, and the original Contractor shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Commissioner of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

28.06 OMIT

28.07 The Contractor and his subcontractors shall within ten (10) days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building and structure where employees of the Contractor and his subcontractors engaged in the performance of this Contract are employed, notices furnished by the City, in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Section 343.9.0 of the Administrative Code of the City of New York, and the Contractor and his subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until final acceptance of the supplies, materials, equipment, or work, labor or services required to be furnished or rendered under this Contract.

28.08 In all orders or contracts by the Contractor to the subcontractor for; (a) manufacturing or furnishing any of the supplies, materials, or equipment required under the Contract; (b) furnishing any of the work, labor or services required under the Contract, the Contractor shall insert a notice to the subcontractor to the effect that such supplies, materials, equipment or work, labor or services are for the City or New York and that the subcontractor is subject to the provisions of Section 343.9.0 of the New York City Administrative Code .

28.09 At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to the Commissioner a written certification of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Section 220 of the New York

State Labor Law and Section 343.9.0 of the Administrative Code of the City of New York and the Rules and Regulations of the Board of Estimate adopted pursuant thereto and any and all supplements and amendments to such rules and regulations. Compliance with the provisions of this paragraph shall be a condition precedent to payment, and no payment shall be made to the Contractor unless and until each such certification shall have been submitted to and received by the Commissioner.

28.10 This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of Section 343.9.0 of the Administrative Code for the award of the Contract.

28.11 Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Contract, and ground for cancellation thereof by the City.

ARTICLE 29: PAYROLL REPORTS

The Contractor and each subcontractor shall furnish to the Director on demand a verified copy of his payroll, and also any other information required by the Director to satisfy him that the provisions of the Labor Law as to the hours of employment and rates of wages are being observed.

CHAPTER IX: CONTRACTOR'S DEFAULT

ARTICLE 30: LIQUIDATED DAMAGES.

30.01 In case the Contractor shall fail to complete the work within the time fixed for such completion in Section II of the Scope of Services, Article 2, subsection K, or within the time to which such completion may have been extended, the Contractor must pay to the City the sum fixed in Section II of the Scope of Services, Article 2, subsection K, for each and every calendar day that the time consumed in completing the work exceeds the time allowed therefor or for which the reporting time is not observed for showing up at any event scheduled hereunder; which said sum, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the completion of the work

hereunder is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

30.02 Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification or the Contractor's obligation to indemnify the City, or to any other remedy provided for by contract or by law.

30.03 The Comptroller will deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference upon demand by the Comptroller.

ARTICLE 31: COMMISSIONER'S RIGHT TO DECLARE CONTRACTOR IN DEFAULT

In addition to those instances specifically referred to in other Articles herein, the Commissioner shall have the right to declare the Contractor in default of the whole or any part of the work if:

1. The Contractor becomes insolvent or if
2. The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
3. A voluntary or involuntary petition in bankruptcy be filed by or against the Contractor; or if
4. The Contractor fails to commence work when notified to do so by the Commissioner; or if
5. The Contractor shall abandon the work; or if
6. The Contractor shall refuse to proceed with the work when and as directed by the Commissioner; or if
7. The Contractor shall without just cause reduce his working force to a number which, if maintained, would be insufficient, in the opinion of the Commissioner, to complete the work in accordance with the approved Progress Schedule, and shall fail or refuse sufficiently to increase such working force when ordered to do so by the Commissioner; or if
8. The Contractor shall sublet, assign, transfer, convey or otherwise dispose of this Contract other than as herein specified; or if
9. A Receiver or Receivers are appointed to take charge of the Contractor's property or affairs; or if
10. The Commissioner shall be of the opinion that the Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if
11. The Commissioner shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this contract: or if
12. The Commissioner shall be of the opinion that the Contractor is not or has not been executing the Contract in good faith and in accordance with its terms; or if
13. The Commissioner shall be of the opinion that the work cannot be completed within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Commissioner's opinion, attributable to conditions within the contractor's control: or if
14. The work is not completed within the time herein provided therefor or within the time to which the Contractor may be entitled to have such completion extended.
15. The Contractor fails to secure and maintain all required insurance.

Before the Commissioner shall exercise his right to declare the Contractor in default by reason of the conditions set forth in Items numbered 1, 4, 5, 6, 7, 10, 11, 13 and 14, he shall give the Contractor an

opportunity to be heard, on 2 days notice, at which hearing the Contractor may have a stenographer present; provided, however, that a copy of such stenographic notes, if any, shall be furnished to the Commissioner

ARTICLE 32: EXERCISE OF THE RIGHT TO DECLARE IN DEFAULT

The right to declare in default for any of the grounds specified or referred to in Article 31 hereof shall be exercised by sending the Contractor a notice, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared.

ARTICLE 33: QUITTING THE SITE

Upon receipt of such notice the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit the site.

ARTICLE 34: COMPLETION OF THE WORK

34.01 The Commissioner, after declaring the Contractor in default, may then have the work completed by such means and in such manner, by contract with or without public letting, or otherwise, as he may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such subcontractors, as he may deem advisable.

34.02 After such completion, the Commissioner shall make a certificate stating the expense incurred in such completion, which shall include the cost of reletting and also the total amount of liquidated damages (at the rate provided for in the Specifications) from the date when the work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the work. Such certificate shall be binding and conclusive upon the Contractor, his Sureties, and any person claiming under the Contractor, as to the amount thereof.

34.03 The expense of such completion, as so certified by the Commissioner, shall be charged against and deducted out of such monies as would have been payable to the Contractor if he had completed the work; the balance of such monies, if any, subject to the other provisions of this Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion, so certified by the Commissioner, exceed the total sum which would have been payable under this Contract if the sum had been completed by the Contractor, any such excess shall be paid by the Contractor to the City upon demand by the Commissioner.

ARTICLE 35: PARTIAL DEFAULT

35.01 In case the Commissioner shall declare the Contractor in default as to a part of the work only, the Contractor shall discontinue such part, shall continue performing the remainder of the work in strict conformity with the terms of the Contract, and shall in no way hinder or interfere with any other contractors or persons whom the Commissioner may engage to complete the work as to which the Contractor was declared in default.

35.02 The provision of this Chapter relating to declaring the Contractor in default as to the entire work shall be equally applicable to a declaration of partial default.

ARTICLE 36: PERFORMANCE OF UNCOMPLETED WORK

In completing the whole or any part of the work under the provision of this Chapter, the Commissioner shall have the power to depart from or change or vary the terms and provisions of this Contract, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Commissioner's certificate or the cost of completion referred to in Article 34 hereof, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for his default.

ARTICLE 37: OTHER REMEDIES

37.01 In addition to the right to declare the contractor in default pursuant to this chapter, the Commissioner shall have the absolute right, in his sole discretion and without a hearing, to complete or cause to complete in the same manner as described in Articles 34 and 36 above, any or all unsatisfactory or incomplete work that remains after the completion date specified. A written notice of the exercise of this right shall be sent to the contractor who shall immediately quit the site in accordance with the provisions of Article 33 hereof.

37.02 The previous provisions of this Chapter shall be in addition to any and all other legal or equitable remedies permissible in the premises.

CHAPTER X: MISCELLANEOUS PROVISIONS

ARTICLE 38: CONFLICTS OF INTEREST

38.01 The Charter of the City of New York in relation to conflicts of interest (Sec. 886) provided, among a number of safeguards, that:

- a. No employee or person whose salary is payable in whole or in part from the City treasury (Subdivision C.) shall accept any valuable gift, whether in the form of service, loan, thing or promise, or any other form from any person, firm or corporation which to his knowledge, is interested directly or indirectly, in any manner whatsoever in business dealings with the City; and,
- b. Any violation of any of the provisions of this Section shall, at the option of the Comptroller, render forfeit and void the Contract, work, business, sale or transaction affected.

38.02 Other sections of the City Charter, the Administrative Code and the Penal Law are applicable in implementing the basic conflicts of interest Section and under certain circumstances penalties may be invoked against the donor as well as the recipient of any form or valuable gift.

38.03 Notice is hereby given that sections of the City Charter, the Administrative Code and the Penal Law alluded to herein shall apply under the terms of this Contract to circumstances relevant to conflicts of interest and shall be extended in application to subcontractors authorized to perform work, labor and services pursuant to this Contract and further it shall be the duty and responsibility of the prime contractor to so inform their respective subcontractors.

ARTICLE 39: COMPLIANCE WITH LAWS

The Contractor must comply with all local, State and Federal laws, rules and regulations applicable to this Contract and to the work to be done hereunder including but not limited to the Federal Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969, as amended.

ARTICLE 40: ANTI TRUST

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 anti trust laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the City under this Agreement.

ARTICLE 41: CONTRACTOR'S WARRANTIES

In consideration of, and to induce the award of this contract to him, the contractor represents and warrants:

41.01 That he is financially solvent, sufficiently experienced and competent to perform the work; and

41.02 That the facts stated in the bid and the information given by bidder in the Information for Bidders is true and correct in all respects; and

41.03 That he has read and complied with all requirements set forth in the Information for Bidders.

ARTICLE 42: CLAIMS AND ACTIONS THEREIN

42.01 No action at law or proceeding in equity against the City or Department shall lie or be maintained upon any claim based upon this agreement or arising out of this agreement or in any way connected with this agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided;

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

42.03 In the event any claim is made or any action brought in any way relating to the agreement herein, the contractor shall diligently render to the department and/or the City of New York without additional compensation any and all assistance which the Department and/or the City of New York may require of the contractor.

42.04 The contractor shall report to the Department in writing within three (3) working days of the initiation by or against the contractor of any legal action or proceeding in connection with or relating to this agreement.

ARTICLE 43: INFRINGEMENTS OF PATENTS

The Contractor shall be solely responsible for and shall indemnify the City against any claims and judgments for damages for any infringement of patents or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the work, including all costs and expenses which the City shall or may incur or be obligated to pay by reason thereof

ARTICLE 44: NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

ARTICLE 45: SERVICE OF NOTICES

45.01 The Contractor hereby designates the business address specified in his bid, as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place, or depositing it in a postpaid wrapper addressed thereto in any post office box regularly maintained by the

United States Post Office Department, shall be conclusively deemed to be sufficient service thereof upon the Contractor as the date of such delivery or deposit.

45.02 Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Commissioner

45.03 Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor is a corporation, upon any officer or director thereof.

ARTICLE 46: UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

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

ARTICLE 47: ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this Contract that each and every provision of law required to be inserted in this Contract shall and is inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

ARTICLE 48: TAX EXEMPTION

48.01 The City is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and or cities and counties on all materials and supplies sold to the City pursuant to the provisions of this Contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Contractor or a subcontractor, or to supplies and materials which even though they are consumed, are not incorporated into the completed work (consumable supplies), and the Contractor and his subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.

48.02 The Contractor agrees to sell and the City agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the Project covered by this Agreement. The sum paid under this Agreement for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials herein.

48.03 The Contractor agrees to construct the Project and to perform all work, labor and services required, necessary, proper or incidental thereto for the sum shown in the bid for the performance of such work, labor and services, and the sum so paid pursuant to this Agreement for such work, labor etc. shall be in full consideration for the performance by the Contractor of all his duties and obligations under this agreement in connection with said work and labor.

48.04 The purchase by the Contractor of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Contractor to the City is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, the Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to the City title to such supplies and materials, free of liens or encumbrances, and the Contractor shall mark or otherwise identify all such materials as the property of the City.

48.05 Title to all materials to be sold by the Contractor to the City pursuant to the provisions of the Contract shall immediately vest in and become the sole property of the City upon delivery of such supplies and materials to the site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of this agreement, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to the City, until such time as the work covered by the Contract is fully accepted by the City. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. In the event that, after title has passed to the City, any of such supplies and materials are rejected as being defective or other wise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

48.06 The purchase by subcontractors of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to the Contractor (either directly or through other subcontractors) and therefore not subject to the aforesaid Sales or Compensating Use Taxes, provided that the subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the

incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Contract with respect to the separation of the sale of materials from the work and labor, services, consumable supplies and any other matters to be provided, and provided further that the subcontract agreements provide separate prices for (1) materials and (2) all other services and material. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other work and labor and other things to be provided.

48.07 The Contractor and his subcontractors and materialmen shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the work covered by this Contract.

48.08 In the event any of the provisions of this Article 48 shall be deemed to be in conflict with any other provisions of this agreement or create any ambiguity, then the provision of this Article shall control.

ARTICLE 49: INVESTIGATIONS

49.01 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental 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.

49.02 Refusal to testify

- a. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the 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 of New York, or;
- b. If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

49.03 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.

49.04 If any non governmental party to the hearing request 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 49.06 below without the City incurring any penalty or damages for delay or otherwise.

49.05 The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

- a. 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
- b. 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.

49.06 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 (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate;

- a. 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.
- b. 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 or authority and responsibility the person has within the entity.
- c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City
- d. 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 49.05 above 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 49.03 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.

49.07 The term

- a. "license" or permit" as used herein shall be defined as a license; permit, franchise or concession not granted as a matter of right.
- b. "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- c. "entity" used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City
- d. "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee,

49.08 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 contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

ARTICLE 50: TERMINATION BY THE CITY

In addition to termination pursuant to any other Article of this Contract, the Commissioner may, at any time, and without fault of the Contractor, terminate this Contract by written notice to the Contractor and in such event:

50.01 The Contract shall, upon receipt of such notice, unless otherwise directed by the Commissioner:

- a. Stop work on the date specified in the notice;
- b. Take such action as may be necessary for the protection and preservation of the City's materials and property;
- c. Cancel all cancelable orders for material and equipment;
- d. Assign to the City and deliver to the site or any other location designated by the Commissioner, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract and not incorporated in the work;

50.02 On all lump sum contracts, the City will pay the Contractor:

- a. Its direct cost as hereinafter defined or the fair and reasonable value, whichever is less, for:
 - i. the portion of the work completed up to the time of termination, and
 - ii. non-cancelable material and equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract but not incorporated in the work;
 - iii. Five percent (5%) of the direct cost as hereinafter defined.
- b. In addition to the foregoing, the Contractor shall be paid five (5%) percent of the difference between the Lump Sum Contract Price and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to paragraph 50.02 a, subs i and ii of this Article.

50.03 On all unit price contracts, the City will pay the Contractor:

- a. for all completed units, the unit price stated in the Contract, and
- b. for incomplete units, payment will be made pursuant to the provisions of Section 50.02a, subs. i and ii, of this Article

50.04 Direct Costs as used in this Article shall mean:

- a. the actual purchase price of material and equipment plus necessary and reasonable delivery costs,
- b. actual cost of labor involved in construction and installation at the site, and
- c. actual cost of necessary bonds and insurance purchased pursuant to requirements of this Contract less any amounts that have been or should be refunded by the Contractor's sureties or insurance carriers.

50.05 Direct Cost shall not include overhead.

50.06 In no event shall any payments under this Article exceed the Contract price for such items.

50.07 All payments pursuant to this Article shall be in the nature of liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the City arising out of the termination.

50.08 The City may deduct or set off against any sums due and payable pursuant to this Article, any claims it may have against the Contractor.

50.09 Where the work covered by the Contract has been substantially completed, as evidenced by a duly executed certificate of substantial completion, termination of the work shall be handled as a change order under Article 23, as amended, in which case a change order will be issued to reflect an appropriate reduction in the Contract Sum, or if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 51: PARTICIPATION IN AN INTERNATIONAL BOYCOTT

51.01 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 Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder

51.02 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 hereof, 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 option, render forfeit and void this Contract.

51.03 The Contractor shall comply in all respects, with the provisions of Section 343 10.0 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

ARTICLE 52: THE WRITTEN AGREEMENT

The written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 53: CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

53.01 This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.

53.02 The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, the Contractor agrees:

- a. If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and
- b. With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have
 - i. to move to dismiss on grounds of *forum non conveniens*,
 - ii. to remove to Federal Court; and
 - iii. to move for a change of venue to a New York State Court outside New York County.
- c. With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
- d. If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

ARTICLE 54: RESOLUTION OF DISPUTES

54.01 All disputes between the City and the Contractor of the kind delineated in this section that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this section and Section 4.09 of the Rules of the Procurement Policy Board ("PPB Rules"). The procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.

- a. 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.
- b. For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the Contract, the interpretation of Contract Documents, the amount to be paid for extra work or disputed work performed in connection with the Contract, the conformity of the Contractor's work to the Contract, and the acceptability and quality of the Contractor's work; such disputes arise when the Engineer makes a determination with which the Contractor disagrees.

54.02 All determinations required by this section shall be made in writing, 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 period required by this section shall be deemed a non-determination without prejudice that will allow appeal to the next level.

54.03 During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the Contractor shall continue to perform work in accordance with the Contract and as directed by the Agency Chief Contracting Officer or Engineer. 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.

54.04 Presentation of Dispute to Agency Head

- a. 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 notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the detailed written submission, the Agency Chief Contracting Officer or, in the case of construction or construction-related services, the Engineer 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.
- b. 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 Agency Chief Contracting Officer and, in the case of construction or construction-related services, the Engineer 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 Contract, 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 to make presentations and to seek review as the Contractor initiating the dispute.

- c. 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 Agency Chief Contracting Officer and, in the case of construction or construction-related services, the Engineer, together with a statement concerning how the decision may be appealed.
- d. 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 pursuant to this section. The City may not take a petition to the Contract Dispute Resolution Board. However, should the Contractor take such a petition, the City may seek, and the Board may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

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

- a. Time, Form, and Content of Notice. Within thirty (30) days of its 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 written 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 written 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.
- b. 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.
- c. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. 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.

- d. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his receipt of all materials referred to in 54.05 c 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 Contract Dispute Resolution Board 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 Contract between the parties.

54.06 Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of

- a. The chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his/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 Contract Dispute Resolution Board’s functions, including, but not limited to, granting extensions of time to present or respond to submissions;
- b. the City Chief Procurement Officer or a designee; or in the case of construction or construction-related services, the Director of the Office of Construction or his/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
- c. a neutral person with appropriate expertise. This person shall be selected by the presiding administrative law judge from a prequalified panel of individual, 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 represents persons, companies, or organizations having disputes with the City.

54.07 Petition to Contract Dispute Resolution Board. 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 Contract Dispute Resolution Board to review the Agency Head determination.

- a. Form and Content of Petition by Contractor. The Contractor shall present its dispute to the Contract Dispute Resolution Board in the form of a Petition, which shall include
 - i. a brief written 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 written decision of the Agency Head;
 - iii. copies of all materials submitted by the Contractor to the Agency;
 - iv. a copy of the written decision of the Comptroller, if any, and
 - v. copies of all correspondence with, or written 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 Contract Dispute Resolution Board at OATH's offices with proof of service on the Corporation Counsel. In addition, the supplier 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
- b. **Agency Response.** Within thirty (30) days of its receipt of the Petition by the Corporation Counsel, the Agency shall respond to the brief written statement of the Contractor and make available to the Board at OATH's offices and one to the Contractor. all material it submitted to the Agency Head and Comptroller. 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.
- c. **Further Proceedings.** The Board shall permit the Contractor to present its case by the submission of memoranda, briefs, and oral argument. The Board shall also permit the Agency to present its case in response to the Contractor by the 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 Board. The Board, at its discretion, may seek such technical or other expertise 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 Board, in its discretion, may combine more than one dispute between the parties of concurrent resolution.
- d. **Contract Dispute Resolution Board Determination.** Within forty-five (45) days of the conclusion of all written submissions and oral arguments, the Board shall render a written decision resolving the dispute. In an unusually complex case, the Board 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 Board's decision must be consistent with the terms of the Contract. In reaching its decision, the Board shall accord no precedential significance to prior decisions of the Board involving other non-related contracts.
- e. **Notification of Contract Dispute Resolution Board Decision.** The Board shall send a copy of its decision to the Contractor, the Agency Chief Contracting Officer, the Corporation Counsel, the Comptroller, and in the case of construction or construction-related services, the Engineer. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Day shall be thirty (30) days after the date the parties are formally notified of the Board's decision.
- f. **Finality of Contract Dispute Resolution Board Decision.** The Board's decision shall be final and binding on all parties. Any party may seek review of the Board's decision solely

in the form of a challenge, made within four (4) months of the date of the Board'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 Board'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 Board in accordance with Section 4-09 of the PPB Rules.

54.08 Any termination, cancellation, or alleged breach of the Contract 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 Contract Dispute Resolution Board to make a binding and final decision pursuant to this section.

ARTICLE 55: CONTRACT CHANGES

Except in the case of requirements contracts, any contract increases which cumulatively exceed the greater of 10% or \$100, 000 must be approved in writing by the City Chief Procurement Officer. Any contract amendment which either amends a unit price, cancels required units, or adds a new type of unit item to the contract must be approved in writing by the Agency Chief Contracting Officer.

ARTICLE 56: PRICING.

56.01 The Contractor shall whenever requested by the Commissioner during the contract, including but not limited to the time of bidding, submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a specified date. The contractor shall be required to keep its submission of cost and pricing data current until the contract has been completed.

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

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

56.04 Refusal to Submit Data. When any contractor refuses to submit the required data to support a price, the Contracting Officer shall not allow the price.

56.05 Certificate of Current Cost or Pricing Data: Form of Certificate. In those cases when cost or pricing data is required, certification shall be made using a certificate substantially similar to the one contained in Chapter 2 of the PPB rules and such certification shall be retained in the agency contract file.

56.06 If the City finds that a price or cost reduction should be made, the contractor agrees not to raise the following matters as a defense:

- a. The Contractor was a sole source supplier or otherwise in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete and current cost or pricing data had been submitted;
- b. The City should have known that the cost or pricing data in issue were defective even though the contractor took no affirmative action to bring the character of the data to the attention of the City;
- c. The Contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

ARTICLE 57: INDEMNIFICATION

The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to, or loss of, any property sustained during its operations or work that is the subject of this agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of any injury, loss or death to, or loss of, any person or damages to, or loss of property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all its employees whether due to the negligence, fault or default of the Contractor or not.

ARTICLE 58: PPB RULES

58.01 This contract is subject to the Rules of the Procurement Policy Board of the City of New York effective August 1, 1990 as amended. In the event of a conflict between said Rules and a provision of this contract, the Rules shall take precedence.

58.02 If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 59: MCBRIDE PROVISIONS

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

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

59.03 Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

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

59.05 PART A - In accordance with section 6 115 .1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor

- a. holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or

- b. shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

59.06 PART B - For purposes of this section, the following terms shall have the following meanings:

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

- a. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- b. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- c. ban provocative religious or political emblems from the workplace;
- d. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- e. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- f. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- g. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- h. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- i. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

59.07 ENFORCEMENT - The contractor agrees that the covenants and representations above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right

to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.’

{NO FURTHER TEXT ON THIS PAGE}

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

**THE CITY OF NEW YORK, ACTING THROUGH ITS
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

By: _____
Agency Chief Contracting Officer

CONTRACTOR

By: _____
(Member of Firm or Officer or 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 _____, 2011 before me personally came Patricia Thomas, to me known and known to me to be the Agency Chief Contracting Officer of the Department of Health and Mental Hygiene of the City of New York, the person described in, and whom as such Agency Chief Contracting Officer executed, the foregoing agreement, and he duly acknowledged to me that he 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 and Bond Requirements

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

| Item | Minimum Coverage | Required |
|---|--|----------|
| Bid Deposit | 2% of Contract Price | (XXX) * |
| | - or - | |
| Bid Bond | 10% of Contract Price | (N/A) |
| Workers Compensation | Statutory Requirements | (XXX) |
| Broad Form Commercial Liability | \$5,000,000 per occurrence \$25,000,000 aggregate Combined Single Limit Bodily Injury and Property Damage endorsed to include Environmental Impairment Liability (EIL) coverage | (XXX) |
| Professional Liability | \$1,000,000 per occurrence | (XXX) |
| Automobile Liability <i>(If any ground vehicle is used in the 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

APPENDIX B

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 EIN# _____
other unincorporated organization

() 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.



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Thomas A. Farley, MD, MPH
Commissioner

APPENDIX C: Local Law 35 Certification

COMMISSIONER CERTIFICATION

INVITATION FOR BIDS

FOR

PILOT SERVICES for AERIAL LARVICIDING OPERATIONS

PIN 11AA095900R0X00

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

“NO BID RESPONSE”
PIN 11AA095900R0X00

_____ HAS OPTED NOT TO BID ON
(Contractor name)

PILOT SERVICES for AERIAL LARVICIDING OPERATIONS

For the following reason(s):

Contact Name _____ Phone _____
(Signature)

Date ____/____/____

Please return this form to the DOHMH Authorized Agency Contact or fax to (347) 396-6760, Attention: Jackie Palmer, no later than _____-, 2011.