

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

INVITATION FOR BID

and

AGREEMENT

FOR

ELEVATOR TEST WITNESS

DATE OF ISSUE: December 16, 2013

PIN 14BS027700R0X00

AUTHORIZED AGENCY CONTACT

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

Primary Contact

Shermaine Manifold, Contract Manager

Email: Bids@health.nyc.gov

New York City Department of Health and Mental Hygiene

Office of the Agency Chief Contracting Officer

42-09 28th Street, 17th Floor, CN-30A

Long Island City, NY 11101-4132

P: (347) 396-6678

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NOTE TO BIDDERS:

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

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

SECTION I: TIMETABLE

1. Release Date of this IFB: December 16, 2013
2. Pre-Bid Conference: **None Scheduled**
3. **Site Visits:** **May be arranged prior to Bid Submission by contacting DOHMH Primary Contact as listed above.**
4. Deadline for Questions: January 2, 2014
5. Bid Due Date and Time, Public Bid Opening Location
Date: **January 23, 2014**
Time: **11:00am**
Place: New York City Department of Health and Mental Hygiene
Office of the Agency Chief Contracting Officer
42-09 28th Street, CN-30A, WS 17-130
Attention: Shermaine Manifold
Email: Bids@health.nyc.gov
6. Anticipated Contract Start Date: July 01, 2014

SECTION II: SCOPE OF SERVICES

The New York City Department of Health and Mental Hygiene (DOHMH) seeks a private Elevator Inspection Agency licensed by the Department of Buildings of the City of New York (“DOB”), as qualified under 1 RCNY §11-01 (Rules for the Certification and Qualification of Private Elevator Inspection Agencies and for the Performance of Inspections and Filing of Inspection Reports for Elevators and Chair lifts by such Agencies), to furnish DOB licensed agency elevator and chair lift inspection witness, report filing services and related services.

The purpose of this solicitation is to establish a requirements contract with the Department of Health and Mental Hygiene (DOHMH) of the City of New York with firm pricing and service delivery requirements for such witness services. The Contractor will witness elevator and chair lift inspections and file reports in the form, as required by the DOB. The Elevator Witness will also be required to file all documentation as required by 1 RCNY §11-01 *et seq* with the applicable provisions of the Building Code of the City of New York.

DOHMH anticipates placing service orders under such contract in accordance with the specifications set forth below to support the 37 elevators and 6 chair lifts owned and/or operated by the DOHMH within the five Boroughs of New York City, and such other or additional elevators and chair lifts for which DOHMH may require such support services.

Elevator Inspectors, under the supervision of an agency director possessing a DOB certificate of approval as an Private Agency Elevator Director, will witness **Category 1 (One Year Tests)**, **Category 3 (Three year test for Hydraulic Elevator)**, of which DOHMH only has one currently) and **Category 5 (Five Year Tests)** tests performed by the DOHMH elevator services and/or chair lift maintenance contractor(s), and such other and additional tests on related devices as may be additionally required by the Commissioner of the DOB, all as may be required by the NYC Administrative Code - Building Maintenance – Chapter 3 - Title 28 Code (2008), which requires a second independent witness to confirm compliance by the Elevator Services agency(the “Elevator Witness”).

Payments for services performed under this contract shall be subject to the annual appropriation of funds to the Department of Health and Mental Hygiene.

EXPERIENCE: Bidder must show that the Bidder is a DOB licensed Private Elevator Inspection Agency qualified to perform the work as specified herein. For purposes of the contract that may be let hereunder such experience must include at least five years of commercial/industrial experience in elevator inspection and report writing. The bidder must also provide a minimum of three (3) project/references who can verify

the qualifications of, and ability to, the Bidder to perform the scope of work specified herein, and who can accurately assess the quality of the workmanship performed by the DOHMH elevator maintenance contractors.

LICENSES: ALL BIDDERS MUST SUBMIT PHOTOCOPIES OF ITS DOB LICENSES WITH THEIR BID, INCLUDING ITS PRIVATE ELEVATOR INSPECTION AGENCY, AND FOR ALL PERSONS WHO WILL PERFORM WORK ON ITS BEHALF UNDER THE CONTRACT, IF AWARDED. SUCH LICENSES MUST INCLUDE AN ELEVATOR DIRECTOR LICENSE AND AT LEAST TWO (2) ELEVATOR INSPECTORS LICENSES. IF COPIES OF THE APPROPRIATE LICENSES ARE NOT INCLUDED WITH THE BID, THE BID WILL BE DEEMED TO BE NONRESPONSIVE. SEE N.Y. ADC. LAW § 28-304.6.1: NY Code - Section 28-304.6.1: Inspection, and 1 RCNY §11-01

ANTICIPATED TERM OF CONTRACT: DOHMH anticipates that the term of work for this contract shall be for FIVE (5) YEARS.

I. SCOPE OF SERVICES

1. The Contractor shall coordinate all inspection test dates for certain elevators and chair lifts, as specified by DOHMH, coordinate inspections/tests with DOHMH elevator and chair lift maintenance contractors and attend testing appointments, perform Elevator Test Witness Inspection Agency services and file inspection/test reports for such elevators and chair lifts with the Department of Buildings for the City of New York (“DOB”), as required or necessary, for all inspections/tests, as required by applicable law, provide Elevator Test Witness Inspector services in connection with such tests, and file required DOB Inspection/Test Reports and follow up reports with DOB in accordance with DOB and DOHMH requirements on behalf of DOHMH, including, without limitation, ELV 3, ELV3A, ELV 15, ELV29 and ELV36 reports, all as necessary, to keep DOB required reports current for all elevator and chair lift devices for which testing is required to be performed under applicable building codes and implementing regulations and instructions issued by DOB in connection therewith.

<http://www.nyc.gov/html/dob/downloads/pdf/elv3ins.pdf>

2. Contractors are referred to the following site for access to DOB forms and instructions current as of the date of issuance of this IFB to consult DOB requirements with regard to inspection/testing and form requirements:

<http://www.nyc.gov/html/dob/downloads/pdf/elv3ins.pdf>

3. Following the completion of testing, the Elevator Inspector will:
 - immediately advise DOHMH's designee in writing whenever unsatisfactory items have been identified during an inspection/test that must be corrected within 45 business days following the date that the initial inspection report was filed by the Contractor with the DOB, specifying in such advice the location of the equipment and the specific deficiencies noted, including therein a copy of the applicable DOB report identifying such deficiencies;
 - arrange for a retesting appointment within such 45 business day period with the DOHMH maintenance contractor as soon after corrections have been made as is practicable;
 - prepare and file the required ELV29 (Affirmation of Correction) with DOB on a timely basis within fifteen (15) days following such initial 45 business days, identifying in such notification the corrections made and requesting dismissal of nonhazardous violations; and perform such other ancillary DOB services as may be required to advise the DOHMH designee of the status of violations until same have been removed of record. Prepare DOB required Elevator Inspection Test Reports, obtain signatures from DOHMH and the DOHMH Elevator Maintenance Contractor, and deliver/file with NYC DOB, as necessary.
 - Obtain a stamped copy of the ELV3 for each elevator test showing the date received by NYC DOB.
 - Deliver the stamped ELV3 form and submit an invoice to DOHMH, detailing therein the charges payable for the services performed and submit same to DOHMH together with such backup documentation for the charges therein as may be required by DOHMH.

NOTE WELL: All services required hereunder, including all Test Witnesses (in all DOB categories, and for Deficiencies Correction Inspection/Testing); the filing of DOB reports, as required, in connection with such Inspection/Testing; and the Maintenance Evaluation Audit services; all are included in the unit prices set forth on the Bid Sheet, provided, further, however, that additional services ordered by DOHMH may, if such services are additional services provided in connection with the subject matter of this Contract, if ordered by DOHMH, may be compensated at the rate of \$125.00 per hour for the Elevator Inspector,

up to the amount allocated and available for such services as per line 4 on the Bid Sheet.

4. At no additional charge to DOHMH, the Contractor shall perform a Maintenance Evaluation Audit and provide a written report to DOHMH during each annual Category 1 Year Test, Category 3 Year Test and Category 5 Year Test cycle, summarizing and explaining therein the maintenance and Building Code deficiencies noted during the test/inspections, identifying problems, and recommending corrective actions to DOHMH for the purpose of enabling DOHMH to manage its elevator and chair lift maintenance, identify repairs and servicing necessary, and prioritize repairs with reference to safety and costs.
 5. The Maintenance Evaluation Audit shall include a detailed review and study of;
 - a. Elevator machine room equipment;
 - b. Elevator hoist way equipment;
 - c. Elevator ride quality, operation, and efficiency; and
 - d. Elevator pit equipment.
- #. The Contractor will assign a DOB licensed Elevator Director to supervise the Elevator Inspectors performing the services required hereunder, and the charges for such supervisory services shall be included in the Elevator Inspector fees set forth in the accepted Bid Sheet fees therefor.

II. SPECIFICATIONS

1. The Contractor must be a DOB licensed Elevator Inspection Agency with an Elevator Agency Director duly licensed by DOB as such, and not less than two Elevator Inspectors also duly licensed by DOB as such, who shall provide the elevator and chair lift inspection/testing services as a witness as required hereunder as well as the DOB filing services required to comply with the new NYC Administrative Code - Building Maintenance – Chapter 3 - Title 28 (N.Y. ADC. LAW § 28-304.6.1: NY Code - Section 28-304.6.1: Inspection) that requires a **licensed second and independent witness** to confirm the compliance of the DOHMH Elevator Services Contractor with the DOB requirements for One Year Tests and the revised Five Year Tests for the approximately 37 elevators (including one hydraulic elevator) and 6 chair lifts owned and/or operated by DOHMH in its various facilities.

2. **Payment**

Payments shall comply with Section XII below and this section of the IFB. Payments will be made upon receipt of a properly submitted invoice in content satisfactory to DOHMH and accompanied by documentation satisfactory to DOHMH, including, without limitation, a DOB ELV report form for each inspection/test witnessed that bears evidence satisfactory to DOHMH of the date of filing with DOB. Payment will be made for all services completed and approved by the Director of Plant Operations or the Assistant Commissioner. The Contractor is cautioned that the Department of Health and Mental Hygiene will not make payment for any work that is not authorized. The payment for inspection/test witnesses and the filing of DOB reports in connection therewith, and supervision of same by the Contractor's Elevator Director will be by payment of the all-inclusive fee for each such inspection/test as detailed

All requests for payment and accompanying documentation shall be submitted for services completed on a schedule that is not more frequently than monthly and shall be submitted directly to:

DOHMH/Office of Fiscal Management
P.O. Box 8400
Queens, NY 11100-8400
Attn.: Invoice Processing Unit

3. **Estimates**

Upon request of the Assistant Commissioner, Director of Plant Operations, or his/her designated representative, the Contractor shall provide detailed estimates for hourly services, including a breakdown of all costs, if necessary, before authorization to proceed with work shall be granted. Estimates shall conform to the bid price offered by the Contractor.

III. **SUPERVISION BY CONTRACTOR**

The Contractor's shall utilize an Elevator Director, duly licensed by DOB to supervise the work of the Contractor's Elevator Inspectors. The Contractor's Elevator Director shall be responsible for assuring that quality work is performed by the Elevator Inspectors and that all services to be performed hereunder are performed in accordance with the terms of the contract. Such Elevator Director shall be authorized to receive and effectuate promptly,

all orders, directives, and instructions, from the DOHMH. At the request of the Contractor, the DOHMH shall give a confirmation in writing of such orders or directives.

IV. INSPECTION AND TESTS

1. The performance of the services to be performed hereunder is subject to inspections, examination or testing by the DOHMH Quality Assurance Contractor and/or its authorized agent, at any time during the course of the work. The DOHMH or its authorized agent shall have the right to reject services not performed in accordance with this scope of services and applicable code provisions and DOB rules, if deemed necessary by DOHMH.
2. Services not performed satisfactorily in accordance with Contract requirements shall be satisfactorily corrected by the Contractor without additional expense to the City, and the Contractor shall promptly provide for corrected services and shall pay all additional costs that would otherwise be incurred by DOHMH and/or the correction of defective workmanship.
3. If the Contractor fails to perform in accordance with contractual requirements hereunder, the DOHMH may, by contract or otherwise, engage a replacement contractor to perform such services and charge the cost, thereof, to the Contractor, and/or may terminate the contract, as provided elsewhere in these specifications.

V. COMPLIANCE WITH LAWS

1. The Contractor shall comply with all City, State and Federal laws, rules and regulations applicable to the Contract and to the services to be performed hereunder.
2. All components of the work shall be in accordance with all applicable New York City and State laws, codes, rules and regulations.

VI. REGISTRATIONS, LICENSES AND PERMITS

1. The Contractor shall give all necessary notices, obtain all required permits and pay all fees in connection with this work. The Contractor shall inform the DOB that the reports to be filed with the DOB hereunder are for inspections/tests conducted at City facilities and shall arrange to have the otherwise applicable filing fees waived by the DOB. The Contractor shall comply with all rules and regulations of the State of New York and the City of New York and these rules shall take precedence over any requirements in future work specifications where a conflict occurs. The Contractor shall prepare required documentation for the various reports, applications and permits. The Contractor shall be

responsible to obtain the required approvals of all Departments having jurisdiction. The Contractor shall obtain the required Certificates of Inspection after completion of his/her work and submit same to DOHMH.

VII. PROTECTION OF WORK AND OF PERSONS AND PROPERTY

1. During the performance of the services to be performed under this contract, the Contractor shall take all precautions necessary to protect the persons and property of the City and of others from damage, loss or injury resulting from the Contractor's operations under this Contract.
2. The Contractor shall immediately notify the City of any property damage or personal injury, or any accidents in the course of the services. Within twenty-four (24) hours after notice, of any such loss, damage or injury to workers or, personal property, the Contractor shall provide a full and complete report thereof in writing to the DOHMH.
3. Such damages to property shall be repaired and/or property shall be replaced by approved methods so as to restore the damaged area(s) to their original condition at the expense of the Contractor.

VIII. SAFETY

1. The Contractor shall ensure that its employees, representatives and agents observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds, which might be done or caused by the services performed under this Contract.
2. The Contractor shall immediately report to DOHMH any condition that may endanger life, health, or property while performing the services specified herein, as well as any actual incidents within the knowledge or observations of its personnel involving such conditions, including, without limitation, any such conditions as may be caused by or in connection with work performed by the elevator and/or chair lift maintenance contractors and their employees or agents.

IX. QUALIFICATIONS OF CONTRACTOR

1. The Contractor and its personnel shall possess the qualifications that are specified above in Section II, including the requisite experience and DOB licenses. All licenses possessed

by the Contractor and its employees and required to perform the services required hereunder must be kept current on an ongoing basis.

2. After the Contract has been registered by the Office of the Comptroller and prior to commencement of work, the Contractor shall establish and maintain an administrative office staffed with at least one (1) employee who must be able to answer calls and receive messages.
3. The Contractor shall have the organization, facilities, experience, and financial capability required to properly, promptly, efficiently, and successfully cope with any emergency or contingency that might arise in the course of services to be provided under the term of this Contract.

X. CONTRACTOR'S REFERENCES

1. The Contractor shall provide at least three (3) client references, including name, address, contact person, telephone number, fax number, months and years of service, and a description of the service that the Contractor provided to the client. These references shall be used to support the Contractor's ability to supply the services stated in the bid.
2. References must be for clients or customers to whom services were provided within the last five (5) years and any persons providing such recommendations must not be related to the bidding firm by blood or marriage or be under the disability of any other conflict of interest in rendering such recommendation.

XI. SUB-CONTRACTING

1. The Contractor shall not subcontract any part of the services on its part to be performed hereunder without first obtaining DOHMH permission to subcontract in writing. DOHMH anticipates that there will be no subcontracting under this contract. See Chapter V-Article 15 of the Agreement and Section 3:02 of Appendix A.

XII. PAYMENT AND RELATED TERMS

1. Payments

The Contractor shall provide the DOHMH with a dated invoice, not more frequently than monthly during the term of the Contract, indicating the appropriate Contract Number as given to the Contractor by the DOHMH, specifying all services rendered during the billing

period. The invoice covering services within the City's Fiscal Year must all be submitted the sooner of either: 30 days after the performance of services for which billing is submitted or prior to, or within fifteen days following the end of any City fiscal year (July 1-June 30) occurring during the term of the Contract, unless a written extension of time for submission has been obtained from DOHMH. The Contractor shall provide evidence of proper satisfactory performance of the work required in these specifications by submitting, together with the invoice for the monthly payment, a properly signed and dated certification, on its own form or letterhead, indicating the period in which services were provided under this contract, together with such backup documentation of charges for which payment is sought as may be required by the City for payment documentation purposes.

2. Invoicing

All correspondence shall be referenced by the contract number. Invoices shall be accompanied by the DOB stamped ELV 3 forms for each test and all other forms filed with the DOB for services performed within the billing period and shall clearly indicate the test date, the test location and the type of test.

3. Liquidated Damages

Failure of the Contractor's Elevator Inspector to appear for a scheduled test appointment shall result in a One Hundred Dollar (\$100.00) charge deducted from the invoices submitted for that test.

XIII. NOTIFICATION TO BEGIN WORK:

1. The Contractor shall commence services under this Contract upon its receipt of a written Notice to Proceed from DOHMH.
2. The Contractor shall notify the DOHMH Director of Plant Operations or the Assistant Commissioner (or designee) as to when and how he will proceed. The contractor shall make arrangements with the DOHMH Director of Plant Operations or the Assistant Commissioner (or designee) regarding the scheduling of all One Year Tests and Five Year Tests.
3. All Contractor personnel shall carry color photo identification cards bearing the name of the employee and the name and contact information for the company for which

he/she works. These identification cards may not contain any official City, State or Federal logo nor imply that the bearer of the card is a government worker.

4. The Department of Health and Mental Hygiene reserves the right to order the Contractor to temporarily suspend services in any or all locations specified, and in such an event, the Contractor shall immediately suspend service and no payment will be made for the period of time that work is suspended.

XIV. INCREASE OR DECREASE THE NUMBER OF LOCATIONS OR SYSTEMS:

The Department of Health and Mental Hygiene reserves the right to **increase** or **decrease** the number of sites covered under this agreement. Additions or deductions to payments shall be in accordance with payments for services to similar facilities or systems. Rates paid for additions shall comply with the offered bid rates. DOHMH shall not pay for any inspections at locations that are removed from the site list by DOHMH.

LIST OF LOCATIONS:

| <u>Elevator Address</u> | <u># of Floors</u> <small>(c = cellar)</small> | <u>Manufacturer</u> | <u># of Elevators</u> |
|------------------------------------|---------------------------------------------------|------------------------------------------------------------|-----------------------|
| MANHATTAN | | | |
| 1. 455 First Avenue | 14/c | Armor/Bull Elevator | 7 |
| 2. 2238 Fifth Avenue | 3/c 1 | Otis Elevator Garaventa Genesis (handicap lift) | |
| 3. 303 9 th Avenue | 3/c | Westinghouse Electric | 1 |
| 4. 158 E. 115 th Street | 4/c | Westinghouse Electric Garaventa Genesis (handicap lift) | 2 |
| 5. 160 W. 100 th Street | 3/c | Armor Elevator | 1 |
| 6. 600 W. 168 th Street | 7/c | Atlantic Elevator | 2 |

BRONX

| | | | | |
|----|--------------------|-----|-------------------------------|---|
| 7. | 1826 Arthur Avenue | 4/c | Otis Elevator | 2 |
| | 1826 Arthur Avenue | 1 | Otis Elevator | 1 |
| | 1826 Arthur Avenue | 1 | Otis Elevator (Handicap Lift) | 1 |
| 8. | 1309 Fulton Avenue | 5/c | Armor Elevator | 2 |

BROOKLYN

| | | | | |
|-----|------------------------|-----|-------------------|---|
| 9. | 259 Bristol Street | 3/c | Seaberg Elevator | 1 |
| 10. | 335 Central Avenue | 3/c | Curtis Elevator | 2 |
| 12. | 295 Flatbush Ave. Ext. | 5/c | Atlantic Elevator | 2 |
| | 295 Flatbush Ave. Ext. | 1 | Atlantic Elevator | 1 |
| 13. | 151 Maujer Street | 3/c | A. B. C. Elevator | 1 |
| 14. | 485 Throop Avenue | 3/c | Watson Elevator | 1 |
| 15. | 1218 Prospect Place | 2/c | Heights Elevator | 1 |
| 16. | 1601 Avenue S | 2/c | Heights Elevator | 1 |

QUEENS

| | | | | |
|-----|-------------------------------|-----|------------------------------------------------|---|
| 17. | 34-33 Junction Boulevard | 3/c | Atlantic Elevator | 1 |
| 18. | 90-37 Parsons Boulevard | 4/c | Armor Elevator | 2 |
| | 90-37 Parsons Boulevard | 1 | Armor Elevator | 1 |
| | Plus the annex building | 1 | Garaventa Genesis (handicap lift) | |
| | 90-27 Parsons Boulevard | 3 | Canton Elevator (Hydraulic Elevator) | 1 |
| 19. | 12-26 31 st Avenue | 3/c | A. B. C. Elevator | 1 |
| | | | Savaria Basement & Lobby (2 handicap lifts) | |

STATEN ISLAND

20. 51-63 Stuyvesant Place 4/c

Gurney Elevator

2

[NO FURTHER TEXT ON THIS PAGE]

SECTION III: BID PROCEDURES AND REQUIREMENTS

1. Status of Information

- a. The Agency (the Department) shall not be bound by any oral or written information released prior to the issuance of the IFB.
- b. The Agency shall not be bound by any oral or written representations, statements or explanations other than those made in this IFB, in Agency written responses to proposer inquiries or in a formal written addendum to this IFB.

2. Communication with the Agency

- a. Proposers are advised that from the date this IFB is issued until the award of the contract, NO contact with Agency personnel related to this solicitation is permitted, except as shall be authorized by the Authorized Agency Contact.
- b. All inquiries regarding this solicitation shall be addressed in writing to the Authorized Agency Contact.
- c. All inquiries shall be responded to in writing.

3. Pre-Bid Conference

None Scheduled.

4. Addenda to the IFB

- a. The Agency shall issue corrections or amendments to the IFB it deems necessary prior to the Bid Due Date in the form of written addenda.
- b. It is the bidder's responsibility to assure receipt of all addenda. The bidder should verify with the designated Agency contact person prior to submitting a proposal that all addenda have been received. Bidders shall acknowledge the number of addenda received as part of their proposals (See Section IV).

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

5. Form of Bid

- a. Each bid must be submitted upon the prescribed form (See Section IV) and must contain all information required therein. FAILURE TO SUBMIT ALL REQUIRED DOCUMENTS WITH THE BID WILL RENDER THE BID INCOMPLETE AND NONRESPONSIVE AND WILL RESULT IN THE DISQUALIFICATION OF THE BIDDER.
- b. The completed bid must be submitted in a sealed envelope on or before the time and at the place indicated in Section I above. The envelope must be marked with the name of the person, firm or corporation presenting it, the bid opening date, bid number and bid title. The bid and all other documents requiring signature must be signed and notarized. Bid Bonds (if required by Schedule A) must be submitted with the Bid, but in a separate sealed envelope, also identified as above.
- c. The Bid must be typewritten or written legibly in ink. The Bid must be signed in ink. Erasures or alterations must be initialed by the signer in ink.
- d. 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. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.
- e. Telegraphic or mailgram bids shall not be accepted.
- f. Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the contract or contract documents. 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.
- g. 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 in Section 8, below.

6. Proprietary Information, Trade Secrets

- a. A bidder shall identify those portions of its bid that it deems to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word “Confidential”. Such materials stamped “Confidential” must be easily separable from the non-confidential portions of the bid.
- b. All such materials so indicated shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. Prices, makes and model or catalog numbers of 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.

7. Modification or Withdrawal of Bids, Late Bids

- a. Bids may be modified or withdrawn by written notice received in the office designated in Section I, paragraph 4, before the time and date set for the bid opening.
- b. If a bid is withdrawn in accordance with this Section, the bid security, if any be required under this IFB, shall be returned to the bidder.
- c. Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received.
- d. Except as provided for in paragraph (a) above, a bidder may not withdraw its bid before the expiration of forty-five (45) days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.
- e. If within sixty (60) days after the Registration of the contract by the Comptroller, the Commissioner fails to fix the date for commencement of work by written notice to

the bidder, the bidder, at their option, may ask to be relieved of their obligation to perform the work called for by written notice to the Commissioner. If such notice is given, the bidder waives all claims in connection with this contract.

8. Mistakes in Bids

- a. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 7, above.
- b. 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 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:
 - (i) **Minor Informalities.** Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City.
 - (ii) **Mistakes Where Intended Correct Bid is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
 - (iii) **Mistakes Where Intended Correct Bid is Not Evident.** 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:
 - (A) 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;

- (B) the price bid was based on an error of such magnitude that enforcement would be unconscionable;
 - (C) 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;
 - (D) 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
 - (E) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.
- (iv) Mistakes Discovered After Award. Mistakes shall not be corrected after 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.

9. Bid Evaluation and Award

- a. This contract shall be awarded, if at all, to the responsible bidders 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, subject to the Best Value (as defined in Section 163 of the State Finance Law of the Laws of the State of New York) exception that may affect the bidder chosen in accordance in the manner described in Appendix G 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.
- b. In accordance with Section 3-02 (o)(3) 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.
- c. 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 Bid if that bid is not also the most favorable bid.
- d. 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:
 - (i) Award to a certified New York City small minority or woman-owned business entity bidder;
 - (ii) Award to a New York City bidder;
 - (iii) Award to a certified New York State small, minority or woman-owned business bidder;
 - (iv) Award to a New York State bidder.

If two or more bidders still remain equally eligible after application of this paragraph, award shall be made by a drawing by lot limited to those bidders. The

bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

- e. 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 5-01 and 7-03 respectively, of the Procurement Policy Board Rules.
- f. The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to resolicit bids if in its sole opinion it shall deem it in the best interest of the City to do so.

The Agency Head may determine that it is appropriate to cancel the Invitation For Bids after bid opening and before award and to complete the acquisition by negotiation, when permitted by rule.

- g. Unit Price Contracts
 - (i) 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.
 - (ii) 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.

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.

10. Bonds

If required in the Schedule of Bonds and Liability Insurance, as detailed in Article 7 of Appendix A, then:

- a. Bid Bond.
Not Required.
- b. Performance and Payment Bonds
Not Required.
- c. Failure to Execute Contract

In the event of failure of the successful bidder to execute the contract and furnish any required security and insurances, within ten (10) days after notice of the award of the contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such contract shall be subsequently re-let, including the cost of such re-letting and less the amount such 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 such accepted bid.

Further, 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 in such event shall be liable also to the City for the amount of actual funding withdrawn by such agency on this project less the amount of the forfeited deposit.

11. Vendor Requirements

a. Financial Qualifications

- (i) In addition to the experience questionnaire (Section IV) required to be submitted with the bid, after the opening of bids and when directed by the Commissioner, the bidder may also be required to submit a sworn statement setting forth such information as the Commissioner may require concerning his financial condition, present and proposed plant and equipment, the personnel and qualifications of his working organizations, prior experience and performance record.

The Agency 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 for examination as may be required by the Agency to ascertain bidder's responsibility and capability to perform the contract.

If the bidder fails or refuses to supply any of the documents or information set forth in paragraph (a) hereof or fails to comply with any of the requirements thereof, the Agency may reject the bid.

- (ii) When directed by the Agency, the bidder, or a responsible officer, agent or employee of the bidder, must submit to an oral examination to be conducted by the Agency 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.

b. Vendex Questionnaires:

- (i) 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. You will be required to submit the completed reports to the Agency within 10 days of notice.
- (ii) The same requirements apply to all subcontractors.

c. Employment report:

- (i) 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 has fewer than 50 employees, although the contract value exceeds \$100,000, you need only submit a "Less Than 50 Employees Certificate". You will be required to submit the completed Employment report to the Agency within 10 days of notice.
- (ii) The same requirements apply to all subcontractors.

d. Americans with Disability Act

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

e. Affirmative Action and 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.

f. 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.

12. Comptroller Certificate

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

13. 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.

14. 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:

- A. 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: Acknowledgment 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: Omitted

Item 6: Omitted

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

Item 7: Insurance Certificates

See Article 7 of Appendix A for Insurance requirements for this Bid.

Item 8: For the Contractor and its elevator test witness personnel, the required

Licenses for the Elevator Inspection Agency, Elevator Agency Director(s) and Elevator Inspector(s) (at least two such licenses) issued by the NYC Department of Buildings (DOB) in accordance with **(N.Y. ADC. LAW § 28-304.6.1: NY Code - Section 28-304.6.1: Inspection), and**

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: References

Contact information for three (3) project/references who can verify the qualifications of and the Bidder's reliability, accuracy and quality of work performed within the past five (5) years. References must be able to verify the Bidder's ability to perform the scope of work specified herein, and who can accurately assess the quality of the workmanship. DOHMH references are not acceptable for this Bid.

- C. The following items must be completed and returned within 10 days of notice by the Department of the winning Bidder:

Item 1: Vendex Questionnaires

Required for bids exceeding \$100,000.

Item 2: Employment Report

Required for bids exceeding \$100,000.

- D. **Do not return Sections I, II, or III of this IFB; also, do not return the attached Agreement with the Bid Submission. However please review and submit the forms as requested in the Appendices.**
- E. The Agency will send the entire Bid/Agreement to the winning Contractor for execution, upon award of this contract. It will contain this entire Bid Package, as part of the contract.

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New York City
Department of Health and Mental Hygiene

Bid Submission for:

Elevator Test Witness

PIN: 14BS027700R0X00

Cover Sheet/Checklist

Name of Bidder: _____ Date submitted: _____

The following items, as checked by the Bidder, are included with this Bid:

- | | | | |
|----------------|------------------------------------------------|---|---|
| Item 1: | Bidder Representations | [|] |
| Item 2: | Bid Sheet | [|] |
| Item 3: | Acknowledgment of Addenda | [|] |
| Item 4: | Experience Questionnaire | [|] |
| Item 7: | Insurance Certificates | [|] |
| Item 8: | Agency, Director and Inspector Licenses | [|] |

Item 9: Audited Financial Statement []

Item 10: References []

Appendix A Article 7 – General Provisions – Insurance Requirements **DO NOT RETURN**

Appendix B Certification by Broker []

Appendix C Tax Affirmation []

Appendix D No Bid Response []

Appendix E Iran Contractor Divestment Rider []

*Sample Agreement Signature Pages []

***Additional completed copies of these pages will be requested from the selected vendor.**

Item 1: Bidder Representations

Name of Bidder: _____

Place of Business: _____

Telephone No. _____ Tax Identification No: _____

Fax No. _____ E-Mail Address: _____

Date of Bid: _____

Bidder is: Individual () Partner () Corporation ()

A). If Bidder is Individual:

Home Address of Bidder _____

B). If Bidder is Partnership:

Name and Home Address of Partners:

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 therein 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 corporation other than herein before named has any interest in this bid, or in the Contract proposed to 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 6-108 of

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

7. Compliance Report: The bidder, as an individual, or as a member, partner, director or officer of the bidder, if the same be a firm, partnership, or corporation, (1) represents that their attention has been specifically drawn to Executive Order No. 50, dated April 25, 1980, on Equal Employment Compliance of the contract 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 therefore, the bidder will submit written verification of such financial capability in a form that is acceptable to the department.
9. That said bidder has visited and examined the site of the work and has carefully examined the Contract in the form approved by the Corporation Counsel, and will execute the Contract and perform all of its items, covenants and conditions, and will provide, furnish and deliver all the work, materials, supplies, tools and appliances for all labor and materials necessary or required for

the hereinafter named work, all in strict conformity with the Contract.

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

[NO FURTHER TEXT ON THIS PAGE]

Item 2: Bid Sheet

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

NOTE #1: The Number of Units for each type of service shall be used for bid purposes only. The Number of Units shown on this page is an **estimate only**, and the Department of Health and Mental Hygiene shall not be bound thereby. The Unit Bid Prices shall remain firm for the duration of this agreement.

In accordance with the payment provisions of this Contract, payments for services performed shall be made in accordance with the Invoices submitted and approved for services performed by the lowest responsive and responsible bidder, or other bidder, whose bid is accepted pursuant to Appendix G.

The undersigned agrees, if this bid is accepted, that the undersigned will, within 10 days of receipt of notice of award, submit executed copies of insurance policies as may be required, execute the Agreement set forth in this Invitation for Bid, and 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:**

Bid Sheet for Elevator Test Independent Witness

PIN: 14BS027700R0X00

Anticipated Term of Agreement: 5 years, 7/1/14-7/31/19

| A | B | C | D | E |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------|
| ITEM | DESCRIPTION | UNIT BID PRICE | ESTIMATED QUANTITIES | EXTENDED COSTS (C x D) |
| 1 | <p align="center">Category 1 Year Inspection/Test and DOB Filing (annual inspection) with Maintenance Evaluation Audit)</p> | <p align="center">\$ _____</p> <p align="center">Rate Includes Inspection/Test and DOB Filing and Maintenance Evaluation Audit</p> | <p>210 (tests performed)</p> | <p align="center">\$ _____</p> <p align="center"><u>(C x D)</u></p> |
| 2 | <p align="center">Category 3* (Three Year Inspection/Test and DOB Filing) (With Maintenance Evaluation Audit) *for Hydraulic Device at one location</p> | <p align="center">\$ _____</p> <p align="center">Rate Includes Inspection/Test and DOB Filing and Maintenance Evaluation Audit</p> | <p>2(tests performed)</p> | <p align="center">\$ _____</p> <p align="center"><u>(C x D)</u></p> |
| 3 | <p align="center">Category 5 (Five Year Inspection/Test and DOB Filing) (With Maintenance Evaluation Audit)</p> | <p align="center">\$ _____</p> <p align="center">Rate Includes Inspection/Test and Maintenance Evaluation Audit</p> | <p>100 (tests performed)</p> | <p align="center">\$ _____</p> <p align="center"><u>(C x D)</u></p> |

| | | | | |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------------------|
| 4 | Elevator Inspection/Test Rate (For Additional Test/Inspection Deficiencies Correction | \$ _____ Per Deficiencies Test/Inspection and DOB Filing and Violations Removal DOB Consultations | 200 hrs. | \$ _____ (C x D) |
| 5 | Allowance for Additional Services during the full term (\$125.00 per hour for hourly services of Elevator Inspector in addition to above noted services) | \$ 50,000.00 | \$50,000 | \$50,000 |
| TOTAL BID PRICE (Sum the Extended Costs of Column E) | | | | \$ _____ |

Total Bid Price in words _____

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

Bidder: _____
(Full Legal Name of Company)

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

Attest: _____

TO BE NOTARIZED:

Sworn to before me this ___ day of
_____, 20

(Notary Public or Commissioner of Deeds)

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(TO BE NOTARIZED)

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

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(TO BE NOTARIZED)

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

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(TO BE NOTARIZED)

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

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Item 3: Acknowledgment 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 IFB:

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 IFB.

DATE __/__/__

BIDDER (NAME) _____

BIDDER (SIGNATURE) _____

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Item 4: Experience Questionnaire:

Bidders Name _____

Telephone No: _____ Federal Tax Identification No: _____

Fax No: _____ E-Mail Address: _____

Submitted by A Corporation; A Co-Partnership; An Individual Date: _____

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: _____

Do you intend to use subcontractors to perform the services requested. Yes No

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? _____

(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? _____

(If Yes, give details) _____

5. Name 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?

(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?

If so, 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? _____

If so, state name of individual, name of Owner and reason therefor. _____

9. In what other lines or business are you financially interested?

10. For what corporations or individuals have you performed any elevator inspection, and to whom do you refer?

11. For what cities have you performed elevator inspection, and to whom do you refer?

12. For what counties have you performed any elevator inspection, and to whom do you refer?

13. For what State Bureaus or Departments have you performed any elevator inspection, and to whom do you refer?

14. Have you ever performed any elevator inspection for the US Government? _____
If so, when and to whom do you refer?

15. What projects has your organization completed within the last five years?

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____

Original 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: \$ _____

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____

Original 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: \$ _____

Original 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: \$ _____

Original Scheduled Completion Date: _____ Actual Completion Date: _____

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

16. 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: _____

Percentage of Contract Time elapsed as of this date: _____

Percentage of Work completed as of this date: _____

If Percent of elapsed time exceeds percentage of work completed, give reasons therefor:

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Contract Time: _____

Percentage of Contract Time elapsed as of this date: _____

Percentage of Work completed as of this date: _____

If Percent of elapsed time exceeds percentage of work completed, give reasons therefor:

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Contract Time: _____

Percentage of Contract Time elapsed as of this date: _____

Percentage of Work completed as of this date: _____

If Percent of elapsed time exceeds percentage of work completed, give reasons therefor:

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Contract Time: _____

Percentage of Contract Time elapsed as of this date: _____

Percentage of Work completed as of this date: _____

If Percent of elapsed time exceeds percentage of work completed, give reasons therefor:

Dated at _____

This _____ day of _____, 20 _____

Name of Organization

By 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 _____

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SECTION V - AGREEMENT

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AGREEMENT dated the 1st. day of _____, 201____ 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 42-09 28th Street, Long Island City, New York 11101 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:

- A. **Services and Activities.** Contractor shall provide the services and activities in program areas listed and described in the Scope of Work listed above in Scope of Services – Section I.
- B. **Budget.** Contractor shall provide such services and activities in accordance with the Budget – Item 2. Bid Sheet.

CHAPTER I: THE CONTRACT AND DEFINITIONS

ARTICLE 1: THE CONTRACT

Except for titles, subtitles, headings, running headlines, tables of content and indices (all of 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 General Conditions, or General Provisions;
- 1.04 The Specifications (Scope of Services);
- 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" or "Services" 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 general provisions and specifications annexed to and made part of 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

6.01 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.

6.02 Electronic Funds Transfer

A. In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached “EFT Vendor Payment Enrollment Form,” in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

B. The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes

of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

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 and 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: AUDIT

CHAPTER IV: TIME PROVISIONS

ARTICLE 11: 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 12: EXTENSION OF TIME

- 12.01 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.
- 12.02 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 13: 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 14: 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.

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CHAPTER V: SUBCONTRACTS AND ASSIGNMENTS

ARTICLE 15: SUBCONTRACTS

- 15.01 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 the Contractor 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.
- 15.02 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 the Contractor decides to do the work himself. No subcontractor shall be permitted on the site unless such subcontractor is approved.
- 15.03 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.
- 15.04 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.
- 15.05 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 the Contractor has made such payment.
- 15.06 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.

- 15.07 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.
- 15.08 No subcontractor shall be permitted to perform work at the site until such subcontractor has furnished satisfactory evidence of insurance covering Workmen's Compensation, Public Liability and Property Damages as required.
- 15.09 The Contractor shall promptly, upon request, file with the Director a conformed copy of the subcontract, with cost of contract.
- 15.10 The provisions of this Section 15 of this Contract shall be in addition to the terms and conditions with respect to subcontracting set forth in Article 3, Section 3.02 of Appendix A hereto.

CHAPTER VI: CONTRACTOR'S SECURITY AND GUARANTY

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

ARTICLE 16: 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 23 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 23 hereof. On contracts where performance and payment bonds are executed, Article 21 does not apply.

16.01 POWERS OF THE INSPECTOR, THE DIRECTOR AND THE COMMISSIONER

ARTICLE 17: THE DIRECTOR

The Director shall not have the power to issue an extra work order, and the performance of such work on the order of the Director without thereafter obtaining written confirmation thereof from the Commissioner, in accordance with Article 3 hereof, shall constitute a waiver of any right to extra 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 18: THE COMMISSIONER

- 18.01 The Commissioner, in addition to those matters elsewhere herein expressly made subject to his determination, direction or approval, shall have the power.
- 18.02 To review and determine any and all questions in relation to this Contract and its performance; and
- 18.03 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
- 18.04 To suspend the whole or any part or the work whenever in his judgment such suspension is required (a) in the interest of the City generally, or (b) to coordinate 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 19: 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:

- 19.01 from showing the true and correct classification, amount, quality or character or 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
- 19.02 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 VII: LABOR PROVISIONS

ARTICLE 20: EMPLOYEES

- 20.01 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
- 20.02 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 21: 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 6-109 of the New York City Administrative Code, as amended.

21.01 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.

21.02 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.

21.03 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.

21.04 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.

21.05 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.

- 21.06 In the event of any breach or violation of any of the provisions of this Article 28, and in addition to any other provisions above, pertaining to such breach or violation, no contracts shall be awarded to the Contractor or subcontractor, as the case may be, or to any firm, corporation, partnership or association in which the Contractor or subcontractor has a controlling interest until three years have elapsed from the date of such breach.
- 21.07 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 6-109 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.
- 21.08 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 6-109 of the New York City Administrative Code .
- 21.09 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 6-109 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.

- 21.10 This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of Section 6-109 of the Administrative Code for the award of the Contract.
- 21.11 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 22: 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 VIII: CONTRACTOR'S DEFAULT

ARTICLE 23: LIQUIDATED DAMAGES.

- 23.01 In case the Contractor shall fail to complete the work within the time fixed for such completion in the Appendix A, or within the time to which such completion may have been extended, the Contractor must pay to the City the sum fixed in the General Conditions Appendix A, for each and every calendar day that the time consumed in completing the work exceeds the time allowed therefor; 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.
- 23.02 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.

- 23.03 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 24: 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:

- 24.01 The Contractor becomes insolvent or if
- 24.02 The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
- 24.03 A voluntary or involuntary petition in bankruptcy be filed by or against the Contractor; or if
- 24.04 The Contractor fails to commence work when notified to do so by the Commissioner; or if
- 24.05 The Contractor shall abandon the work; or if
- 24.06 The Contractor shall refuse to proceed with the work when and as directed by the Commissioner; or if
- 24.07 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
- 24.08 The Contractor shall sublet, assign, transfer, convey or otherwise dispose of this Contract other than as herein specified; or if

- 24.09 A Receiver or Receivers are appointed to take charge of the Contractor's property or affairs; or if
- 24.10 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
- 24.11 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
- 24.12 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
- 24.13 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
- 24.14 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. Before the Commissioner shall exercise his right to declare the Contractor in default by reason of the conditions set forth in Items numbered 31.1, 31.4, 31.5, 31.6, 31.7, 31.10, 31.11, 31.13 and 31.14, 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
- 24.15 The Contractor fails to secure and maintain all required insurance.

**ARTICLE 25: 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 26: QUITTING THE SITE

Upon receipt of such notice the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit any and all site(s) specified in such notice.

ARTICLE 27: COMPLETION OF THE WORK

- 27.01 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.
- 27.02 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.
- 27.03 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 28: PARTIAL DEFAULT

- 28.01 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 or 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.

- 28.02 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 29: 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 or 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 30: OTHER REMEDIES

- 30.01 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.
- 30.02 The previous provisions of this Chapter shall be in addition to any and all other legal or equitable remedies permissible in the premises.

CHAPTER IX: MISCELLANEOUS PROVISIONS

ARTICLE 31: CONFLICTS OF INTEREST

- 31.01 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.
- 31.02 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.
- 31.03 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 32: 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 33: CONTRACTOR'S WARRANTIES

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

- 33.01 That he is financially solvent, sufficiently experienced and competent to perform the work; and
- 33.02 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
- 33.03 That he has read and complied with all requirements set forth in the Information for Bidders.

ARTICLE 34: CLAIMS AND ACTIONS THEREIN

- 34.01 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;
- 34.02 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.

34.03 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.

34.04 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 35: 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 36: 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 37: SERVICE OF NOTICES

- 37.01 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.
- 37.02 Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Commissioner.
- 37.03 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 38: 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 39: 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 40: TAX EXEMPTION

- 40.01 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.
- 40.02 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.
- 40.03 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.
- 40.04 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.

- 40.05 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 otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.
- 40.06 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.
- 40.07 The Contractor and his subcontractors and material men 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 whom or which they purchase supplies and materials for the performance of the work covered by this Contract.

- 40.08 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 41: TERMINATION BY THE CITY

In addition to termination pursuant to any other Article of this Contract, including without limitation, pursuant to Article 10 of Appendix A hereto, 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:

- 41.01 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;
- 41.02 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, subsections i and ii of this Article.

41.03 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

41.04 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.

41.05 Direct Cost shall not include overhead.

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

41.07 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.

41.08 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.

41.09 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 42: CHOICE OF LAW, CONSENT TO
JURISDICTION AND VENUE

ARTICLE 43: 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 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.

[NO FURTHER TEXT FOR THIS PAGE]

ARTICLE 44: PRICING.

- 44.01 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.
- 44.02 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 .
- 44.03 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.
- 44.04 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.
- 44.05 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.
- 44.06 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.

IN WITNESS WHEREOF, the Chief Operating Officer/Executive Deputy Commissioner, on behalf of the City of New York, and the Contractor, have executed this agreement in triplicate.

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

By: _____
Chief Operating Officer and Executive Deputy Commissioner

(Print full legal name of Contractor)

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

(Place Seal Here)

CORPORATION COUNSEL CONTRACT APPROVAL

Agency DOHMH

E-PIN 81614B0003

Contractor

Approved as to form

Certified as to legal authority

Electronically Signed By STEVEN CUSHMAN

Date 12/05/2013 12:04

Acting Corporation Counsel

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ACKNOWLEDGMENT BY COMMISSIONER

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this _____ day of _____, 20_____ before me personally
came _____, to me known and known to me to be the Deputy Commissioner of the
Department of Health and Mental Hygiene of the City of New York, the person described in and who is
duly authorized to execute the foregoing instrument on behalf of the Commissioner, and she
acknowledged to me that she executed the same for the purpose therein mentioned.

=====

Notary Public or Commissioner of Deeds

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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

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APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

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

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

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

F. “Comptroller” shall mean the Comptroller of the City of New York.

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

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

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

J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of

the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

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

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

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

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

Section 2.02 Conflicts of Interest

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

or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

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

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

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

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

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

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in

a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

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

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

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

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

Section 2.05 Political Activity

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

Section 2.06 Religious Activity

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

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

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The

Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the

acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

Section 4.04 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.05 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

Section 4.06 Non-Discrimination: New York State Labor Law § 220-e

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

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

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

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

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

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

Section 4.07 Non-Discrimination: Admin. Code § 6-108

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

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

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

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

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.08 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

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

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

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

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

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

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services (“DLS”); and

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

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held

pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

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

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

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

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final

determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

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

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

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

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

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section,

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

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

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

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the

material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

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

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

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

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

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

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

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that

existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

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

Section 7.03 Professional Liability Insurance

A. At the Department’s direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement

arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

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

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

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

Section 7.05 Unemployment Insurance

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

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

Section 7.08 Proof of Insurance

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

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

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

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

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

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

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

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following

information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

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

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

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

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

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

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

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

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

Section 8.06 Actions By or Against Third Parties

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

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

Section 8.07 Withholding of Payments

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

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

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

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

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

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

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

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

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

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of

services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

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

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

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

Section 10.03 Contractor Default

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

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

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating

to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

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

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

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

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

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

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

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

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

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

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

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting

forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

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

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

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

Section 10.04 Force Majeure

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

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services)

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

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

Section 10.05 Procedures for Termination

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

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

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

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

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

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

Section 10.06 Miscellaneous Provisions

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

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

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

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

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

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

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

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

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

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

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

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

D. Presentation of Dispute to Agency Head.

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

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the

CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

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

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

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

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

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement

shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

Section 13.06 Voter Registration

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

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

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

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

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person

indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. display any political preference or party allegiance;

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

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

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

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

Section 13.04 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C.

Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

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

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

Section 13.05 MacBride Principles

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

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

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

Section 13.06 Access to Public Health Insurance Coverage Information

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

B. **Applicability to Certain Contractors.** This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. “Contractors” to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

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

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

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

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

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

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the

commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

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

Section 13.07 Distribution of Personal Identification Materials

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

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

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

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

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

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APPENDIX B

CERTIFICATION BY BROKER

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

CERTIFICATION BY BROKER

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

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

NOTARY PUBLIC

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APPENDIX C

Tax Affirmation

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

Full name of proposer or bidder: _____

Address: _____

City _____ State _____ Zip _____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

() A Individual or Sole Proprietorship SS# _____

() B Partnership, Joint Venture or 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. N)

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The City of New York

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Michael R. Bloomberg
Mayor

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



nyc.gov/health

APPENDIX D

Charter Section 312(a) Certification

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

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

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

(Commissioner) (Agency Chief Contracting Officer)

12/11/13

Date

Displacement Determination Form – Pursuant to City Charter § 312(a)
(for PSRs or equivalent pre-procurement documents)

This form must be used to certify whether or not there is displacement in the instant contracting action, as defined in City Charter § 312(a) (as amended by Local Law 63 of 2011). You can either certify that there is no displacement by completing Part 1 of this form, or you can certify that there is displacement by completing Part 2 of this form.

If the contract that you are awarding is a task order contract that does not simultaneously result in the award of a first task order, then you must check the box on the bottom of this page; displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. If the contract that you are awarding does simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

If you have any questions about Local Law 63 or about completing this form, please contact the Mayor's Office of Contract Services at APTLL63@cityhall.nyc.gov or (212) 788-0010.

Procurement Description:

APT EPIN:

Your Name: M. Bari Khan

Phone: 347 396-6438

Email: bkhan@health.nyc.gov

Please specifically identify the service(s) being procured.

Elevator Test Witness - Competitive Sealed Bid -

The Department requires the services of an "Elevator Director", licensed by the New York City Department of Buildings, to witness and file for all one-year and five-year elevator tests performed by the DOHMH Elevator Services Contractor

If the contract to be awarded as a result of this procurement action is a task order contract (multiple or single award and multiple or single agency) that does not simultaneously result in the award of a first task order, then displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. (Check this box *only* if you are completing this form for a task order contract that will *not* simultaneously result in the award of the first task order. If you check this box, do not fill out the remainder of this form.)

If the contract to be awarded as a result of this procurement action *does* simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

Part 1: Certification of No Displacement

The Agency has determined that the contract resulting from this procurement action *will not* result in the displacement of any City employee within this Agency, as defined by Charter § 312(a).

The basis upon which the Agency has made this determination (Please answer *all* questions under Part 1):

Do any civil service and/or job titles within this Agency currently perform the services sought by the proposed contract and/or services of a substantially similar nature or purpose?

Yes No

If so, list the names of such titles and the extent to which Agency employees within such titles currently perform such services.

Do the services sought by the proposed contract expand, supplement, or replace existing services?

Yes No

In either event, include a detailed description comparing the services sought by the proposed contract with such existing services.

Is there capacity within the Agency to perform the services sought by the proposed contract?

Yes No

If not, provide a detailed description specifying the ways in which the Agency lacks such capacity.

DOHMH has no existng staff with the requisite title, experience or expertise to perform the services sought via this procurement.

For the term of the proposed contract, list the projected headcount of employees within such titles or employees who perform such services and/or services of a substantially similar nature or purpose.

0



Check this box to confirm that none of the below events have occurred within the Agency in the past three years.

- The displacement of a City employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- The announcement of spending reductions in connection with a budgetary program, including but not limited to a Program to Eliminate the Gap, that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- Any other statement by an Agency or by the Mayor of a specific anticipated employment action that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose.

List any other bases for the Agency's determination that the contract resulting from this procurement action will not result in the displacement of any City employee within this Agency.

Part 2: Certification of Displacement



The agency has determined that displacement, as defined by Charter § 312(a), has or will occur as a result of this contracting action. The agency has performed the required cost-benefit analysis, as described in Charter § 312(a).

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

“NO BID RESPONSE”

PIN: 14BS027700R0X00

_____ **HAS OPTED NOT TO**
BID ON
(Contractor name)

ELEVATOR TEST WITNESS

For the following reason(s):

Contact Name _____

Phone _____

(Signature)

Date ____/____/____

Please return this form to the DOHMH Authorized Agency Contact by the Bid Due Date.

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APPENDIX F

Iran Contractor Divestment Rider

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

- a) The person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

- 1. The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or**

- 2. The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.**

[NO FURTHER TEXT ON THIS PAGE]

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

BIDDER'S CERTIFICATION

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____, 20__

SIGNATURE

PRINTED NAME

TITLE

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

Notary Public

Dated:



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APPENDIX G

Whistleblower Protection Expansion Act Rider

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,
 - (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
 - (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
 - (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

- (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
- (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

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

(e) This rider is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

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

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

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

Local Law 30-2012

By Council Members Garodnick, Barron, Brewer, Chin, Dromm, Ferreras, Fidler, Gennaro, Gentile, Jackson, James, Koppell, Lander, Mark-Viverito, Mealy, Mendez, Palma, Rose, Seabrook, Vann, Williams, Nelson, Foster, Van Bramer, Halloran and Koo

A Local Law to amend the administrative code of the city of New York, in relation to requiring city contractors and subcontractors to post information concerning their employees' reporting of fraud, false claims, criminality or corruption and their whistleblower protection rights.

Be it enacted by the Council as follows:

Section 1. Title 6 of the administrative code of the city of New York is amended by adding a new section 6-132 to read as follows:

§6-132. Posting of notice of whistleblower protection rights.

a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) "Contract" shall mean any written agreement, purchase order or instrument valued in excess of one hundred thousand dollars or more pursuant to which a contracting agency is committed to expend or does expend funds in return for work, labor, services, supplies,

equipment, materials, or any combination of the foregoing, and shall include a subcontract between a contractor and a subcontractor.

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

(3) "Contractor" shall mean a person or business entity who is a party to a contract with a contracting agency valued in excess of one hundred thousand dollars, and "subcontractor" shall mean a person or entity who is a party to a contract with a contractor valued in excess of one hundred thousand dollars.

b. Posting of information about reporting fraud, false claims, criminality or corruption. Every contractor or subcontractor having a contract valued in excess of one hundred thousand dollars or more shall post a notice, in a prominent and accessible place on any site where work pursuant to such contract or subcontract is performed, containing information about

(1) how its employees can report to the New York city department of investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with such contract or subcontract, and

(2) the rights and remedies afforded to its employees under sections 7-805 and 12-113 of the administrative code for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with such contract or subcontract.

c. Contract provisions. Every city contract or subcontract valued in excess of one hundred thousand dollars shall contain a provision detailing the requirements of this section. If a contracting agency determines that there has been a violation of this section, it shall take such action it deems appropriate consistent with the remedies available under the contract or subcontract.

d. Nothing in this section shall be construed to limit an agency's authority to cancel or terminate a contract, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a contractor city business.

§2. This local law shall take effect 120 days after its enactment into law and shall apply to contracts and subcontracts for which bids or proposals are first solicited after such effective date; provided, however, that the commissioner of investigation and the city's chief procurement officer shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

Local Law 33-2012

By Council Members Garodnick, Halloran, Dromm, Barron, Brewer, Ferreras, Fidler, Gentile, Jackson, James, Koo, Koppell, Lander, Levin, Mark-Viverito, Palma, Rose, Sanders Jr., Seabrook, Van Bramer, Vann, Williams, Rivera, Rodriguez, Foster, Chin, Mealy, Gennaro and Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to extending whistleblower protection for officers and employees of city contractors and subcontractors.

Be it enacted by the Council as follows:

Section 1. This bill shall be known and may be cited as the "Whistleblower Protection Expansion Act."

§ 2. Section 12-113 of the administrative code of the city of New York, as amended by local law number 10 for the year 2003, paragraphs 4, 5 and 6 of subdivision a and paragraph 3 of subdivision b as added by local law number 25 for the year 2007, and subdivision f as amended by local law number 25 for the year 2007, is amended to read as follows:

§ 12-113 Protection of sources of information. a. Definitions. For purposes of this section:

1. "Adverse personnel action" shall include dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

2. "Remedial action" means an appropriate action to restore the officer or employee to his or her former status, which may include one or more of the following:
- (i) reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action, or, as appropriate, to an equivalent position;
 - (ii) reinstatement of full seniority rights;
 - (iii) payment of lost compensation; and
 - (iv) other measures necessary to address the effects of the adverse personnel action.
3. "Commissioner" shall mean the commissioner of investigation.
4. "Child" shall mean any person under the age of nineteen, or any person ages nineteen through twenty-one if such person receives instruction pursuant to an individualized education plan.
5. "Educational welfare" shall mean any aspect of a child's education or educational environment that significantly impacts upon such child's ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.

6. "Superior officer" shall mean an agency head, deputy agency head or other person designated by the head of the agency to receive a report pursuant to this section, who is employed in the agency in which the conduct described in such report occurred.

7. "Contract" shall mean any written agreement, purchase order or instrument having a value in excess of one hundred thousand dollars pursuant to which a contracting agency is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, and shall include a subcontract between a covered contractor and a covered subcontractor. Such term shall not include contracts or subcontracts resulting from emergency procurements or that are government-to-government procurements.

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

9. "Covered contractor" shall mean a person or business entity who is a party or a proposed party to a contract with a contracting agency valued in excess of one hundred thousand dollars, and "covered subcontractor" shall mean a person or entity who is a party or a proposed party to a contract with a covered contractor valued in excess of one hundred thousand dollars.

10. "Officers or employees of an agency of the city" shall be deemed to include officers or employees of local development corporations or other not-for-profit corporations that are parties to contracts with contracting agencies and the governing boards of which include city officials acting in their official capacity or appointees of city officials. Such officers and employees shall not be deemed to be officers or employees of a covered contractor or covered subcontractor.

b. 1. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the commissioner, or (ii) to a council member, the public advocate or the comptroller, who shall refer such report to the commissioner. For purposes of this subdivision, an agency of the city shall be deemed to include, but not be limited to, an agency the head or members of which are appointed by one or more city officers, and the offices of elected city officers.

2. No officer or employee of a covered contractor or covered subcontractor shall take an adverse personnel action with respect to another officer or employee of such contractor or

subcontractor in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of such contractor or subcontractor, which concerns a contract with a contracting agency, (i) to the commissioner, (ii) to a council member, the public advocate or the comptroller, who shall refer such report to the commissioner, or (iii) to the city chief procurement officer, agency chief contracting officer, or agency head or commissioner of the contracting agency, who shall refer such report to the commissioner.

3. Every contract or subcontract in excess of one hundred thousand dollars shall contain a provision detailing the provisions of paragraph two of this subdivision and of paragraph two of subdivision e of this section.

[2.] 4. Upon request, the commissioner, council member, public advocate or comptroller receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.

[3.] 5. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to present a substantial and specific risk of harm to the health, safety or educational

welfare of a child by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the commissioner, (ii) to a council member, the public advocate, the comptroller or the mayor, or (iii) to any superior officer.

c. An officer or employee (i) of an agency of the city, or (ii) of a public agency or public entity subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter who believes that another officer or employee has taken an adverse personnel action in violation of subdivision b of this section may report such action to the commissioner.

d. 1. Upon receipt of a report made pursuant to subdivision c of this section, the commissioner shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken.

2. Within fifteen days after receipt of an allegation pursuant to subdivision c of this section of a prohibited adverse personnel action, the commissioner shall provide written notice to the officer or employee making the allegation that the allegation has been received by the commissioner. Such notice shall include the name of the person in the department of investigation who shall serve as a contact with the officer or employee making the allegation.

3. Upon the completion of an investigation initiated under subdivision c of this section, the commissioner shall provide a written statement of the final determination to the officer or employee who complained of the retaliatory adverse personnel action. The statement shall include the commissioner's recommendations, if any, for remedial action, or shall state the commissioner has determined to dismiss the complaint and terminate the investigation.

e. 1. Upon a determination that a retaliatory adverse personnel action has been taken with respect to an officer or employee of an agency of the city in violation of paragraph one or five of subdivision b of this section, the commissioner shall without undue delay report his or her findings and, if appropriate, recommendations to the head of the appropriate agency or entity, who (i) shall determine whether to take remedial action and (ii) shall report such determination to the commissioner in writing. Upon a determination that the agency or entity head has failed to take appropriate remedial action, the commissioner shall consult with the agency or entity head and afford the agency or entity head reasonable opportunity to take such action. If such action is not taken, the commissioner shall report his or her findings and the response of the agency or entity head (i) if the complainant was employed by an agency the head or members of which are appointed by the mayor, to the mayor, (ii) if the complainant was employed by a non-mayoral agency of the city, to the city officer or officers who appointed the agency head,

or (iii) if the complainant was employed by a public agency or other public entity not covered by the preceding categories but subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter, to the officer or officers who appointed the head of the public agency or public entity, who shall take such action as is deemed appropriate.

2. Any officer or employee of a covered contractor or covered subcontractor who believes that he or she has been the subject of an adverse personnel action in violation of paragraph two of subdivision b shall be entitled to bring a cause of action against such covered contractor or covered subcontractor to recover all relief necessary to make him or her whole. Such relief may include but shall not be limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorneys' fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the agency chief contracting officer or agency head or commissioner of the contracting agency of such action; provided, however, that failure to provide such notice shall not be

a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the city, any public agency or other public entity, or local development corporations or not-for-profit corporations the governing boards of which include city officials acting in their official capacity or appointees of city officials, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

f. Nothing in this section shall be construed to limit the rights of any officer or employee with regard to any administrative procedure or judicial review, nor shall anything in this section be construed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collective bargaining agreement or to prohibit any personnel action which otherwise would have been taken regardless of any report of information made pursuant to this section.

g. Violation of this section may constitute cause for administrative penalties.

h. The commissioner shall conduct ongoing public education efforts as necessary to inform employees and officers of covered agencies and contractors of their rights and responsibilities under this section.

i. Not later than October thirty-first of each year, the commissioner shall prepare and forward to the mayor and the council a report on the complaints governed by this section

during the preceding fiscal year. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints.

§ 3. This local law shall take effect ninety days after its enactment into law; provided, however, that the provisions of this local law shall apply only to contracts or subcontracts solicited or renewed on or after such effective date.

[NO FURTHER TEXT ON THIS PAGE]

New York City Administrative Code section 7-805

Remedies of employees.

a.(1) Any officer or employee of the city of New York who believes that he or she has been the subject of an adverse personnel action, as such term is defined in paragraph one of subdivision a of section 12-113 of the administrative code of the city of New York; or

(2) any officer or employee of the city or state of New York, who believes that he or she has been the subject of a retaliatory action, as defined by section seventy-five-b of the civil service law; or

(3) any non-public employee who believes that he or she has been the subject of a retaliatory action by his or her employer, as defined by section seven hundred forty of the labor law because of lawful acts of such employee in furtherance of a civil enforcement action brought under this section, including the investigation, initiation, testimony, or assistance in connection with, a civil enforcement action commenced or to be commenced under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to: (i) an injunction to restrain continued discrimination, (ii) reinstatement to the position such employee would have had but for the discrimination or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

b. An employee described in subdivision a of this section may bring an action in any court of competent jurisdiction for the relief provided in this section.



REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

Department of Investigation (DOI) Complaint Bureau

212-825-5959

or by mail or in person at:

DEPARTMENT OF INVESTIGATION

80 MAIDEN LANE, 17th FLOOR

NEW YORK, NEW YORK 10038

Attention: COMPLAINT BUREAU

or file a complaint on-line at:

www.nyc.gov/doi

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

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

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APPENDIX H

SUBCONTRACTOR TRACKING NOTICE

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

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

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

Contractor hereby agrees to these provisions.

APPENDIX I

BEST VALUE ADDENDUM/NOTICE TO BIDDERS

Pursuant to recent amendments to State law expected to take effect prior to the award of this contract, purchase contracts subject to GML §103 (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article eight of the Labor Law) shall be awarded on the basis of best value as defined in the State Finance Law §163. State Finance Law §163(1)(j) defines best value as that bid or offer that optimizes quality, cost, and efficiency. Accordingly, this contract will be awarded on the basis of best value to the City, which will be determined to be the lowest responsive and responsible bidder, provided however that the Mayor may, pursuant to Charter §313(b)(2), direct the agency to award this contract to other than the low bidder in the best interests of the City by determining, in writing, that another bid optimizes quality, cost and efficiency and is thus the best value to the City. An award to other than the low bidder may only be made to a bidder whose bid is within 10% of the lowest responsive and responsible bid.