THE CITY OF NEW YORK

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

INVITATION FOR BID (IFB)

AND

AGREEMENT

FOR

PLUMBING SERVICES

DATE OF ISSUE: December 22, 2014

PIN 15BS000600R0X00

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AUTHORIZED AGENCY CONTACT

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

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New York City Department of Health and Mental Hygiene
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EPIN: 81615B0001
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NOTICE TO BIDDERS


THE CONTRACTOR SHALL INCLUDE IN EACH AND EVERY SUBCONTRACT A REQUIREMENT THAT THE SUBCONTRACTOR, AND SUBCONTRACTORS OF ALL TIERS, BECOME A SIGNATORY TO AND BOUND TO THE PLA WITH RESPECT TO ALL SUBCONTRACTED WORK. CONTRACTOR MUST ALSO HAVE ALL SUBCONTRACTORS OF ALL TIERS EXECUTE THE ATTACHED LETTER OF ASSENT PRIOR TO SUCH SUBCONTRACTORS PERFORMING ANY WORK IN PERFORMANCE OF THE WORK REQUIRED HEREUNDER. BIDDERS ARE ADVISED THAT THE CITY AND CITY AGENCIES HAVE ENTERED INTO MULTIPLE PROJECT LABOR AGREEMENTS. THE TERMS OF EACH PROJECT LABOR AGREEMENT, WHILE SIMILAR, ARE NOT IDENTICAL. ALL BIDDERS SHOULD CAREFULLY READ THE ENTIRE PLA THAT GOVERNS THE WORK REQUIRED PURSUANT TO THIS CONTRACT.

PLEASE BE ADVISED THAT THE PLA ATTACHED AS APPENDIX M, HAS BEEN EXTENDED TO APPLY TO CONTRACTS LET PRIOR TO DECEMBER 31, 2014, INCLUDING THE CONTRACT TO BE LET AS A RESULT OF THIS IFB. OTHER THAN EXTENDING THE EXPIRATION DATE, ALL OTHER TERMS OF THE PLA CONTINUE TO APPLY AND ARE IN FULL FORCE AND EFFECT.

ADDITIONAL NOTICE TO BIDDERS:


HOWEVER, COMPLETE AND SUBMIT ONLY THE BID PACKAGE (SECTION IV).

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

A. To the extent that the terms of the PLA conflicts with any other terms of this information for Bidders, the terms of the PLA shall govern. Where, however, the Information for Bidders, including this Scope of Work, other additional terms and conditions contained in this IFB, and the requirement that the city’s
Law Department approves the agreement as to form and certification as to authority, the PLA does not supersede or eliminate those requirements.

B. In addition to the various provisions regarding work rules, Contractors should take special notice of the requirement that Contractors and subcontractors of all tiers are required to make payments to designated employee benefit funds, including potentially the direct payment by the city to the benefit fund of monies owed and corresponding withholding of payments to the Contractor. See PLA (Appendix M) Article 11, Section 2. The City strongly advises Contractors to read these provisions carefully and to include appropriate provisions in subcontracts to incorporate necessary requirements to ensure subcontractors’ adherence to the requirements of the PLA and of this IFB, as applicable.

C. This Contract is subject to the apprenticeship requirements of Labor Law §222 and to apprenticeship requirements established by the Department pursuant to Labor Law §816-b. Please be advised that the involved trades have apprenticeship programs that meet the statutory requirements of Labor Law 222(e) and the requirements set by the Department pursuant to Labor Law §816-b, contractors and subcontractors who agree to perform the Work pursuant to the PLA are participating in such apprenticeship programs within the meaning of Labor Law §222(e) and the Department’s directive.

D. The local collective bargaining agreements (CBAs) that are incorporated into the PLA as PLA Schedule A Agreements are available on computer disk from the Department’s Contract Officer upon the request of any prospective bidder. Please note that the “PLA Schedule A” is distinct from the Department’s Schedule A that is a part of this invitation for bids.

E. A contact list for the participating unions is set forth after the FAQs set forth below.

F. Below are answers to frequently asked questions (FAQs) about this PLA:

Q1. Does a contractor need to be signatory with the unions in the NYC Building and Construction Trades Council in order to bid on projects under the PLA?
A. No, any contractor may bid by signing and agreeing to the terms of the PLA. The contractor need not be signatory with these unions by any other labor agreement or for any other project.

Q2. Does a contractor agreeing to the PLA and signing the Letter of Assent create a labor agreement with these unions outside of the project covered by the PLA?
A. No, the PLA applies only to those projects that the Contractor agrees to perform under the PLA and makes no labor agreement beyond those projects.

Q3. Does the PLA affect the subcontractors that a bidder may utilize on the project?
A. Subject to the Department’s approval of subcontractors pursuant to Article 17 of the City’s Standard Construction Contract, a contractor may use any subcontractor, union or non-union, as long as the subcontractor signs and agrees to the terms of the PLA.

Q4. Are bidders required to submit Letters of Assent signed by proposed subcontractors with their bid in order to be found responsive?
A. No, bidders do not have to submit signed Letters of Assent from their subcontractors with their bid. Subcontractors, however, will be required to sign the letter of Assent prior to being approved by the Department.

Q5. May a contractor or subcontractor use any of its existing employees to perform this work?

A. Generally labor will be referred to the contractor from the respective signatory local unions. See PLA Article 4. However, contractors and subcontractors may continue to use up to 12% of their existing, qualifying labor force for this work, in accordance with the terms of PLA Article 4, Section 2B. Certified MWBEs for which participation goals are set pursuant to NYC Administrative Code §6-129 that are not signatory to any Schedule A CBAs may use their existing employees for the 2\textsuperscript{nd}, 4\textsuperscript{th}, 6\textsuperscript{th} and 8\textsuperscript{th} employee needed on the job if their contracts are valued at or under $500,000. For contracts valued at above $500,000 but under $1,000,000, such certified MWBEs may use their own employees for the 2\textsuperscript{nd}, 5\textsuperscript{th} and 8\textsuperscript{th} employees needed on the job in accordance with the provisions of PLA Article 4, Section 2C. If additional workers are needed by these MWBEs, the additional workers will be referred to the contractor from the signatory local unions subject to the contractor’s right to meet 12% of the additional needs with its existing, qualifying employees.

Q6. Must the City set MWBE participation goals for the particular project or contract in order for a certified MWBE to utilize the provisions of PLA Article 4, Section 2C?

A. No. PLA Article 4, Section 2(C) specifies what categories of MWBEs are eligible to take advantage of this provision (i.e., those MWBEs for which the City is authorized to set participation goals under §6-129). For purposes of section 2(C), it is not necessary for the project to be subject to §6-129 or for the City to have actually set participation goals for the particular contract or project. The result is the same where a projects receives State funding and therefore is subject of Article 15-A of the Executive Law.

Q7. May a contractor bring in union members from locals that are not signatory unions?

A. Referrals will be from the respective signatory locals and/or locals listed in schedule A of the PLA. Contractors may utilize ‘traveler provisions’ contained in the local collective bargaining agreements (local CBAs) where such provisions exist and/or in accordance with the provisions of PLA Article 4, Section 2.

Q8. Does a non-union employee working under the PLA automatically become a union member?

A. No, the non-union employee does not automatically become a union member by working on a project covered by the PLA. Non-union employees working under the PLA are subject to the union security provisions (i.e., union dues/agency shop fees) of the local CBAs while on the project. These employees will be enrolled in the appropriate benefit plans and earn credit toward various union benefit programs. See PLA Article 4, Section 6 and Article 11.
Q9. Are all contractors and subcontractors working under the PLA, including non-union contractors and contractors signatory to collective bargaining agreements with locals other than those that are signatories to the PLA, required to make contributions to designated employee benefit funds?

A. Contractors and subcontractors working under the PLA will be required to contribute on behalf of all employees covered by the PLA to established jointly trusteed employee benefit funds designated in the Schedule A CBAs and required to be paid on public works under any applicable prevailing wage law. See PLA Article 11, Section 2. The Agency may withhold from amounts due the contractor any amounts required to be paid, but not actually paid into any such fund by the contractor or a subcontractor. See PLA Article 11, Section 2 C.

Q10. What happens if a contractor or subcontractor fails to make a required payment to a designated employee benefit fund?

A. The PLA sets forth a process for unions to address a contractor or a subcontractor’s failure to make required payments. The process includes potentially the direct payment by the City to the benefit fund of monies owed and the corresponding withholding of payments to the Contractor. See PLA Article 11, Section 2. The City strongly advises Contractors to read these provisions carefully and to include appropriate provisions in subcontracts addressing these possibilities.

Q11. Does signing on to the PLA satisfy the Apprenticeship Requirements established for this bid?

A. Yes. By agreeing to perform the Work subject to the PLA, the bidder demonstrates compliance with the apprenticeship requirements imposed by this invitation for Bids.

Q12. Does the PLA provide a standard work day across all the signatory trades?

A. Yes, all signatory trades will work an eight (8) hour day, Monday through Friday with a day shift at straight time as the standard work week.

Q13. Does the PLA create a common holiday schedule for all the signatory trades?

A. Yes, the PLA recognizes eight (8) common holidays. See PLA Article 12, Section 4.

Q14. Does the PLA provide for a standard policy for ‘shift work’ across all signatory trades?

A. Yes. In addition, a day shift does not have to be scheduled in order to work the second and third shifts. See PLA Article 12, Section 3.

Q15. May the Contractor schedule overtime work, including work on a weekend?

A. Yes, the PLA permits the Contractor to schedule overtime work, including work on the weekends. See PLA Article 12, Sections 2, 3, and 5. To the extent that the Agency’s approval is required before a Contractor may schedule or be paid for overtime, that approval is still required notwithstanding the PLA language.
Q16. Are overtime payments affected by the PLA?
A. Yes, all overtime pay incurred Monday through Saturday will be at time and one half (1 ½). There will be no stacking or pyramiding of overtime pay under any circumstances. See PLA Article 12, Section 2. Sunday and holiday overtime will be paid according to each trades CBA.

Q17. Does the PLA contain special provisions for the manning of Temporary Services?
A. Yes. Where temporary services are required by specific request of the agency or construction manager, they shall be provided by the contractor’s existing employees during working hours in which a shift is scheduled for employees of the contractor. The need for temporary services during non-working hours will be determined by the agency or construction manager and may be limited to one person per applicable trade where practicable. There will be no stacking of trades on temporary services. See PLA Article 15.

Q18. What do the workers get paid when work is terminated early in a day due to inclement weather or otherwise cut short of 8 hours?
A. The PLA provides that employees who report to work pursuant to regular schedule and not given work will be paid two hours of straight time. Work terminated early for severe weather or emergency conditions will be paid only for time actually worked. In other instances where work is terminated early, the worker will be paid for a full day. See PLA Article 12, Sections 6 and 8.

Q19. Should a local collective bargaining agreement [local CBA] expire during the project will a work stoppage occur on a project subject to the PLA?
A. No. All the signatory unions are bound by the ‘no strike’ agreement as to the PLA work. Work will continue under the PLA and the otherwise expired local CBA(s) until the new local CBA(s) are negotiated and in effect. See PLA Articles 7 and 19.

Q20. May a contractor working under the PLA be subject to a strike or other boycott activity by a signatory union at another site while the contractor is a signatory to the PLA?
A. Yes. The PLA applies ONLY to work under the PLA and does not regulate labor relations at other sites even if those sites are in close proximity to PLA work.

Q21. If a contractor has worked under other PLAs in the New York City area, are the provisions in this PLA generally the same as the others?
A. While Project Labor Agreements often look similar to each other, and particular clauses are often used in multiple agreements, each PLA is a unique document and should be examined accordingly.

Q22. What happens if a dispute occurs between the contractor and an employee during the project?
A. The PLA contains a grievance and arbitration process to resolve disputes between the contractor and the employees. See PLA Article 9.
Q23. What happens if there is a dispute between locals as to which local gets to provide employees for a particular project or a particular aspect of a project?

A. The PLA provides for jurisdictional disputes to be resolved in accordance with the NY Plan. See PLA Article 10. A copy of the NY Plan is available upon request from the Department. The PLA provides that work is not to be disrupted or interrupted pending the resolution of any jurisdictional dispute. The work proceeds as assigned by the contractor until the dispute is resolved. See PLA Article 10, Section 3.
CONTACT INFORMATION FOR LOCAL UNIONS

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[NO FURTHER TEXT ON THIS PAGE]
Project Labor Agreement - Letter of Assent

Dear:

The undersigned party confirms that it agrees to be a party to and be bound by the New York Agency, Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Project Labor Agreement, its Schedules, Addenda and Exhibits are hereby incorporated by reference herein.

The undersigned, as a Contractor or Subcontractor (hereinafter Contractor) on the Project known as ___________________________ and located at ______________________________________________________ (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the Project Labor Agreement, a copy of which was received and is acknowledged, hereby:

(1) Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all schedules; amendments and supplements now existing or which are later made thereto;

(2) Agrees to be bound by the legally established collective bargaining agreements and local trust agreements as set forth in the Project Labor Agreement and this Agreement but only to the extent of Program Work and as required by the PLA.

(3) Authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor but only to the extent of Program Work as required by the PLA.

(4) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the Project and shall require labor harmony from every lower tier subcontractor it has engaged or may engage to work on the Project. Labor harmony disputes/issues shall be subject to the Labor Management Committee provisions.

(5) Agrees to secure from any Contractors) (as defined in said Agreement) which is or becomes a Subcontractor (of any tier), to it, a duly executed Agreement to be Bound in from identical to this document.

Dated: __________________________

___________________________________

(Name of Contractor or subcontractor)

___________________________________

By: ________________________________

Contractor or (Authorized Officer &

___________________________________

(Address)

___________________________________

(Phone) (Fax)

Contractor’s State License # (below):

___________________________________

Sworn to before me this ___________________________ day of ______________________, 2014

___________________________________

Notary Public
SECTION I: TIMETABLE

1. Release Date of this IFB: December 22, 2014

2. Pre-Bid Conference: January 13, 2015 at 10:00 A.M. to 11:30 A.M. on the 3rd Floor, Room 3-32.

   Attendance by bidders is optional but strongly recommended by DOHMH. To register for the conference, e-mail the name, title and affiliation of each attendee to Bids@health.nyc.gov. Please state “ATTENDEE PLUMBING SERVICES” in the subject line of the e-mail. On the day of the conference, please bring picture identification with you and arrive thirty minutes early to allow for the time that it will take to proceed through security.

3. Site Visits: May be arranged prior to Bid Submission by contacting DOHMH Authorized Agency Contact as listed above.


   All questions must be submitted in writing to the Authorized Agency Contact person, preferably by e-mail.

4. Bid Due Date and Time, Public Bid Opening Location

   Date: February 2, 2015
   Time: 11:00 A.M.
   Place: New York City Department of Health and Mental Hygiene
   Office of the Agency Chief Contracting Officer
   42-09 28th Street, 17th Floor
   Attention: Shermaine Manifold, Contract Manager
   Email: Bids@health.nyc.gov

   Bid opening will be held at the above-location on the 17th floor.

   ** Any bids received after 11:00 am will be considered late and will not be accepted. **

5. Anticipated Contract Start Date: July 01, 2015
SECTION II - SCOPE OF WORK

The New York City Department of Health & Mental Hygiene ("DOHMH") seeks a contractor to provide all labor, materials and equipment that are necessary for the provision of plumbing services, which includes plumbing repairs, plumbing maintenance, and new plumbing installations on an as-needed basis for all DOHMH facilities located throughout the five (5) boroughs of New York City.

EXPERIENCE:
Following are the experience and license requirements for this Invitation for Bids. Bidder must demonstrate all of the following at the time of bid submission in order to be considered responsive:

1. Bidder must demonstrate the capability to perform all Work utilizing its own staff, and subcontracting shall be limited to any specialty work, proprietary systems and ancillary work;

2. Bidder must demonstrate that the bidder is currently performing the same type of work specified herein for a commercial/industrial/public sector customer and that it has, at a minimum successfully performed and completed at least Three Hundred Thousand dollars ($300,000.00) over the past three years immediately preceding the bid opening;

3. Bidder must demonstrate that the bidder has a minimum of THREE (3) years of commercial, industrial experience in plumbing repairs, plumbing maintenance, and new plumbing installations; and

4. Bidder must provide THREE (3) written reference letters from clients who can attest to the bidder’s experience and quality of services. Reference letters must be from clients for whom services were provided within the last three (3) years. DOHMH references are not acceptable for this Bid. References must not be related to the bidder by blood or marriage. Each of these references must include:
   a. name of reference;
   b. title
   c. address; and
   d. contact information.

REQUIRED LICENSE/CERTIFICATIONS:
Following are required licenses/certifications for this Invitation for Bids. Bidders must demonstrate that they hold these licenses/certifications at the time of bid submission in order to be considered responsive. Bidder must also present copies of resumes for all license holders at the time of bid submission in order to be considered responsive:

1. Principal owner of the bidding firm, and not less than one additional individual employed by the bidding firm must present a valid Department of Building ("DOB") NYC Master Plumber license. Please provide front and back copy of licenses, and resume for the individuals who hold licenses.
2. At least one individual employed by the bidding firm must present a valid Department of Building (DOB) NYC Master Fire Suppression Piping Contractor license. Please provide front and back copy of license, and resume for the individuals who hold licenses.

TRADE CREDENTIALS:
The Contractor shall use sufficient numbers of workers who are thoroughly trained in and familiar with the specified requirements, methods and products, and who are duly licensed as may be required by local, state, federal and any other authorities having jurisdiction.

ANTICIPATED TERM OF CONTRACT: DOHMH anticipates that the term of the contract will be FIVE (5) years.

[NO FURTHER TEXT ON THIS PAGE]
A. **SPECIFICATIONS / SCOPE OF WORK:**

This is a Requirements contract for plumbing services at DOHMH Facilities throughout New York City. The **Contractor** shall provide all labor and materials that are necessary to perform plumbing repairs, plumbing maintenance, and new plumbing installations for DOHMH Facilities, pursuant to Work Orders issued hereunder. All Work will be initiated and defined by DOHMH. This is a time and materials contract based on prevailing wages and **Contractor**’s bid materials markup rate listed on the Bid Price Sheet. The estimates set forth herein are for the purposes of bid comparison and do not represent actual quantities. The services and supplies and materials necessary to perform the services will be in the quantities requested by DOHMH and shall be furnished at the prices set forth in the Bid Price Sheet.

1. All work, equipment and materials furnished under this contract shall conform to the existing rules, requirements and specification of the State and City of New York, the National Fire Protection Association (NFPA 13-1989), Bureau of Electric Control (BEC), National Electric (NEC), the requirements of the Occupational Safety and Health Act (OSHA) and all other applicable Federal, State and Local Laws and regulations (collectively, “Applicable Codes and Requirements”).

2. All materials and equipment used to perform the work under this contract shall bear the inspection labels of the Underwriters Laboratories, if the material and equipment is of a class inspected by said laboratories.

3. Any paragraph or requirements in these Specifications deviating from the Applicable Codes and Requirements cited above, shall be deemed invalid, as the Applicable Codes and Requirements take precedence over these Specifications. The **Contractor** shall be held responsible for adherence to all Applicable Codes and Requirements.

4. Any additional work or material necessary to complete a work order, after issuance, shall be furnished at no additional cost to the Department and shall be considered by the parties to have been included in the work order price. Ignorance of any Applicable Code, Requirement or Specification shall not be accepted as an excuse for non-conformity. Acceptance by the Project Manager of work performed under this contract shall not relieve the **Contractor** of any expense necessary to correct any failure to comply with Applicable Codes and Requirements.

5. In the event of a conflict among the Applicable Codes and Requirements, the more stringent requirements shall prevail.

6. The **Contractor** should ensure that all signs, charts, labels, etc. conforming to the requirements of the specifications and applicable laws are present at job sites.

7. The **Contractor** shall prepare shop drawings, as required, for approval by the Department of Buildings (DOB), City of New York and filing permit applications with the DOB, City of New York and all other agencies and authorities having jurisdiction over plumbing work.
8. The Contractor shall provide Controlled Inspection based on the services rendered at the DOHMH designated location. The Contractor shall complete Form OP-98 for Self-Certification for Plumbing inspection, which should include the Inspection data details and must be submitted to the NYC Department of Buildings.

9. Upon completion of the work, the Contractor, if necessary, shall obtain certificates(s) of inspection and approval from the inspection organization having jurisdiction over the work and shall deliver such certificate(s) to the Project Manager.

10. Upon the failure of the Contractor to perform inspections or to take all actions necessary to have violations dismissed by the governing authorities within sixty (60) days of notification by the Department, the Contractor shall pay DOHMH or DOHMH, at its option, may deduct from payments otherwise due, or to become due, the amount of One Thousand Dollars ($1,000) per occurrence, as well as the total cost of this work which DOHMH may assign to others.

11. The Contractor shall devote its time and personal attention to the work and shall employ and retain at each work site, from the commencement to the entire completion of the work, a Contractor Superintendent who is competent and able to communicate effectively. The Contractor Superintendent must be capable of maintaining proper supervision and care of the work and must be approved by the Project Manager. The Contractor Superintendent, irrespective of any superintendent or foreman employed by any subcontractor, shall ensure that the instructions of the Project Manager are carried out.

12. The Contractor shall be responsible to identify and verify, with the authorized DOHMH representative, the actual field conditions and requirements for replacing or repairing the existing plumbing work prior to the commencement of any work.

13. The latitude and degree of the plumbing services at each site may vary depending on whether maintenance, repair or new installations are required. The Contractor shall use sufficient numbers of workers who are thoroughly trained in and familiar with the specified requirements, methods and products, and who are duly licensed for the services being requested to prosecute the work diligently in accordance with the work request in the manner and with the timeline required hereunder.

14. Emergency Service: In an emergency situation, such as a flood or condition that could cause extreme water damage, the Contractor shall respond to the affected site within one hour of the receipt of a call from an authorized DOHMH representative. Contractor shall specify to DOHMH the preferred call-in procedure for both emergencies and non-emergencies (i.e., phone numbers, email addresses, and contact names).

15. Non-Emergency Repair Work: The Contractor shall respond to requests for non-emergency repairs within two (2) calendar days after notification from DOHMH.
16. The **Contractor** shall develop an emergency back-up plan and shall engage other specialty workers on an extra work basis, as first approved by DOHMH, in the event that the emergency involves other specialties (i.e. electrical, mechanical, etc.).

17. The **Contractor** shall provide to DOHMH a written implemented comprehensive safety plan that indicates who the highest ranking person responsible for safety is, including therein, without limitation, the contact information for such person. The **Contractor**’s safety plan shall be maintained on file by the authorized DOHMH representative and shall be updated and refiled with DOHMH as necessary during the term of this Contract by the Contractor.

18. The contractor shall prepare shop drawings, as required, for approval by the Department of Buildings (DOB), City of New York and shall file all required permit applications with the DOB, City of New York and all other agencies and authorities having jurisdiction over plumbing work.

19. **Plumbing Work:**

   Work assigned in this scope shall include, but not be limited to, installation, repair, replacement, or maintenance of:

   - Leaks
   - Toilets
   - Street Connections
   - Drain Cleaning
   - Faucets
   - Drains
   - Sinks
   - Sewers
   - Risers
   - Hi/Low Pressure Steam
   - Gas Violations & Repairs
   - Distribution & Waste Lines Repairs/Installation

   The Contractor shall ensure the following:

   a. The contractor shall provide all miscellaneous accessories and specialties required for a complete installation of any plumbing or sprinkler system into satisfactory operating condition.

   b. The contractor shall ensure the demolition and removal of existing plumbing systems and related equipment/accessories as required.

   c. Cutting of framing or support members, if required for the job, shall not compromise the structural integrity of the building. The Contractor shall reinforce to code specifications any cut framing or support members.

   d. The contractor shall clean all piping prior to operation.

   e. The contractor shall provide and install all necessary plumbing fixtures, trim, carriers,
drains and related equipment.

f. The contractor shall connect piping from sanitary, storm or combined house sewers to city sewer piping.

g. The contractor shall perform natural gas piping and installation of gas meters.

h. The contractor shall provide insulation of all cold, hot and recirculation piping, all horizontal leader offsets above slab, drinking fountain drains above slab, domestic water heaters and meters.

i. The contractor shall install Master water pressure reducing stations.

j. The contractor shall provide and install storm drainage piping from roof areas, floor drains, etc., to connection with storm or combined house sewer.

k. The contractor shall vent piping from fixtures, drains, equipment and stacks to point of termination above roof.

l. The contractor shall install duplex ejectors and controls for both indoor and outdoor duplex systems.

m. The contractor shall connect domestic water service to the street main connection.

n. The contractor shall connect fire protection water service to the street main piping.

o. The contractor shall install fire water distribution systems including backflow prevention devices and water meters. For new installations plumber must be licensed in Reduced Pressure Zone for backflow devices.

p. The contractor shall provide and install domestic water distribution systems, including backflow prevention devices.

q. The contractor shall install domestic hot water generation (water heaters) and distribution systems.

r. The contractor shall provide capped outlets on fire services for fire protection systems.

s. The contractor shall install complete sprinkler protection systems.

t. The contractor shall provide/install flashing for drains and vent penetrations.

u. The contractor shall install bathroom/restroom and kitchen accessories.
B. **ASBESTOS, MOLD AND LEAD PAINT CLAUSES**

In the event the Contractor or its employees or any Agent, Subcontractor or contractor shall encounter any asbestos containing material ("ACM") lead paint, mold, or any material reasonably believed to be ACM or lead paint while working on the contracted premises, the Contractor or such other party shall immediately:

1. Cease work in the immediate vicinity of the ACM, lead paint, mold, or suspected material and notify the Project Manager, cordon off the area to prevent workers, staff and clients from entering the affected area; and

2. Vacate the immediate vicinity of the ACM, lead paint, mold, or suspected material.

3. Continue the work in other areas of the premises unaffected by ACM, lead paint or mold material;

It is hereby agreed and understood that, in the event the presence of ACM, lead paint, mold, or material reasonably believed to be ACM or lead paint is confirmed, the work completion schedule affected by tasks to be performed in the work area shall be suspended until any and all asbestos and/or lead testing, removal, or encapsulation is complete;

The period during which the work completion schedule is tolled shall be the period of time required to resolve the asbestos or lead issue and provide notice of said resolution; and

The Contractor agrees to make no claim for damages resulting from delays due to removal of any asbestos.

C. **IRREVOCABILITY OF BID**

1. The prices set forth in the bid are firm and shall be in effect from date of award until the completion or termination of the contract. However, after award, prices may be subject to change, either as an increase or decrease, predicated solely upon demonstrated changes in the Prevailing Wage and/or Supplemental Benefits rates pursuant to Section 220 of New York State Labor Law. Adjustments shall not be made for any other costs associated with the resulting agreement.

2. The Contractor shall abide by all laws, and shall pay wages and benefits pursuant to Sections 220 and 230 of the New York State Labor Law, as applicable. DOHMH will closely monitor the Contractor’s compliance. DOHMH shall use the Total Bid Price to determine the low bidder. DOHMH shall award the contract to the lowest responsive and responsible bidder.

3. DOHMH at its option may terminate this contract at any time and for any reason with written notice to the Contractor, in which event DOHMH shall be liable to the Contractor only for the cost of all work satisfactorily completed up to the time of termination.
D. GENERAL CONDITIONS:

1. Examination of Work Sites
   Upon notification from the Commissioner, or the Commissioner’s designee, the Contractor shall visit the site of the proposed work to become fully acquainted with all related conditions. Prior to making site visits the contractor must call to confirm site visit date and time.

2. Estimates
   For each job, the Contractor shall provide the Commissioner, or the Commissioner’s designee, with a written estimate of the total cost of the work within one business day after the site visit. In addition, the estimates shall include a scope of work, a starting date, and a completion date.

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

   The Contractor shall protect all buildings, appurtenances and finishes from damage during the work performed under this contract.

   The Contractor shall repair or replace such damages by proved methods to restore the damaged areas to their original condition at the expense of the Contractor.

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

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

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

   The Contractor shall be responsible for the coordination of the operations of its employees and materials suppliers engaged under this contract.
E. **INVOICING AND PAYMENT:**

1. After a written estimate of the total cost of work is submitted for each job site to the DOHMH designee and the designee deems the work as being successfully completed, the Contractor will submit an invoice. The Invoice will show where maintenance work was performed clearly indicating:

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

Invoices for plumbing services will not be processed or approved without copies of updated project manager schedule and reports being delivered to the contracting officer.

The contractor shall submit a Payroll Report with each invoice.

2. The Contractor shall submit invoices for payment once monthly for all work performed and authorized by DOHMH. The Contractor shall include work tickets, certified payroll reports, and supplier’s invoices with each invoice. The Health Services Manager or his/her representative at the location shall sign the work ticket verifying the date, time, work description, and that the contractor satisfactorily completed all work as specified. Attached to this solicitation are excerpts of wage classifications and of the NYC Office of the Comptroller, Labor Law 220 Prevailing Wage Schedule. The contractor may submit payroll reports from their accountant certifying the hours worked and the wage rates paid for each prevailing wage title performing the work of this contract. All invoices shall delineate vendor’s costs for materials. The Contractor shall submit with the invoice all pertinent documentation such as the number of actual labor hours and cost per hour, an itemized list of all materials used on a job with corresponding supplier invoices or stock withdrawal sheets, all referenced with the same job number. Payment will be made for each job invoice for all work submitted and approved by the Commissioner, or the Commissioner’s designee. DOHMH will not pay for any work that is not authorized by the Department of Health.

3. If payment is to be made for parts and materials hereunder, then Invoices for cost reimbursements for parts and material costs will not be paid until such costs are certified by the Contractor that such costs have been incurred in the performance of this Agreement. Reimbursement shall be limited to the fair and reasonable cost to the Contractor, as certified by the Contractor, and as documented by the Contractor by
attachment of its cost data, including, without limitation, documentation of the cost to the Contractor thereof in the form of invoices, paid receipts, and the like. The Department reserves the right to limit the reimbursement of such costs to the fair and reasonable cost prevailing in the industry for such costs. The fair and reasonable cost will be determined by the Department in its sole discretion with reference to (1) the type of cost generally recognized as ordinary and necessary for the contract performance, (2) generally accepted sound business practices, (3) arm’s length bargaining, (4) deviations from the Contractor’s established practices, (5) compliance with applicable Federal, State and local laws, rules and regulations, (6) the price to the Contractor’s most favored customer, and (7) the fair market price of the item for which the cost is incurred, plus any mark-up permitted to the Contractor in the Bid Price Sheet that is a part of this Contract. Material and parts costs include the costs of such items as raw materials, parts, sub-assemblies, components and manufacturing supplies, whether purchased or fabricated by the Contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing reimbursable costs, any generally recognized method of pricing such materials and parts may be acceptable to the Department if that method is consistently applied and the resulting cost is fair and reasonable.

4. All requests for payment, and invoices submitted under this Contract, shall be submitted to:

DEPARTMENT: DOHMH/Office of Fiscal Management
ADDRESS: P.O. Box 8400
Queens, NY 11101-8400
ATTENTION: Invoice Processing Unit

5. Liquidated Damages

In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of the lack of, or delay in, the satisfactory completion of the work hereunder, below are sums fixed and agreed as the liquidated damages that the City will suffer by reason of such lack or delay, and not as a penalty The parties acknowledge that the damages to the Department for the Contractor’s failure to complete the work to the satisfaction of the Department in a timely manner in accordance with all applicable plumbing code requirements are impossible to quantify, and therefore, the parties have elected to fix certain charges in lieu thereof, as the Department, as follows:

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

b. Failure to meet the agreed upon completion date will result in a One Hundred Dollar ($100.00) charge deducted from the invoice for each calendar day until
completion of that particular project, unless the Department, in its discretion, determines that such delay in completion has not been caused in full or in part by the Contractor.

c. Upon the failure of the Contractor to perform inspections or have violations dismissed by governing authorities within sixty (60) days of notification by the Department, the Contractor shall pay DOHMH, or DOHMH, at its option, may deduct from payments due or to become due, the amount of One Thousand Dollars ($1,000) per occurrence, as well as the total cost of this work which DOHMH may assign to others.

F. GUARANTEE

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

G. DRAWINGS/SPECIFICATIONS

1. The Department may not provide drawings and specifications for all projects. Where drawings are provided, work not specified in the specifications nor detailed on the Contract Drawings but required in carrying out their intent or in the complete and proper execution of the work, is nevertheless required, and shall be performed by the Contractor in accordance with best industry practices.

2. Conflicts between the drawings and specifications, or within themselves, or discrepancies of any nature including between field conditions, shall be resolved based on the premise that the Contractor is deemed to have estimated on the most expensive way of doing the work unless he has asked for and obtained a decision in writing from the Commissioner, or the Commissioner’s designee before the submission of the estimate, as to what shall govern.

H. COMPLIANCE WITH LAWS

1. The Contractor shall comply with all local, State and Federal laws, rules and regulations applicable to this Contract and to the work specified herein including but not limited to the Federal Occupational Safety and Health Act of 1970, as amended; the Construction Safety Act of 1969, as amended; and the applicable local plumbing code requirements, as amended.

2. All components shall be in accordance with all applicable New York City and State laws, codes and rules.

3. The contractor shall provide Material Safety Data Sheets (MSDS) for all products used under this contract.
I. WORK AND ITS PERFORMANCE

1. Unless otherwise expressly provided in the Contract Drawings, Specifications and Addenda, the work shall be performed in accordance with the best modern practice for work of this character and in accordance with industry standards, to the satisfaction of the Commissioner, or the Commissioner’s designee.

2. The Contractor shall move furniture, office equipment, pictures, tack boards, shades, Venetian blinds and all items required for proper performance of the work. The Contractor shall handle this task in a satisfactory manner and return same, undamaged, to the place where they were situated prior to performance of the required work. The Contractor shall properly cover furniture, equipment and floors located in the area of the work, with a drop cloth during the working phase. Upon completion of the work, the Contractor shall make the area ready for occupancy by returning all furniture and equipment to its original location. Upon completion of the work, the Contractor shall also restore all parts of the premises disturbed by their work to its original condition at their expense. The Contractor shall repair any damage to the building and its contents caused by at the Contractor’s work at the Contractors expense. The Contractor shall perform all cutting, patching, restoration or replacement in a manner satisfactory to the Commissioner, or the Commissioner’s designee.

3. All equipment, materials and articles used in the work covered by the contract, shall be of the most suitable grade of their respective kind. All material shall be delivered in new original packaging. Any materials showing evidence of being opened or unsealed before delivery shall not be used and shall be removed at once from the work-site. All materials shall be used without adulteration and in full compliance with the manufacturers’ instructions.

4. The Commissioner, or the Commissioner’s designee, retains the right to select and approve the type, brand or grade of materials, supplies, devices, fixtures or components to be used in all the facilities. All work shall be performed during normal working hours between 8:00 a.m. to 4:00 p.m. Monday through Friday, unless prior approval is obtained from the Commissioner, or Commissioner’s designee. Instances where the work cannot be performed during regular business hours of Monday through Friday from 8:00 A.M. to 4:00 P.M., the contractor agrees to perform the work during off hours as scheduled between the parties. The Contractor may be asked to perform work on weekends and evenings so as not to disrupt the daily operation of the facility. Overtime hours shall apply for work requested and authorized by the DOHMH for performance outside of normal working hours and on weekends and holidays. Overtime shall be paid to the contractor based upon the rates bid for regular hours and multiplied according to the Holiday and Overtime Legends of the Labor Law § 220 Prevailing Wage Schedule of the New York City Comptroller’s Office. The Contractor shall be responsible for all costs associated with after-hours work.

During the progress of the work and up to the date of final acceptance, all materials and workmanship shall be subject to inspection or examination by the Commissioner, or the Commissioner’s designee, at any and all times. The Department shall have the right to reject defective material or workmanship, if in the opinion of the
Commissioner, or the Commissioner’s designee, it is deemed necessary. Rejected workmanship or material shall be satisfactorily corrected and be replaced with proper materials without additional expense to the City. The Department may by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost, thereof, to the contractor, or may terminate the contract, as provided elsewhere in these specifications.

J. PROTECTION OF WORK AND OF PERSONS AND PROPERTY

1. During the performance and up to the date of final acceptance, the Contractor must take all reasonable precautions to protect the persons and property of the City and of others from damage, loss or injury resulting from the Contractor’s operations under this Contract. The Contractor’s obligation to protect shall include, without limitation, the duty to provide, replace and adequately maintain at or about the site suitable and sufficient guards, lights, barricades, enclosures, and protective coverings.

2. The Contractor shall immediately notify the City of any damage(s) to the work or work area and the contents thereof and of all accident(s) on or adjacent to the site within twenty-four hours of the occurrence. Within three days after notice, of any such loss, damage or injury to work, or damage(s) to persons’ property, the Contractor shall provide a full and complete report thereof in writing to the Commissioner, or the Commissioner’s designee.

3. If persons, City property or property of others sustains a loss, damage or injury resulting from the negligence or carelessness of the Contractor, in the performance of this Contract, or from his or their failure to comply with any of the provisions of this Contract or of law, the Contractor shall indemnify and hold the city harmless from any and all claims and judgments for damages, cost and expenses to which the City may be subjected or which may suffer or incur by reason thereof.

K. PERMITS, NOTIFICATIONS AND INSURANCE REQUIREMENTS

1. The Contractor shall give all required notices; pay all legal and required fees, and penalties incurred by the work or laborers of this contract. The Contractor shall promptly pay all incidental charges, and meet all the incidental expenses necessary for the most rapid and satisfactory progress of the work under this Contract. The Contractor shall be responsible for obtaining all necessary permits for work directed under this contract at Contractor’s expense. Contractor agrees and covenants that the company, its agents and employees will comply with all City, State and Federal laws, rules and regulations applicable to the business to be conducted under this contract. Nothing in these specifications is to be construed as not requiring conformance to all applicable codes and regulations. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, the Contractor shall bear all costs arising therefrom, and shall initiate corrective action immediately upon request by the Department.

2. Upon receipt of notification to proceed with the work as specified, from the Commissioner, the Contractor shall expedite the work with minimal interruption to
daily operation of the facility and the execution of this contract. The Contractor shall consider other notifications as specified, and shall be governed by decisions of the Commissioner, or the Commissioner’s designee, with respect to the scheduling of the work.

3. During the term of this contract, the contractor must maintain Builders Risk, Workers Compensation, Employer’s Liability and other insurance as required in Appendix A of this document. The cost of such insurance shall be borne by the contractor.

L. SAFETY

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

2. The Contractor shall protect all buildings, appurtenances and finishes by from damage resulting from the work performed under this contract. The Contractor shall repair or replace all damages to the foregoing by approved methods to restore the damaged areas to their original condition at the expense of the Contractor.

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

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

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

M. PROTECTION OF EQUIPMENT

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

N. SUPERVISION BY CONTRACTOR

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

O. **SUFFICIENCY OF PERSONNEL**

If the General Supervisor of Building Maintenance or the Commissioner or the Commissioner’s designee is of the opinion that the work required by the specifications are not satisfactorily performed because of insufficiency of personnel, the Department shall have the authority to require the contractor to use such additional personnel, or take such other steps as it may deem necessary to perform the work satisfactorily, at no additional cost to the City.

P. **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. If the bid price is a lump sum, then 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.

[NO FURTHER TEXT ON THIS PAGE]
Q. **LIST OF LOCATIONS:**

<table>
<thead>
<tr>
<th>FACILITY NAME</th>
<th>FACILITY ADDRESS</th>
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</thead>
<tbody>
<tr>
<td><strong>MANHATTAN LOCATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>1. East Harlem District Health Center</td>
<td>158 East 115th Street New York, NY 10029</td>
</tr>
<tr>
<td>2. Central Harlem District Health Center</td>
<td>2238 Fifth Avenue New York, NY 10035</td>
</tr>
<tr>
<td>3. Chelsea District Health Center</td>
<td>303 9th Avenue New York, NY 10001</td>
</tr>
<tr>
<td>4. Riverside District Health Center</td>
<td>160 West 100th Street New York, NY 10027</td>
</tr>
<tr>
<td>5. Washington Heights District Health Center</td>
<td>600 West 168th Street New York, NY 10032</td>
</tr>
<tr>
<td>6. Public Health Lab</td>
<td>455 First Avenue New York, NY 10016</td>
</tr>
<tr>
<td>7. Manhattan Animal Care &amp; Control</td>
<td>326 East 110th Street New York, NY 10029</td>
</tr>
<tr>
<td>8. Manhattanville District Health Center</td>
<td>21 Old Broadway New York, NY 10309</td>
</tr>
<tr>
<td><strong>BROOKLYN LOCATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>9. Bedford District Health Center</td>
<td>485 Throop Avenue Brooklyn NY 11221</td>
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<tr>
<td>10. Brownsville District Health Center</td>
<td>259 Bristol Street Brooklyn NY 11212</td>
</tr>
<tr>
<td>11. Bushwick District Health Center</td>
<td>335 Central Avenue Brooklyn NY 11221</td>
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<tr>
<td>12. Crown Heights District Health Center</td>
<td>1218 Prospect Place Brooklyn NY 11213</td>
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<tr>
<td>13. Fort Greene District Health Center</td>
<td>295 Flatbush Avenue Extension Brooklyn NY 11201</td>
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<td>14. Homecrest District Health Center</td>
<td>1601 Avenue S, Brooklyn NY 11229</td>
</tr>
<tr>
<td>15. Williamsburg District Health Center</td>
<td>151 Maujer Street Brooklyn NY 11206</td>
</tr>
<tr>
<td>16. Brooklyn Animal Care &amp; Control</td>
<td>2336 Linden Blvd Brooklyn, NY 11208</td>
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<td><strong>QUEENS LOCATIONS</strong></td>
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<tr>
<td>17. Astoria District Health Center</td>
<td>12-26 31st Avenue LIC, NY 11106</td>
</tr>
<tr>
<td>18. Corona District Health Center</td>
<td>34-33-Junction Blvd Jackson Heights, NY 11372</td>
</tr>
<tr>
<td>19. Jamaica District Health Center</td>
<td>90-37 Parsons Blvd Jamaica, NY 11432</td>
</tr>
<tr>
<td>20. Jamaica District Health Center Annex</td>
<td>90-27 Parsons Blvd Jamaica NY 11432</td>
</tr>
<tr>
<td><strong>BRONX LOCATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>21. Morrisania District Health Center</td>
<td>1309 Fulton Avenue Bronx, NY 10456</td>
</tr>
<tr>
<td>22. Tremont District Health Center</td>
<td>1826 Arthur Avenue Bronx, NY 10457</td>
</tr>
<tr>
<td>23. Westchester/Pelham District Health Center</td>
<td>2527 Glebe Avenue Bronx NY 10461</td>
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<tr>
<td><strong>STATEN ISLAND LOCATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>24. Richmond District Health Center</td>
<td>51 Stuyvesant Place Staten Island, NY 10301</td>
</tr>
<tr>
<td>25. Staten Island Animal Care &amp; Control</td>
<td>3139 Veterans Road West Staten Island, NY 10309</td>
</tr>
</tbody>
</table>

R. **SUB-CONTRACTING**

The selected vendor will be required to utilize the City’s web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term.

Appendix I to this IFB contains the Subcontractor Tracking/Compliance Notice. The Contractor must comply with the provisions stated and referenced therein.
S. **NOTIFICATION TO BEGIN WORK:**

1. All Contractor personnel shall carry color photo identification cards bearing the name of the employee and the name of 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.

2. 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.

T. **BID ITEMS AND METHOD OF BIDDING:**

Please see the Bid Price Sheet for Bid Items, Method, and Instructions.

Note that the Percentage Mark-Up/ % mark-up contained on the Bid Price Sheet means the percentage bid by the Bidder to be added as a multiplier to the amount paid to the Contractor for labor and/or Materials, and shall be deemed to include any and all elements of overhead and profit and all direct and indirect costs of the Contractor including, without limitation:

1. Tools (including small tools), equipment and accessories, whether owned or rented, scaffolding, travel, transportation, waste disposal, mobilization, administration, supervision, management and superintendence;

2. Costs and expenses of insurance, bonds, licenses, permits and filings of any kind or nature whatsoever, as required by the Contract;

3. Taxes including, without limitation, Payroll Taxes;

4. Statutory or contractual costs or expenses that the Contractor must pay on behalf of its employees including, without limitation, all payments mandated by federal, State or local Laws, rules and regulations and modifications, revisions and additions thereto; and

5. Costs or expenses incurred by the Contractor if it subcontracts all or any part of the Work, unless otherwise specified herein.
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.
   c. A site visit can be arranged by contacting the Authorized Agency Contact.

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).

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, 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 8, 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 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. For the purposes of this IFB, award will be made to the responsive and responsible bidder that offers the lowest bid price.

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 re-solicit 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. If the Bid Price Sheet contains unit prices, 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 Appendix A, then:


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 Person. Bidders will be required to submit the completed reports to DOHMH within 10 days of notice.

(ii) Bidders are requested to submit completed VENDEX Questionnaires ([www.nyc.gov/Vendex](http://www.nyc.gov/Vendex)) with the bid. Failure to submit the required forms shall not be grounds for a determination that the vendor is non-responsive.

(iii) 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 employees 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) Bidders are requested to submit completed Department of Labor Services Employment Report ([http://www.nyc.gov/html/sbs/html/procurement/dls.shtml](http://www.nyc.gov/html/sbs/html/procurement/dls.shtml)) with the bid. Failure to submit the required forms shall not be grounds for a determination that the vendor is non-responsive.

(iii) 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.

g. Sub-contractors

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

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

(iii) Subcontractors must comply with the submission requirements for the VENDEX Questionnaires and Employment Report.

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:

ITEM 1. Bidder Representations

ITEM 2. Bid Price Sheet
This form must be completed and signed by an authorized person representing the bidder, the corporate seal must be affixed, and the form must be notarized.

ITEM 3. Acknowledgement of Addenda
This form must be completed and signed by an authorized person representing the bidder.

ITEM 4. Experience Questionnaire
This form must be completed and signed by an authorized person representing the bidder and the form must be notarized. Bidder must include all certifications and other evidence that the bidder and its service technicians meet the threshold requirements necessary to perform the services required hereunder. Be sure to attach all relevant evidence of training, prior experience and certifications for service technicians who will be performing services.

APPENDIX H: Iran Divestment Rider
Must be completed, signed by Bidder, and notarized.

APPENDIX N: OSHA 300 & OSHA 300A log forms
Must be completed and signed by Bidder.
B. The following items, supplied by the Bidder, must also be included with the Bid Submission:

ITEM 5. Safety
Workers Compensation document or signed letter from broker/insurance carrier indicating the bidder’s Experience Modification Rating (EMR).
Copies of OSHA training card(s).

ITEM 6. Audited/Reviewed Financial Statement
Most recent audited or reviewed financial statement signed by the CPA.

ITEM 7. Required License and Resumes
- Department of Building (DOB) NYC Master Plumber license. **(Principal owner of the bidding firm, and one additional individual employed by the bidding firm).
- Resume for the individuals who hold licenses.
- Department of Building (DOB) NYC Master Fire Suppression Piping Contractor license. **(At least one individual employed by the bidding firm).
- Resume for the individuals who hold licenses.

ITEM 8. References
Bidder must provide three (3) written reference letters from clients who can attest to the bidder’s experience and quality of services. Reference letters must be from clients for whom services were provided within the last three (3) years. DOHMH references are not acceptable for this Bid. References must not be related to the bidder by blood or marriage.

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

ITEM 9. VENDEX Questionnaires
Required for bids exceeding $100,000
ITEM 10.  **Employment Report**
Required for bids exceeding $100,000

ITEM 11.  **Insurance Certificates and Worker’s Compensation**
See Article 7 of the Agreement for Insurance Requirements for this bid

D. **Do not return Sections I, II, or III of this Invitation for Bid; also do not return the attached Agreement with the Bid Submission. However please review and submit the forms as required in the Appendices.**

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

[NO FURTHER TEXT ON THIS PAGE]
THE CITY OF NEW YORK
Department of Health and Mental Hygiene Bid Submission for:

PLUMBING SERVICES
PIN: 15BS000600R0X00
Cover Sheet / Checklist

Name of Bidder: ______________________________  Date Submitted: __________

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

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>Item 1</td>
<td>Bidder Representations</td>
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<td>Item 2</td>
<td>Bid Price Sheet</td>
<td>[ ]</td>
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<td>Item 3</td>
<td>Acknowledgement of Addenda</td>
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<td>Item 4</td>
<td>Experience Questionnaire</td>
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<td>Item 5</td>
<td>Safety</td>
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<td>Item 6</td>
<td>Audited or Reviewed Financial Statement</td>
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<td>Item 7</td>
<td>Department of Building (DOB) NYC Master Plumber license and resume for each license holder</td>
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<td>(principal and individual employed by bidding firm)</td>
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<td>Department of Building (DOB) NYC Master Fire Suppression Piping Contractor license and resume for each license holder</td>
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<tr>
<td></td>
<td>(at least one individual employed by bidding firm)</td>
<td></td>
</tr>
<tr>
<td>Item 8</td>
<td>Reference Letters (3)</td>
<td>[ ]</td>
</tr>
<tr>
<td>Appendix H</td>
<td>Iran Contractor Divestment Rider</td>
<td>[ ]</td>
</tr>
<tr>
<td>Appendix N</td>
<td>OSHA 300 and 300A logs</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
ITEM 1 - Bidder Representations

Name of Bidder: ________________________________________________________________

Place of Business: ______________________________________________________________

Telephone #: __________________________ Fax #: _________________________________

E-mail address: __________________________ EIN: _______________________________

Date of Bid: ______________________________

Bidder is:  Individual ( )  Partnership ( )  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 herein is in all aspects true.

2. The said Bidder is of lawful age and the only one interested in this bid, and that no person, firm, or corporation other than herein before named has any interest in this bid, or in the contract proposed to be taken.

3. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief: (1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor or potential competitor; (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other bidder or to any competitor or potential competitor; and (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

4. That no councilman or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits.

5. That said bidder is not in arrears to the City of New York upon debt, taxes or contract, and is not a defaulter, as surety or otherwise, upon any obligation of the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except (describe in detail):

__________________________________________________________________________
__________________________________________________________________________

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

7. Compliance Report: The bidder, as an individual, or as a member, partner, director or officer of the bidder, if the same be a firm, partnership, or corporation, (1) represents that their attention has been specifically drawn to Executive Order No. 50, dated April 25, 1980, on Equal Employment Compliance of the contract, and (2) warrants that they will comply with the provisions of Executive Order No. 50. The bidder, as an individual, or as a member, partner, director, or officer of the bidder, if the same be a firm, partnership, or corporation, executes this document expressly warranting that they will comply with the provision of this contract in providing records, Chapter 8.

8. By submission of this bid, bidder certifies that it now has, and will continue to have, the financial capability to fully perform the work required for this contract. Any award of this contract will be made in reliance upon such certification. Upon request therefore, the bidder will submit written verification of such financial capability in a form that is acceptable to the Department.

9. That said bidder has visited and examined the site of the work and has carefully examined the Contract in the form approved by the Corporation Counsel, and will execute the Contract and perform all of its items, covenants and conditions, and will provide, furnish and deliver all the work, materials, supplies, tools and appliances for all labor and materials necessary or required for the hereinafter named work, all in strict conformity with the Contract and for the prices set forth in the Bid Price Sheet.

10. That the party signing the Bid Price Sheet is duly authorized to sign this agreement on behalf of the Contractor.
ITEM 2: BID PRICE SHEET

NOTICE TO ALL BIDDERS:

FAILURE TO COMPLETE THIS SECTION IN DETAIL SHALL RESULT IN REJECTION OF YOUR BID.

The undersigned agrees, if this bid is accepted, that it 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 (IFB), and will proceed, when directed to do so, with the work required hereunder in strict compliance with the terms and conditions set forth in this Bid AT THE UNIT AND OTHER PRICES SET FORTH BELOW:

NOTE #1: As specified in Section I of the Scope of Work, payment of prevailing wages is required for titles covered under this solicitation. The Number of Units expressed or implied on the BID PRICE SHEET are estimates only and shall be used for bid purposes only; DOHMH does not guarantee any minimum or maximum amount of work and the Department of Health and Mental Hygiene shall not be bound thereby. Although the prevailing wage and supplemental benefits rates may change in accordance with New York State Labor Law, the bid mark-up percentage shall remain firm for the duration of this agreement. Services are to be provided only at the request of DOHMH.

NOTE #2: The bid mark-up rate shall include, but not be limited to, all costs for materials, labor, tools, equipment, traveling, trucking, necessary insurances, permits, fees and filings, overhead and profit.

NOTE #3: The Bid Mark-up Percentage on Parts and Materials (Table 2) may not exceed 20%.

NOTE #4: Bidders shall enter the same Bid Mark-up Percentage for each Prevailing Wage Title.

NOTE #5: This is a requirements contract and is intended to cover, during the term of this Contract, the requirements of DOHMH. The quantities listed are estimated for the full term of this contract, and DOHMH may use more, less or none of the quantities listed.

NOTE #4: DOHMH reserves the right to add or remove Facilities at any time during the period of this Contract.

NOTE #5: If the prevailing wage and/or benefit amount promulgated by the Comptroller in accordance with Section 230 of the New York State Labor Law shall be increased for
any of the classifications of employees to be utilized in the performance of moving services hereunder during the term of this contract, the rate bid by the contractor shall be deemed increased by like amount and the obligations to pay such compensation and afford such benefits to the persons performing such services, either as employees of the contractor or of any approved subcontractor, will likewise be deemed to have increased in commensurate amounts.

Compliance with all provisions of the New York Labor Law is mandatory under this contract. Pursuant to Sections 220 and 230 of the New York State Labor Law, the Comptroller of the City of New York has promulgated a schedule of prevailing wages and supplemental benefits. These wages and benefits have been established solely for laborers, workmen, and mechanics engaged by private contractors to perform public work contracts. The wages to be paid and the benefits to be provided are those which prevail when the work is performed. A copy of the current relevant wage rates is attached as Appendix E.

The appropriate job title(s) as defined in labor Law Section 220, Prevailing Wage Schedule, shall be used throughout the terms of this contract. Certified payroll reports shall be provided with each partial payment request to verify that the appropriate job title(s) are being used and that the provisions of the labor Law, as to the hours of employment, rates, and supplemental benefits are being observed. The job titles required under this contract include, but are not limited to, those trade classifications under the applicable Prevailing Wage Rates that are listed in the Bid Price Sheet included herewith.

Request for interpretation or correction under Subsection 2 of Section III (Bid Procedures and Requirements) 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.

**ESCALATION CLAUSE:**
After award, prices may be subject to change, either as an increase or decrease. These price increases or decreases are predicated solely upon demonstrated changes in the Prevailing Wage rates pursuant to Sections 220 and 230 of the New York State Labor Law. Adjustments shall not be made for any materials cost associated with this agreement.
ITEM 2: BID PRICE SHEET (1 of 4)
PIN 15BS000600R0X00, DOHMH Plumbing

Bidder’s Legal Name___________________________________________ Bidder’s EIN____________________

TABLE 1: WAGES, YEAR ONE CALCULATION

*Enter Bid Mark-up Percentage for all prevailing wage titles: _________%. Bidders shall enter the same Bid Mark-up Percentage for each Prevailing Wage Title.

<table>
<thead>
<tr>
<th>Prevailing Wage Titles</th>
<th>Sum of Current Hourly Prevailing Wage plus Supplemental Benefit Rates per hour</th>
<th>Estimated Number of Hours for one year</th>
<th>Prevailing Wage SUBTOTAL: Per Year A x B</th>
<th>Bid Mark-Up Percentage</th>
<th>Subtotal – fully loaded hourly rate (A x D) + A</th>
<th>Subtotal – estimate for the first year (B x E)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plumber</td>
<td>$89.70</td>
<td>1000</td>
<td>$89,700</td>
<td></td>
<td>$____________________ $____________________</td>
<td></td>
</tr>
<tr>
<td>Plumber (Mechanical Equipment and Services) work shall include any repair and/or replacement of the present plumbing system)</td>
<td>$50.39</td>
<td>1000</td>
<td>$50,390</td>
<td></td>
<td>$____________________ $____________________</td>
<td></td>
</tr>
<tr>
<td>Plumber: Pump and Tank (Installation and Maintenance)</td>
<td>$84.87</td>
<td>1000</td>
<td>$84,870</td>
<td></td>
<td>$____________________ $____________________</td>
<td></td>
</tr>
<tr>
<td>Heat &amp; Frost Insulator</td>
<td>$89.79</td>
<td>500</td>
<td>$44,895</td>
<td></td>
<td>$____________________ $____________________</td>
<td></td>
</tr>
</tbody>
</table>
Table 1 (continued):

*Enter Bid Mark-up Percentage for all prevailing wage titles: ________%. Bidders shall enter the same Bid Mark-up Percentage for each Prevailing Wage Title.

<table>
<thead>
<tr>
<th>Prevailing Wage Titles (continu’d)</th>
<th>Sum of Current Hourly Prevailing Wage plus Supplemental Benefit Rates per hour</th>
<th>Estimated Number of Hours for one year</th>
<th>Prevailing Wage SUBTOTAL: Per Year A x B</th>
<th>Bid Mark-Up Percentage</th>
<th>Subtotal – fully loaded hourly rate (A x D) +A</th>
<th>Subtotal – estimate for the first year (B x E)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mason Tender</td>
<td>$30.37</td>
<td>500</td>
<td>$30,370</td>
<td></td>
<td>$_________</td>
<td>$_________</td>
</tr>
<tr>
<td>Roofer</td>
<td>$66.37</td>
<td>1000</td>
<td>$66,370</td>
<td>___%</td>
<td>$_________</td>
<td>$_________</td>
</tr>
<tr>
<td>Steamfitter I and II</td>
<td>$103.04</td>
<td>600</td>
<td>$61,824</td>
<td></td>
<td>$_________</td>
<td>$_________</td>
</tr>
<tr>
<td>PREVAILING WAGES SUBTOTAL FOR YEAR ONE</td>
<td>$428,419 (G) (sum of column C)</td>
<td>SUBTOTAL WAGES FOR YEAR ONE</td>
<td>$_________ (H) (sum of column F)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ITEM 2: BID PRICE SHEET (3 of 4)  
PIN 15BS000600R0X0000, DOHMH Plumbing

Bidder’s Legal Name____________________  Bidder’s EIN________________________

TABLE 2: PARTS & MATERIALS

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Years</td>
<td>Item</td>
<td>Allowance</td>
<td>Bid Mark-up</td>
<td>Extension (CxD) + C</td>
</tr>
<tr>
<td>YEAR ONE</td>
<td>Parts and Materials</td>
<td>$20,000</td>
<td>_____%</td>
<td>$_________</td>
</tr>
<tr>
<td>YEAR TWO</td>
<td>Parts and Materials</td>
<td>$20,000</td>
<td>_____%</td>
<td>$_________</td>
</tr>
<tr>
<td>YEAR THREE</td>
<td>Parts and Materials</td>
<td>$20,000</td>
<td>_____%</td>
<td>$_________</td>
</tr>
<tr>
<td>YEAR FOUR</td>
<td>Parts and Materials</td>
<td>$20,000</td>
<td>_____%</td>
<td>$_________</td>
</tr>
<tr>
<td>YEAR FIVE</td>
<td>Parts and Materials</td>
<td>$20,000</td>
<td>_____%</td>
<td>$_________</td>
</tr>
</tbody>
</table>

Subtotal for Parts & Materials  $_______(Z)
**ITEM 2: BID PRICE SHEET (4 of 4)**

**PIN 15BS000600R0X00, DOHMH Plumbing**

**Bidder’s Legal Name____________________**

**Bidder’s EIN________________________**

**TABLE 3: Total Bid Calculation**

<table>
<thead>
<tr>
<th>Contract Years</th>
<th>CALCULATION: Estimated Average Fluctuation in Prevailing Wage &amp; Supplemental Benefits Rates</th>
<th>Extension: TOTAL BID PRICE CALCULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>YEAR ONE WAGES SUBTOTAL</td>
<td>$___________________________(I) (&quot;G&quot; from Table 1 x 1.016)</td>
<td>$___________________________ (Insert “H” from Table 1)</td>
</tr>
<tr>
<td>YEAR TWO WAGES ESTIMATE</td>
<td>$___________________________(J) (I x 1.016)</td>
<td>$___________________________ (J x bid-markup percentage) + J</td>
</tr>
<tr>
<td>YEAR THREE WAGES ESTIMATE</td>
<td>$___________________________(K) (J x 1.016)</td>
<td>$___________________________ (K x bid-markup percentage) + K</td>
</tr>
<tr>
<td>YEAR FOUR WAGES ESTIMATE</td>
<td>$___________________________(L) (K x 1.016)</td>
<td>$___________________________ (L x bid-markup percentage) + L</td>
</tr>
<tr>
<td>YEAR FIVE WAGES ESTIMATE</td>
<td>$___________________________(M) (L x 1.016)</td>
<td>$___________________________ (M x bid-markup percentage) + M</td>
</tr>
</tbody>
</table>

| SUBTOTAL FOR PARTS & MATERIALS | $___________________________ (Insert “Z” from Table 2) |

| TOTAL BID PRICE FOR 5 years | $___________________________ (sum of Extension: TOTAL BID PRICE CALCULATION column above) |

**Total bid price in words:___________________________________________________________________________

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

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

Bidder: ________________________________________________
(Insert Full Legal Name of Company)

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

Attest: ________________________________
(Secretary of Corporate Bidder)

(CORPORATE SEAL)

TO BE NOTARIZED:

Sworn to before me this ___ day
of _________________, 2014

____________________________________
(Notary Public or Commissioner of Deeds)
(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
B) AFFIDAVIT WHERE BIDDER IS A PARTNERSHIP:

STATE OF __________________________

COUNTY OF ________________________

_________________________________________, being duly sworn says: I a member of

__________________________________________, the firm described

in, and which executed, the foregoing bid. I subscribed the name of the firm thereto on

behalf of the firm, and the several matters therein stated are in all respects true.

____________________________________

(Signature of Partner who signed the bid)

Subscribed and sworn to before me this__________ day of_____________ , 20_____ 

________________________________________

Notary Public
C) **AFFIDAVIT WHERE BIDDER IS A CORPORATION:**

STATE OF __________________________)

COUNTY OF __________________________)

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

____________________________________ (Signature of Officer who signed the bid)

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

_________________________________________________________
Notary Public
ITEM 3: Acknowledgement of Addenda

Complete Part I or Part II, whichever is applicable:

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

<table>
<thead>
<tr>
<th>ADDENDUM #</th>
<th>Date of Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Dated________________________ , 20_____</td>
</tr>
<tr>
<td>2</td>
<td>Dated________________________ , 20_____</td>
</tr>
<tr>
<td>3</td>
<td>Dated________________________ , 20_____</td>
</tr>
<tr>
<td>4</td>
<td>Dated________________________ , 20_____</td>
</tr>
<tr>
<td>5</td>
<td>Dated________________________ , 20_____</td>
</tr>
<tr>
<td>6</td>
<td>Dated________________________ , 20_____</td>
</tr>
</tbody>
</table>

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

Dated: ________________________________ , 20____

BIDDER (NAME): ______________________________________________________

BIDDER (SIGNATURE): __________________________________________________
ITEM 4: Experience Questionnaire

*NOTE: The principal owner of the bidding firm must sign this questionnaire guaranteeing the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

Bidding Firm Name ______________________________________________________________

Bidding Firm Federal Tax Identification No: ______________________________

Principal Owner(s) name: ______________________________________________________

Telephone No: ____(____)_________________ 

Fax No._______________ Principal Owner E-Mail Address: __________________________

Bidding Firm is: Corporation ( ) Partnership ( ) Proprietorship ( )

Date: __________________, 20___

Address of Principal Business Office: _____________________________________________

1. Indicate the number of years’ experience the bidding firm has in plumbing repairs, plumbing maintenance, and new plumbing installations: ____________

2. Do you intend to use subcontractors to perform the services requested? _____ YES _____ NO

   *Please note, DOHMH does not anticipate any subcontracting

3. How many NYC Department of Buildings (DOB) licensed Master Plumbers does the bidding firm currently have on staff? _______ (please list name and title on the chart below)

How many NYC Department of Buildings (DOB) licensed Fire Suppression Contractors does the bidding firm currently have on staff? _______ (please list name and title on the chart below)
### NYC DOB Master Plumber

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
</tr>
</tbody>
</table>

### NYC DOB Fire Suppression Contractor

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
</tr>
</tbody>
</table>

4. Please indicate the highest ranking person responsible for safety and their title. Provide a current resume for this individual.

_________________,

Name

_________________,

Title

5. During the past five (5) years has the bidding firm completed plumbing repairs, plumbing maintenance, and new plumbing installations for any City or State agency? _____YES _____NO

If YES, please list the City or State agency (include bureaus and/or departments) and provide the number of contracts held:

____________________________________________________________________________

____________________________________________________________________________

6. During the past five (5) years has the bidding firm ever performed plumbing repairs, plumbing maintenance, and new plumbing installations for the U.S. Government? _____Yes _____No

If YES, provide dates, include the State Contract Reference No., the name and telephone number of the government contract administrator for such federal contract.

____________________________________________________________________________

____________________________________________________________________________

7. Below provide three projects that the bidding firm has **completed** within the past THREE (3) years performing plumbing repairs, plumbing maintenance, and new plumbing installations:

1. Project Description and Location: ________________________________

   ______________________________________________________________

   Name and Address of Owner: _______________________________________

   Phone Number of Owner: ______________________________

   Contract Amount: $ ______________________ Date Started:_______________

   Completion Date________________

2. Project Description and Location: ________________________________

   ______________________________________________________________
Name and Address of Owner: ____________________________________________
Phone Number of Owner: _____________________________________________
Contract Amount: $ _______________________ Date Started: _______________
Completion Date _______________

3. Project Description and Location: ______________________________________
Name and Address of Owner: ____________________________________________
Phone Number of Owner: _____________________________________________
Contract Amount: $ _______________________ Date Started: _______________
Completion Date _______________

8. Indicate the number of projects that the bidding firm currently has under contract performing plumbing repairs, plumbing maintenance, and new plumbing installations? ________

9. Provide the information below for this project:

Project Description: ______________________________________________________
Name and Address of Owner: ____________________________________________
Phone Number of Owner: _____________________________________________
Contract Amount: $ _______________________ Date Started: _______________
Contract duration: ___________ % of Contract Time elapsed as of this date: ___________
% Work completed as of this date: ___________
If Percent of elapsed time excess of work completed, give reasons therefor: ___________

10. During the past five (5) years has the bidding firm ever failed to complete a city/state/government contract? _____YES _____NO
If YES, please indicate the agency/company, Month/Year and give the reason:
________________________________________________________________________
11. During the past five (5) years, has the bidding firm ever been debarred from entering into any city/state/government contracts? _____YES _______NO
   If YES please provide details and dates:__________________________________________
                                                                                      
12. Is the bidding firm controlled by any other entity? _____YES _______NO
   If YES please indicate the name of the controlling entity _____________________________
                                                                                      
13. During the past five (5) years has a principal of the bidding firm ever been affiliated or connected with any other entity other than the bidding firm as a member, partner, director or officer? _____YES _______NO
   If YES, Indicate From and To dates of affiliation or current status:____________________
                                                                                      
14. If YES to above, during the past five (5) years has the affiliate entity ever been declared in default by any City, State or Federal Agency? _____YES _______NO
   If YES, give details and dates. Attach additional pages if needed)
                                                                                      
15. During the past five (5) years, has any principal of the bidding firm been called to a Grand Jury to testify, refused to sign a Waiver of Immunity to answer any relevant questions or have been indicted for any reason whatsoever? _____YES _______NO
   If YES, give details and dates. Attach additional pages if needed:____________________
ITEM 5: Safety

1. The contractor should attach a copy of the principal owner’s OSHA safety training(s) (i.e. OSHA 10 hour, 30 hour, etc.).

2. The contractor should indicate the firm’s Experience Modification Rating (EMR) for 2013. This number should be specified on your Workers Compensation document or by requesting a letter from your broker or insurance carrier that indicates the firm’s EMR.

   Experience Modification Rating (EMR) 2013______________________.
ITEM 5: Safety

1. The contractor must complete the OSHA 300 and OSHA 300A log forms (Appendix N).

2. The contractor should attach a copy of the principal owner’s OSHA safety training(s) (i.e. OSHA 10 hour, 30 hour, etc.).

3. The contractor should indicate the firm’s Experience Modification Rating (EMR) for 2013. This number should be specified on your Workers Compensation document or request a letter from your broker or insurance carrier that indicates the firm’s EMR.

   Experience Modification Rating (EMR) 2013______________________.

4. The contractor shall provide an implemented comprehensive safety plan that indicates who the highest ranking person responsible for safety is. The contractor’s safety plan shall be maintained on file by the authorized DOHMH representative.
Dated at ____________________________________________________________

This ____________________ day of ____________________, 20__________

_______________________________________________________________
(Full Legal Name of Organization)

By: __________________________________________________________________
(Name and Title of Person Signing)

STATE OF_____________________ ) ss:
COUNTY OF___________________ )

________________________________________________________________________ ,
(Print Name of Above Signatory)
being duly sworn deposes and says that he/she
is __________________________________________________

of the above __________________________________________________
(Full Legal Name of Bidder)

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 or Commissioner of Deeds

My commission expires________________________________________________________
CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
STANDARD REQUIREMENTS CONTRACT

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THE CITY OF NEW YORK  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
DOHMH REQUIREMENTS AGREEMENT

THIS AGREEMENT, made and entered into this __________________________ day of __________________________, in the year 20__, by and between The City of New York (the “City”), acting through its Department of Health and Mental Hygiene (“DOHMH”), having administrative offices at Gotham Center, 42-09 28th Street, Queens, New York, and 

___________________________________________________________

having offices at:

___________________________________________________________ (“Contractor”).

WITNESSETH:

The parties, in consideration of the mutual agreements contained herein, agree as follows:

CHAPTER I  
THE CONTRACT AND DEFINITIONS

ARTICLE 1. THE CONTRACT

1.1 Except for titles, subtitles, headings, running headlines, tables of contents 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:

1.1.1 All provisions required by law to be inserted in this Contract, whether actually inserted or not;

1.1.2 The Contract Drawings and Specifications;

1.1.3 The General Conditions and Special Conditions, if any;

1.1.4 The Contract and Appendices A through N inclusive;

1.1.5 The Information for Bidders; Request for Proposals; Notice of Solicitation and Proposal For Bids; Bid or Proposal, and, if used, the Bid Booklet;

1.1.6 All Addenda issued prior to the receipt of the bids; the Notice of Award; Performance and Payment Bonds, if required; and the Notice to Proceed or the Order to Work; and

1.1.7 Work Orders or Supplemental Work Orders issued under this Contract.

1.2 Should any conflict occur in or between the Specifications, the General Conditions, Special Conditions or any part of this Contract the Contractor shall be deemed to have estimated the most expensive way of doing the Work, unless the Contractor shall have asked for and obtained a decision in writing from the Commissioner of the Department of HEALTH AND MENTAL HYGIENE (“DOHMH”) before the submission of its bid as to what shall govern.
ARTICLE 2. DEFINITIONS

2.1 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:

2.1.1 "Addendum" or "Addenda" shall mean the additional Contract provisions and/or technical clarifications issued in writing by the Commissioner prior to the receipt of bids.

2.1.2 "Agency" shall mean DOHMH.

2.1.3 "Agency Chief Contracting Officer" (ACCO) shall mean a person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO, or his/her duly authorized representative.

2.1.4 "Allowance" shall mean a sum of money which the Agency may include in the total amount of the Contract for such specific contingencies as the Agency believes may be necessary to complete the Work, e.g., lead or asbestos remediation, and for which the Contractor will be paid on the basis of stipulated Unit Prices or a formula set forth in the Contract or negotiated between the parties provided, however, that if the Contractor is not directed to use the Allowance, the Contractor shall have no right to such money and it shall be deducted from the total amount of the Contract.

2.1.5 "City" shall mean the City of New York.

2.1.6 "City Chief Procurement Officer" (CCPO) shall mean a person delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCO and any offices which have oversight responsibility for the procurement of construction, or his/her duly authorized representative.

2.1.7 "Commissioner" shall mean the Commissioner of DOHMH and his/her duly authorized representative(s).

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

2.1.9 "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, and any Work Orders issued hereunder.

2.1.10 "Contract Drawings" shall mean those drawings furnished by the Commissioner in any Work Order.

2.1.11 "Contract Work" and "Work" shall mean everything required to be furnished and done by the Contractor by any one or more of the parts of the Contract or any Work Order. This shall include, without limitation, all services required to complete the assigned tasks in accordance with the Contract documents including labor, Materials, superintendence, management, administration, equipment and incidentals including cleaning, and obtaining any and all regulatory agency approvals such as permits, certifications and licenses, necessary and required to complete the Work.

2.1.12 "Contractor" shall mean the entity (successful bidder) which executed the Contract, and its representatives, obligated to perform Contract Work in accordance with the terms and conditions of
the Contract, whether a corporation, firm, partnership, joint venture, individual, or any combination thereof, and its, their, his/her successors, personal representatives, executors, administrators, and assigns, and any person, firm, partnership, joint venture, individual, or corporation which shall at any time be substituted in the place of the Contractor under this Contract.

2.1.13 “DOHMH”, “Director of Operations”, “DOHMH Project Architect” and words of similar import shall mean the DOHMH staff assigned to oversee the Contractor’s Work and coordinate and communicate with the Contractor on a given project.

2.1.14 “Days” shall mean calendar days, except where otherwise specified.

2.1.15 “Engineer” or “Architect” or “Project Manager” or “Construction Project Manager” shall mean the person so designated in writing by the Commissioner in the Notice to Proceed or the Order to Work to act as such in relation to this Contract, including a private Architect or Engineer or Project Manager or Construction Project Manager, as the case may be. For purposes of this Contract, individuals serving in these capacities shall be deemed equivalent with respect to their power and authority under this Contract. Subject to written approval by the Commissioner, the Engineer, Architect, Project Manager or Construction Project Manager may designate an authorized representative.

2.1.16 “Engineering Audit Officer” (EO) shall mean the person so designated by the Commissioner to perform responsible auditing functions hereunder.

2.1.17 “Equal” or “Approved Equal” shall mean equal as determined by DOHMH, in its sole discretion.

2.1.18 “Extra Work” shall mean Work performed as other than Unit Price Work or labor and Materials as specified in Chapter VI of this Contract. Additional Work ordered in a Supplemental Work Order shall not be deemed Extra Work unless such Work cannot be performed as Unit Price Work or on labor and Materials basis.

2.1.19 “Facility” or “Facilities”, unless otherwise specified, shall refer to any and all of the DOHMH owned or managed properties/sites/buildings listed in the Specifications and shall include, but not be limited to, all interior and exterior portions of such properties, up to and including the building’s property line as determined by the City. DOHMH reserves the right, in its sole discretion, to add or delete Facilities from the list contained in the Specifications, and will notify the Contractor of an addition or deletion in writing.

2.1.20 “Federal-Aid Contract” shall mean a contract in which the United States (federal) Government provides financial funding as so designated in the Information for Bidders.

2.1.21 “Final Acceptance” shall mean final written acceptance of all the Work in a particular Work Order by the Commissioner, a copy of which shall be sent to the Contractor.

2.1.22 “Final Approved Punch List” shall mean a list, approved pursuant to Article 14.2.2, specifying those items of Work to be completed on a particular Work Order by the Contractor after Substantial Completion and dates for the completion of each item of Work.

2.1.23 “Labor Rate” shall mean the hourly amount that must be paid to individuals performing
Contract Work under Sections 220 and/or 230 of the Labor Law of the State of New York or any other applicable prevailing wage law. All payments to Contractor for Contract Work done on a labor or “Time” basis (“Time and Materials” or “T&M”), shall be based on the Labor Rate for an individual multiplied by the number of hours worked and increased by the Percentage Mark-Up bid by the Contractor.

2.1.24 "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, any ordinance, rule or regulation having the force of law, or common law.

2.1.25 "Materialman" shall mean any corporation, firm, partnership, joint venture, or individual, other than employees of the Contractor, who or which contracts with the Contractor or any Subcontractor, to fabricate or deliver, or who actually fabricates or delivers, plant, materials or equipment to be incorporated in the Work.

2.1.26 "Materials" shall include, but shall not be limited to, any and all physical items necessary and required to complete the Work, as determined by the Commissioner in her/his sole discretion, including, without limitation, supplies, consumables, and any and all other assets and/or resources which may provide the basis for, or be incorporated into, the Work. Payment for Materials shall be limited to the actual and reasonable cost of the Materials or any discounted price paid by the Contractor increased by the Percentage Mark-Up bid by the Contractor.

2.1.27 "Means and Methods of Construction" shall mean the labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Contract.

2.1.28 "Notice to Proceed" or "Order to Work" shall mean the written notice issued by the Commissioner specifying the time for commencement of the Work under a Work Order.

2.1.29 "NYC", "New York City", "City of New York" and "City" shall mean the City of New York.

2.1.30 "Occupants" shall mean employees, visitors or invitees at NYC owned or managed buildings.

2.1.31 "Other Contractor(s)" shall mean any contractor (other than the entity which executed this Contract or its Subcontractors) who or which has a contract with the City for work on or adjacent to the Facility or Site of the Work.

2.1.32 "Payroll Taxes" shall mean State Unemployment Insurance (SUI), Federal Unemployment Insurance (FUI), and payments pursuant to the Federal Insurance Contributions Act (FICA).

2.1.33 "Percentage Mark-Up" or "% mark-up" shall mean the percentage bid by the Contractor to be added as a multiplier to the amount paid to the Contractor for labor and Materials. The Percentage Mark-Up shall be deemed to include, without limitation, any and all elements of overhead and profit and all direct and indirect costs incurred by the Contractor, any and all elements of overhead and profit including the cost of all insurance and bonds, governmental fees, licenses, and permits of any kind or nature whatsoever that the Contractor must carry or incurs pursuant to the Contract as well as all Payroll Taxes or other statutory, or contractual costs or expenses that the Contractor must pay on behalf of its employees. The Percentage Mark-Up shall also include
Contractor's costs or expenses for tools, Small Tools, equipment and accessories, whether owned or rented, scaffolding, travel, transportation, mobilization, supervision, management and superintendence. Unless otherwise set forth in the Specifications, the Percentage Mark-Up shall further be deemed to include any costs, expenses, overhead or profit if the Contractor subcontracts all or any part of the Work.

2.1.34 "Project" shall mean the public improvement to which this Contract or any Work Order relates;

2.1.35 “Project Meeting” shall mean a meeting between DOHMH staff, the Contractor and, if appropriate, other contractors and/or consultants working at the Facility, prior to, or during the performance of Work detailed under a specific Work Order.

2.1.36 “Provide” shall mean “furnish and install”, unless otherwise specified.

2.1.37 "Procurement Policy Board" (PPB) shall mean the Agency of the City of New York whose function is to establish comprehensive and consistent procurement policies and rules which shall have broad application throughout the City.

2.1.38 "Required Quantity" in a Unit Price Contract shall mean the actual quantity of any item of Unit Price Work or labor or Materials which is required to be performed or furnished in order to comply with the Contract.

2.1.39 "Resident Engineer" shall mean the representative of the Commissioner duly designated by the Commissioner to be his/her representative at the site of the Work and shall include any of the individuals named in Section 2.1.14.

2.1.40 "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 Engineer.

2.1.41 “Small Tools” shall mean items that are ordinarily required for a worker’s job function, including but not limited to, equipment that ordinarily has no licensing, insurance or substantive storage costs associated with it; such as circular and chain saws, impact drills, threaders, benders, wrenches, socket tools, etc.

2.1.42 "Specifications" shall mean all of the directions, requirements, and standards of performance applying to the Work as hereinafter detailed and designated in the Contract or any Work Order.

2.1.43 "Subcontractor" shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or with its subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, or superintendence, supervision and/or management at the Site. Wherever the word Subcontractor appears, it shall also mean sub-Subcontractor.

2.1.44 "Substantial Completion" shall mean the written determination by the Engineer that the Work required under this Contract or a particular Work Order is substantially, but not entirely, complete and the approval of the Final Approved Punch List.
2.1.45 “Supplemental Work Order” shall mean any and all written amendments, modifications or changes to a Work Order deemed necessary by DOHMH, in its sole discretion, in the best interests of the City. Unless required by Law, Supplemental Work Orders need not be registered with the Comptroller and shall not be deemed Extra Work.

2.1.46 “Tenant Services” shall mean DOHMH AM’s Tenant Services unit.

2.1.47 “Unit Price” shall mean the total amount to be paid to the Contractor for Unit Price Work, by application of the Unit Price to an estimated quantity of services to be performed under each item, irrespective of whether such amount is derived from separate labor and Material components or combined in a single sum. Unless otherwise specified, each Unit Price shall be deemed to include, without limitation, any and all direct or indirect costs incurred by the Contractor and any and all elements of overhead and profit as well as any and all direct and indirect costs of the Contractor including, but not limited to: including the cost of all insurance and bonds of any kind or nature whatsoever that the Contractor must carry pursuant to the Contract, as well as all Payroll Taxes or other statutory, or contractual costs or expenses that the Contractor must pay on behalf of its employees. The Unit Price shall also include Contractor’s costs or expenses for tools, Small Tools, equipment and accessories, whether owned or rented, scaffolding, travel, transportation, and mobilization. Unless otherwise specified, the Unit Price shall further be deemed to include any costs, expenses, overhead or profit if the Contractor subcontracts all or any part of the Work.

2.1.48 “Unit Price Work” shall mean a defined scope of Work as described in the Contract Documents for which the Contractor will be paid based on its “Unit Price” bid.

2.1.49 “Work” shall mean all services required to complete the Project in accordance with the Contract Documents, including without limitation, labor, material, superintendence, management, administration, equipment, and incidentals, and obtaining any and all permits, certifications and licenses as may be necessary and required to complete the Work, and shall include both Contract Work and Extra Work.

2.1.50 “Work Order” or “Work Request” shall mean a written order issued to the Contractor by the Commissioner that shall include a specified scope of Work to be completed within a definite time period with a “not to exceed” amount provided, however, that the “not to exceed” amount, scope of work and time within which a Work Order is to be completed may be amended, changed or modified by the Commissioner, in her/his sole discretion, in a Supplemental Work Order or the time may be extended pursuant to Article 13A. Any additional time that may be necessary for the Contractor to complete the Work due to the issuance of a Supplemental Work Order or a time extension shall not be deemed a delay for which the Contractor shall be entitled to any damages whatsoever. All references herein to a Work Order shall be deemed to include Supplemental Work Orders.
CHAPTER II
THE WORK AND ITS PERFORMANCE

ARTICLE 3. CHARACTER OF THE WORK

3.1 Unless otherwise expressly provided in the Contract Drawings, Specifications, Addenda or Work Order, the Work shall be performed in accordance with the best modern practice, utilizing, unless otherwise specified in writing, new and unused materials of standard first grade quality and workmanship and design of the highest quality, to the satisfaction of the Commissioner.

ARTICLE 4. MEANS AND METHODS OF CONSTRUCTION

4.1 Unless otherwise expressly provided in the Contract Drawings, Specifications, and Addenda, the Means and Methods of Construction shall be such as the Contractor may choose; subject, however, to the Engineer’s right to reject the Means and Methods of Construction proposed by the Contractor which in the opinion of the Engineer:

4.1.1 Will constitute or create a hazard to the Work, or to persons or property; or

4.1.2 Will not produce finished Work in accordance with the terms of the Contract; or

4.1.3 Will be detrimental to the overall progress of the Project.

4.2 The Engineer’s approval of the Contractor’s Means and Methods of Construction, or his/her failure to exercise his/her right to reject such means or methods, shall not relieve the Contractor of its obligation to complete the Work as provided in this Contract; nor shall the exercise of such right to reject create a cause of action for damages.

ARTICLE 5. COMPLIANCE WITH LAWS

5.1 The Contractor shall comply with all Laws applicable to this Contract and to the Work to be done hereunder.

5.2 Procurement Policy Board Rules: This Contract is subject to the Rules of the PPB ("PPB Rules") in effect at the time of the bid opening for this Contract. In the event of a conflict between the PPB Rules and a provision of this Contract, the PPB Rules shall take precedence.

5.3 Noise Control Code provisions.

5.3.1 In accordance with the provisions of Section 24-216(b) of the Administrative Code of the City ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the City Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the City Department of Environmental Protection.
5.3.2 The Contractor agrees to comply with Section 24-219 of the Administrative Code and implementing rules codified at 15 Rules of the City of New York ("RCNY") Section 28-100 et seq. In accordance with such provisions, the Contractor, if the Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan at each Site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the City Department of Environmental Protection. In addition, the Contractor’s certified Construction Noise Mitigation Plan is subject inspection by the City Department of Environmental Protection in accordance with Section 28-101 of Title 15 of RCNY. No Contract Work may take place at a Site unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

5.4 Ultra Low Sulfur Diesel Fuel: In accordance with the provisions of Section 24-163.3 of the Administrative Code, the Contractor specifically agrees as follows:

5.4.1 Definitions. For purposes of this Article 5.4, the following definitions apply:

5.4.1(a) “Contractor” means any person or entity that enters into a Public Works Contract with a City Agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such Public Works Contract.

5.4.1(b) “Motor Vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway.

5.4.1(c) “Nonroad Engine” means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under Section 7411 or Section 7521 of Title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

5.4.1(d) “Nonroad Vehicle” means a vehicle that is powered by a Nonroad Engine, fifty (50) horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers, and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five (65) horsepower or less and that are not used in any construction program or project.

5.4.1(e) “Public Works Contract” means a contract with a City Agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a City Agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a City Agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.
5.4.2 Ultra Low Sulfur Diesel Fuel

5.4.2(a) All Contractors shall use Ultra Low Sulfur Diesel Fuel in diesel-powered Nonroad Vehicles in the performance of this Contract.

5.4.2(b) Notwithstanding the requirements of Article 5.4.2(a), Contractors may use diesel fuel that has a sulfur content of no more than thirty parts per million (30 ppm) to fulfill the requirements of this Article 5.4.2, where the Commissioner of the City Department of Environmental Protection ("DEP Commissioner") has issued a determination that a sufficient quantity of Ultra Low Sulfur Diesel Fuel is not available to meet the needs of Agencies and Contractors. Any such determination shall expire after six (6) months unless renewed.

5.4.2(c) Contractors shall not be required to comply with this Article 5.4.2 where the City Agency letting this Contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million (30 ppm) is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Contractor in its fulfillment of the requirements of this Contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million (30 ppm) is available. Any finding made pursuant to this Article 5.4.2(c) shall expire after sixty (60) Days, at which time the requirements of this Article 5.4.2 shall be in full force and effect unless the City Agency renews the finding in writing and such renewal is approved by the DEP Commissioner.

5.4.2(d) Contractors may check on determinations and approvals issued by the DEP Commissioner pursuant to Section 24-163.3 of the Administrative Code, if any, at www.dep.nyc.gov or by contacting the City Agency letting this Contract.

5.4.2(e) The requirements of this Article 5.4.2 do not apply where they are precluded by federal or State funding requirements or where the Contract is an emergency procurement.

5.4.2 Best Available Technology

5.4.3(a) All Contractors shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this Contract. For determinations of best available technology for each type of diesel-powered Nonroad Vehicle, Contractors shall comply with the regulations of the City Department of Environmental Protection, as and when adopted, Chapter 14 of Title 15 of the Rules of the City of New York (RCNY). The Contractor shall fully document all steps in the best available technology selection process and shall furnish such documentation to the City Agency or the DEP Commissioner upon request. The Contractor shall retain all documentation generated in
the best available technology selection process for as long as the selected best available technology is in use.

5.4.3(b) No Contractor shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered Nonroad Vehicle in accordance with the provisions of this Article 5.4.3 within three (3) years of having first utilized such technology for such vehicle.

5.4.3(c) This Article 5.4.3 shall not apply to any vehicle used to satisfy the requirements of a specific Public Works Contract for fewer than twenty (20) Days.

5.4.3(d) The Contractor shall not be required to comply with this Article 5.4.3 with respect to a diesel-powered Nonroad Vehicle under the following circumstances:

5.4.3(d)(i) Where the City Agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by this Article 5.4.3 is unavailable for such vehicle, the Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.

5.4.3(d)(ii) Where the DEP Commissioner has issued a written waiver based upon the Contractor having demonstrated to the DEP Commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, the Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.

5.4.3(d)(iii) In determining which technology to use for the purposes of Articles 5.4.3(d)(i) and 5.4.3(d)(ii) above, the Contractor shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.

5.4.3(d)(iv) The Contractor shall submit requests for a finding or a waiver pursuant to this Article 5.4.3(d) in writing to the DEP Commissioner, with a copy to the ACCO of the City Agency letting this Contract. Any finding or waiver made or issued pursuant to Articles 5.4.3(d)(i) and 5.4.3(d)(ii) above shall expire after one hundred eighty (180) Days, at which time the requirements of Article 5.4.3(a) shall be in full force and effect unless the City Agency renews the finding, in writing, and the DEP Commissioner approves such finding, in writing, or the DEP Commissioner renews the waiver, in writing.

5.4.3(e) The requirements of this Article 5.4.3 do not apply where they are precluded by federal or State funding requirements or where the Contract is an emergency procurement.

5.4.3 Section 24-163 of the Administrative Code. The Contractor shall comply with Section 24-163 of the Administrative Code related to the idling of the engines of motor vehicles while parking.
5.4.4 Compliance

5.4.5(a) The Contractor’s compliance with Article 5.4 may be independently monitored. If it is determined that the Contractor has failed to comply with any provision of Article 5.4, any costs associated with any independent monitoring incurred by the City shall be reimbursed by the Contractor.

5.4.5(b) Any Contractor who violates any provision of Article 5.4, except as provided in Article 5.4.5(c) below, shall be liable for a civil penalty between the amounts of one thousand ($1,000) and ten thousand ($10,000) dollars, in addition to twice the amount of money saved by such Contractor for failure to comply with Article 5.4.

5.4.5(c) No Contractor shall make a false claim with respect to the provisions of Article 5.4 to a City Agency. Where a Contractor has been found to have done so, such Contractor shall be liable for a civil penalty of twenty thousand ($20,000) dollars, in addition to twice the amount of money saved by such Contractor in association with having made such false claim.

5.4.6 Reporting

5.4.6(a) For all Public Works Contracts covered by this Article 5.4, the Contractor shall report to the City Agency the following information:

5.4.6(a)(i) The total number of diesel-powered Nonroad Vehicles used to fulfill the requirements of this Public Works Contract;

5.4.6(a)(ii) The number of such Nonroad Vehicles that were powered by Ultra Low Sulfur Diesel Fuel;

5.4.6(a)(iii) The number of such Nonroad Vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology;

5.4.6(a)(iv) The number of such Nonroad Vehicles that utilized such other authorized technology in accordance with Article 5.4.3, including a breakdown by vehicle model and the type of technology used for each such vehicle;

5.4.6(a)(v) The locations where such Nonroad Vehicles were used; and

5.4.6(a)(vi) Where a determination is in effect pursuant to Article 5.4.2(b) or 5.4.2(c), detailed information concerning the Contractor’s efforts to obtain Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million (30 ppm).

5.4.6(b) The Contractor shall submit the information required by Article 5.4.6(a) at the completion of Work under the Public Works Contract and on a yearly basis no later than August 1 throughout the term of the Public Works Contract. The yearly report shall cover Work performed during the preceding fiscal year (July 1 - June 30).
5.5 Ultra Low Sulfur Diesel Fuel. In accordance with the Coordinated Construction Act for Lower Manhattan, as amended:

5.5.1 Definitions. For purposes of this Article 5.5, the following definitions apply:

5.5.1(a) “Lower Manhattan” means the area to the south of and within the following lines: a line beginning at a point where the United States pierhead line in the Hudson River as it exists now or may be extended would intersect with the southerly line of West Houston Street in the Borough of Manhattan extended, thence easterly along the southerly side of West Houston Street to the southerly side of Houston Street, thence easterly along the southerly side of Houston Street to the southerly side of East Houston Street, thence northeasterly along the southerly side of East Houston Street to the point where it would intersect with the United States pierhead line in the East River as it exists now or may be extended, including tax lots within or immediately adjacent thereto.

5.5.1(b) “Lower Manhattan Redevelopment Project” means any project in Lower Manhattan that is funded in whole or in part with federal or State funding, or any project intended to improve transportation between Lower Manhattan and the two air terminals in the City known as LaGuardia Airport and John F. Kennedy International Airport, or between Lower Manhattan and the air terminal in Newark known as Newark Liberty International Airport, and that is funded in whole or in part with federal funding.

5.5.1(c) “Nonroad Engine” means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under Section 7411 or Section 7521 of Title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

5.5.1(d) “Nonroad Vehicle” means a vehicle that is powered by a Nonroad Engine, fifty (50) horsepower (HP) and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers, and similar equipment, except that this terms shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five (65) HP or less and that are not used in any construction program or project.

5.5.1(e) “Ultra Low Sulfur Diesel Fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million (15 ppm).

5.5.2 Requirements. Contractors and Subcontractors are required to use only Ultra Low Sulfur Diesel Fuel to power the diesel-powered Nonroad Vehicles with engine HP rating of fifty (50) HP and above used on a Lower Manhattan Redevelopment Project and, where practicable, to reduce the emission of pollutants by retrofitting such Nonroad Vehicles with oxidation catalysts, particulate filters, or technology that achieves lowest particulate matter emissions.

5.6 Pesticides. In accordance with Section 17-1209 of the Administrative Code, to the extent that the Contractor or any Subcontractor applies pesticides to any property owned or leased by the City, the Contractor, and any Subcontractor shall comply with Chapter 12 of the Administrative Code.
5.7 Waste Treatment, Storage, and Disposal Facilities and Transporters. In connection with the Work, the Contractor and any Subcontractor shall use only those waste treatment, storage, and disposal facilities and waste transporters that possess the requisite license, permit or other governmental approval necessary to treat, store, dispose, or transport the waste, materials or hazardous substances.

5.8 Environmentally Preferable Purchasing. The Contractor shall ensure that products purchased or leased by the Contractor or any Subcontractor for the Work that are not specified by the City or are submitted as equivalents to a product specified by the City comply with the requirements of the New York City Environmentally Preferable Purchasing Program contained in Chapter 11 of Title 43 of the RCNY, pursuant to Chapter 3 of Title 6 of the Administrative Code.

ARTICLE 6. INSPECTION

6.1 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 and also for inspecting the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

6.2 The Contractor's obligation hereunder shall include the uncovering or taking down of finished Work and its restoration thereafter; provided, however, that the order to uncover, take down and restore shall be in writing, and further provided that if Work thus exposed proves satisfactory, and if the Contractor has complied with Article 6.1, such uncovering or taking down and restoration shall be considered an item of Extra Work to be paid for in accordance with the provisions of Article 26. If the Work thus exposed proves unsatisfactory, the City has no obligation to compensate the Contractor for the uncovering, taking down or restoration.

6.3 Inspection and approval by the Commissioner, the Engineer, Construction Project Manager, or Resident Engineer, of finished Work or of Work being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract. Finished or unfinished Work not found to be in strict accordance with the Contract shall be replaced as directed by the Engineer, even though such Work may have been previously approved and paid for. Such corrective Work is Contract Work and shall not be deemed Extra Work.

6.4 Rejected Work and materials shall be promptly taken down and removed from the Site, which must at all times be kept in a reasonably clean and neat condition.

ARTICLE 7. PROTECTION OF WORK AND OF PERSONS AND PROPERTY; NOTICES AND INDEMNIFICATION

7.1 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace and/or repair such Work at the Contractor's sole cost and expense, as directed by the Resident Engineer. The obligation to deliver finished Work in strict accordance with the Contract prior to Final Acceptance shall be absolute and shall not be affected by the Resident Engineer's approval of, or failure to prohibit, the Means and Methods of Construction used by the Contractor.
7.2 During the performance of the **Work** and up to the date of **Final Acceptance**, 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 **Contract**. The **Contractor's** obligation to protect shall include the duty to provide, place or replace, and adequately maintain at or about the **Site** suitable and sufficient protection such as lights, barricades, and enclosures.

7.3 The **Contractor** shall comply with the notification requirements set forth below in the event of any loss, damage or injury to **Work**, persons or property, or any accidents arising out of the operations of the **Contractor** and/or its **Subcontractors** under this **Contract**.

7.3.1 The **Contractor** shall make a full and complete report in writing to the **Resident Engineer** within three (3) **Days** after the occurrence.

7.3.2 The **Contractor** shall also send written notice of any such event to all insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to the **Contractor's** own employees) no later than twenty (20) days after such event and again no later than twenty (20) days after the initiation of any claim and/or action resulting therefrom. Such notice shall contain the following information: the number of the insurance policy, the name of the Named Insured, the date and location of the incident, and the identity of the persons injured or property damaged. For any policy on which the **City** and/or the **Engineer**, **Architect**, or **Project Manager** are Additional Insureds, such notice shall expressly specify that “this notice is being given on behalf of the City of New York as Additional Insured, such other Additional Insureds, as well as the Named Insured.”

7.3.2(a) Whenever such notice is sent under a policy on which the **City** is an Additional Insured, the **Contractor** shall provide copies of the notice to the **Comptroller**, the **Commissioner** and the **City** Corporation Counsel. The copy to the **Comptroller** shall be sent to the Insurance Unit, NYC Comptroller’s Office, 1 Centre Street – Room 1222, New York, New York, 10007. The copy to the **Commissioner** shall be sent to the address set forth in Schedule A of the General Conditions. The copy to the **City** Corporation Counsel shall be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

7.3.2(b) If the **Contractor** fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, 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**.

7.4 To the fullest extent permitted by law, the **Contractor** shall defend, indemnify, and hold the **City**, its employees, and officials (the “Indemnitees”) harmless against any and all claims (including but not limited to claims asserted by any employee of the **Contractor** and/or its **Subcontractors**) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys’ fees and disbursements) allegedly arising out of or in any way related to the operations of the **Contractor** and/or its **Subcontractors** in the performance of this **Contract** or from the **Contractor's** and/or its **Subcontractors'** failure to comply with any of the provisions of this **Contract** or of the **Law**. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Article 7.4 by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that the indemnification obligation hereunder contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of **Law** or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or
contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of Law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

7.4.1 Indemnification under Article 7.4 or any other provision of the Contract shall operate whether or not Contractor or its Subcontractors have placed and maintained the insurance specified under Article 22.

7.5 The provisions of this Article 7 shall not be deemed to create any new right of action in favor of third parties against the Contractor or the City.

CHAPTER III
TIME PROVISIONS

ARTICLE 8. COMMENCEMENT AND PROSECUTION OF THE WORK

8.1 Term of the Contract: The Contract shall commence as of the date of the Notice to Proceed or issuance of the first Work Order hereunder and shall remain in effect during the initial term of the Contract set forth in Schedule A. At the Commissioner’s sole option, the term of this Contract may be renewed for the period set forth in Schedule A. The Contract may also be extended, at the Commissioner’s sole option, for a cumulative period not to exceed one year from the date of expiration of either the original term or the renewal term of the Contract.

8.2 Continuation of the Contract:

8.2.1 Notwithstanding the provisions of Article 8.1, in the event:

(a) Services are required for a Project; and,

(b) A Work Order for the Project is issued by the Commissioner during the “term of the Contract,” as such quoted term is defined below, including the last day thereof; and,

(c) The time frame for completion of the Project extends beyond the term of the Contract,

(d) Then and in such event, the Contract shall remain in full force and effect for whatever period of time is necessary for completion of such Work Order or any Supplemental Work Order required to complete the Project.

8.2.2 For the purposes of Article 8.2, the phrase “term of the Contract” shall mean whichever of the following is the latest of the following Contract periods: (1) the initial term of the Contract as set forth in Schedule A, (2) the extended term of the Contract, or (3) the renewal term of the Contract.
8.3 Commencement/Prosecution of the Work:

8.3.1 The Contractor shall commence Work on the date specified in a Work Order signed by the Commissioner. The time for performance of the Work shall be computed from the date specified in such Work Order, which shall remain in effect until completion of all required services for the Work Order. TIME BEING OF THE ESSENCE to the City, the Contractor shall thereafter prosecute the Work diligently, using such Means and Methods of Construction as are in accord with Article 4 herein and as will assure its completion not later than the date specified in the Work Order, or the date to which the time for completion may be extended.

8.3.2 Unless terminated or cancelled by the Commissioner, Work Orders shall be effective and binding upon the Contractor when placed in the mail prior to the termination of the term of the Contract as hereinabove defined in 8.2, addressed to the Contractor at the address shown on the advice of award, or emailed to the Contractor at the email address or telefax number provided by the Contractor for the purposes of this Contract.

ARTICLE 9. PROGRESS SCHEDULES

9.1 To enable the Work to be performed in an orderly and expeditious manner, the Contractor, within fifteen (15) Days after the Notice to Proceed or Order to Work or issuance of a Work Order, unless otherwise directed by the Engineer, shall submit to the Engineer a proposed progress schedule based on the Critical Path Method in the form of a bar graph or in such other form as specified by the Engineer, and monthly cash flow requirements, showing:

9.1.1 The anticipated time of commencement and completion of each of the various operations to be performed under the Work Order; and

9.1.2 The sequence and interrelation of each of these operations with the others and with those of other related contracts; and

9.1.3 The estimated time required for fabrication or delivery, or both, of all materials and equipment required for the Work, including the anticipated time for obtaining required approvals pursuant to Article 10; and

9.2 The estimated amount in dollars the Contractor will claim on a monthly basis.

9.3 The proposed schedule shall be revised as directed by the Engineer, until finally approved by the Engineer, and after such approval, subject to the provisions of Article 11, shall be strictly adhered to by the Contractor.

9.4 If the Contractor shall fail to adhere to the approved progress schedule, or to the schedule as revised pursuant to Article 11, it shall promptly adopt such other or additional Means and Methods of Construction, at its sole cost and expense, as will make up for the time lost and will assure completion in accordance with the approved progress schedule. The approval by the City of a progress schedule which is shorter than the time allotted under the Contract shall not create any liability for the City if the approved progress schedule is not met.

9.5 The Contractor will not receive any payments until the proposed progress schedule is submitted.
ARTICLE 10. REQUESTS FOR INFORMATION OR APPROVAL

10.1 From time to time as the Work progresses and in the sequence indicated by the approved progress schedule, the Contractor shall submit to the Engineer a specific request in writing for each item of information or approval required by the Contractor. These requests shall state the latest date upon which the information or approval is actually required by the Contractor, and shall be submitted in a reasonable time in advance thereof to provide the Engineer a sufficient time to act upon such submissions, or any necessary re-submissions thereof.

10.2 The Contractor shall not have any right to an extension of time on account of delays due to the Contractor’s failure to submit requests for the required information or the required approval in accordance with the above requirements.

ARTICLE 11. NOTICE OF CONDITIONS CAUSING DELAY AND DOCUMENTATION OF DAMAGES CAUSED BY DELAY

11.1 After the commencement of any condition which is causing or may cause a delay in completion of the Work, including conditions for which the Contractor may be entitled to an extension of time, the following notifications and submittals are required:

11.1.1 Within seven (7) Days after the commencement of such condition, the Contractor must notify the Engineer in writing of the existence, nature, and effect of such condition upon the approved progress schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.

11.1.2 If the Contractor shall claim to be sustaining damages for delay, as provided for in this Article 11, within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are being incurred, the Contractor shall submit to the Commissioner verified written statements of the details and the amounts of such damages, together with documentary evidence of such damages (“statement of delay damages”) as further detailed in Article 11.6. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. On failure of the Contractor to strictly comply with all of the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action arising under or by reason of this Contract shall not be different from or in excess of the statements made and documentation provided pursuant to this Article 11.

11.1.3 Within 60 days of submission of the final verified statement of claims pursuant to Article 44, the Commissioner shall make a determination as to whether a compensable delay has occurred and, if so, the amount of compensation due the Contractor. Notwithstanding the above, the Commissioner may make a determination as to whether a compensable delay has occurred at any time after the Contractor’s first submission of a statement of delay damages provided, however, that the amount of compensation due to the Contractor will not be determined until the Commissioner determines that the Work is delayed after the date set for substantial completion.

11.2 Failure of the Contractor to strictly comply with the requirements of Article 11.1.1 may, in the discretion of the Commissioner, be deemed sufficient cause to deny any extension of time on account of delay
arising out of such condition. Failure of the Contractor to strictly comply with the requirements of Articles 11.1.1 and 11.1.2 shall be deemed a conclusive waiver by the Contractor of any and all claims for damages for delay arising from such condition and no right to recover on such claims shall exist.

11.3 When appropriate and directed by the Engineer, the progress schedule shall be revised by the Contractor until finally approved by the Engineer. The revised progress schedule must be strictly adhered to by the Contractor.

11.4 Compensable Delays

11.4.1 The Contractor agrees to make claim only for additional costs attributable to delay in the performance of this Contract necessarily extending the time for completion of the Work or resulting from acceleration directed by the Commissioner and required to maintain the Project schedule, occasioned solely by any act or omission to act of the City listed below. The Contractor also agrees that delay from any other cause shall be compensated, if at all, solely by an extension of time to complete the performance of the Work.

11.4.1.1 The failure of the City to take reasonable measures to coordinate and progress the Work, except that the City shall not be responsible for the Contractor’s obligation to coordinate and progress the Work of its Subcontractors.

11.4.1.2 Extended delays attributable to the City in the review or issuance of change orders, in shop drawing reviews and approvals or as a result of the cumulative impact of multiple change orders, which have a verifiable impact on Project costs.

11.4.1.3 The unavailability of the Site for an extended period of time that significantly affects the scheduled completion of the Contract.

11.4.1.4 The issuance by the Engineer of a stop work order relative to a substantial portion of the Work for a period exceeding thirty (30) Days, which was not brought about through any action or omission of the Contractor.

11.4.1.5 Differing site conditions that were neither known nor reasonably ascertainable on a pre-bid inspection of the Site or review of the bid documents or other publicly available sources, and that are not ordinarily encountered in the Project’s geographical area or neighborhood or in the type of Work to be performed.

11.4.1.6 Delays caused by the City’s bad faith or its willful, malicious, or grossly negligent conduct;

11.4.1.7 Delays not contemplated by the parties;

11.4.1.8 Delays so unreasonable that they constitute an intentional abandonment of the Contract by the City; and

11.4.1.9 Delays resulting from the City’s breach of a fundamental obligation of the Contract.
11.4.2 No claim may be made for any alleged delay in **Substantial Completion** of the **Work** by a date earlier than the date of **Substantial Completion** provided for in Schedule A unless there is a provision in the **Contract** providing for additional compensation for early completion. No claim may be made for any alleged delay in **Substantial Completion** of the **Work** if the work is substantially completed by the date of **Substantial Completion** provided for in Schedule A unless acceleration has been directed by the **Commissioner** to meet the date of **Substantial Completion** set forth in Schedule A.

11.4.3 The provisions of this Article 11 apply only to claims for additional costs attributable to delay and do not preclude determinations by the **Commissioner** allowing reimbursements for additional costs for **Extra Work** pursuant to Articles 25 and 26 of this **Contract**. To the extent that any cost attributable to delay is reimbursed as part of a change order, no additional claim for compensation under this Article 11 shall be allowed.

11.5 **Non-Compensable Delays.** The **Contractor** agrees to make no claim for, and is deemed to have included in its bid prices for the various items of the **Contract**, the extra/additional costs attributable to any delays caused by or attributable to the items set forth below. For such items, the **Contractor** shall be compensated, if at all, solely by an extension of time to complete the performance of the **Work**, in accordance with the provisions of Article 13. Such extensions of time will be granted, if at all, pursuant to the grounds set forth in Article 13.3.

11.5.1 The acts or omissions of any third parties, including but not limited to **Other Contractors**, public/ governmental bodies (other than **City Agencies**), utilities or private enterprises, who are disclosed in the **Contract Documents** or are ordinarily encountered or generally recognized as related to the **Work**;

11.5.2 Any situation which was within the contemplation of the parties at the time of entering into the **Contract**, including any delay indicated or disclosed in the **Contract Documents** or generally recognized as related to the nature of the **Work**, and/or the existence of any facility or appurtenance owned, operated or maintained by any third party, as indicated or disclosed in the **Contract Documents** or ordinarily encountered or generally recognized as related to the nature of the **Work**;

11.5.3 Restraining orders, injunctions or judgments issued by a court which were caused by a Contractor’s submission, action or inaction or by a Contractor’s **Means and Methods of Construction**, or by third parties, unless such order, injunction or judgment was the result of an action or omission by the **City**;

11.5.4 Any labor boycott, strike, picketing, lockout or similar situation;

11.5.5 Any shortages of supplies or materials, or unavailability of equipment, required by the **Contract Work**;

11.5.6 Climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides or other catastrophes or acts of God, or acts of war or of the public enemy or terrorist acts, including the **City’s** reasonable responses thereto; and

11.5.7 **Extra Work** which does not significantly affect the overall completion of the **Contract**, reasonable delays in the review or issuance of change orders or field orders and/or in shop drawing reviews or approvals.

11.6 **Required Content of Submission of Statement of Delay Damages**
11.6.1 In the verified written statement of delay damages required by Article 11.1.2, the following information shall be provided by the Contractor:

11.6.1.1 For each delay, the start and end dates of the claimed periods of delay and, in addition, a description of the operations that were delayed, an explanation of how they were delayed, and the reasons for the delay, including identifying the applicable act or omission of the City listed in Article 11.4.

11.6.1.2 A detailed factual statement of the claim providing all necessary dates, locations and items of Work affected by the claim.

11.6.1.3 The amount of additional compensation sought and a breakdown of that amount into categories as described in Article 26.2, subject to the limitations set forth in Article 11.7.

11.6.1.4 Any additional information requested by the Commissioner.

11.7 Recoverable Costs

11.7.1 Delay damages may be recoverable for the following costs actually and necessarily incurred in the performance of the Work:

11.7.1.1 Direct labor, including payroll taxes (subject to statutory wage caps) and supplemental benefits, based on time and materials records;

11.7.1.2 Necessary materials (including transportation to the Site), based on time and material records;

11.7.1.3 Reasonable rental value of necessary plant and equipment other than small tools, plus fuel/energy costs according to the applicable formula set forth in Articles 26.2.4 and/or 26.2.8, based on time and material records;

11.7.1.4 Insurance and bond costs;

11.7.1.5 Extended field office costs;

11.7.1.6 Extended Site overhead; and

11.7.1.7 Extended home office overhead.

11.7.2 Recoverable Subcontractor Costs. When the Work is performed by a Subcontractor, the Contractor may be paid the actual and necessary costs of such subcontracted Work as outlined above in Articles 11.7.1.1 through 11.7.1.6, and an additional overhead of five (5%) percent of the costs outlined in Articles 11.7.1.1 through 11.7.1.3.

11.7.3 Non-Recoverable Costs. The parties agree that the City will have no liability for the following items and the Contractor agrees it shall make no claim for the following items:
11.7.3.1 Profit, or loss of anticipated or unanticipated profit;

11.7.3.2 Consequential damages, including but not limited to interest on monies in dispute, including interest which is paid on such monies, loss of bonding capacity, bidding opportunities, or interest in investment, or any resulting insolvency;

11.7.3.3 Indirect costs or expenses of any nature;

11.7.3.4 Direct or indirect costs attributable to performance of Work where the Contractor, because of situations or conditions within its control, has not progressed the Work in a satisfactory manner; and

11.7.3.5 Attorneys’ fees and dispute and claims preparation expenses.

11.7 Determinations under this Article 11 are not subject to the jurisdiction of the Contract Dispute Resolution Board pursuant to the dispute resolution process set forth in Article 27.

11.8 If the parties agree, pursuant to Article 11.1.3 above, that a compensable delay has occurred and agree on the amount of compensation, payment may be made pursuant to a written change order. Payment pursuant to such change order is subject to pre-audit by the Engineering Audit Officer, and may be post-audited by the Comptroller and/or the Agency.

ARTICLE 12. COORDINATION WITH OTHER CONTRACTORS

12.1 During the progress of the Work, Other Contractors may be engaged in performing other work or may be awarded other contracts for additional work on this Project. In that event, the Contractor shall coordinate the Work to be done hereunder with the work of such Other Contractors and the Contractor shall fully cooperate with such Other Contractors and carefully fit its own Work to that provided under other contracts as may be directed by the Engineer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any Other Contractors.

12.2 If the Engineer determines that the Contractor is failing to coordinate its Work with the work of Other Contractors as the Engineer has directed, then the Commissioner shall have the right to withhold any payments otherwise due hereunder until the Contractor completely complies with the Engineer’s directions.

12.3 The Contractor shall notify the Engineer in writing if any Other Contractor on this Project is failing to coordinate its work with the Work of this Contract. If the Engineer finds such charges to be true, the Engineer shall promptly issue such directions to the Other Contractor with respect thereto as the situation may require. The City shall not, however, be liable for any damages suffered by any Other Contractor’s failure to coordinate its work with the Work of this Contract or by reason of the Other Contractor’s failure to promptly comply with the directions so issued by the Engineer, or by reason of any Other Contractor’s default in performance, it being understood that the City does not guarantee the responsibility or continued efficiency of any contractor. The Contractor agrees to make no claim against the City for any damages relating to or arising out of any directions issued by the Engineer pursuant to this Article 12 (including but not limited to the failure of any Other Contractor to comply or promptly comply with such directions), or the failure of the Engineer to issue any directions, or the failure of any Other Contractor to coordinate its work, or the default in performance of any Other Contractor.
12.4 The Contractor shall indemnify and hold the City harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the Engineer's directions promptly; and the Comptroller shall have the right to exercise the powers reserved in Article 23 with respect to any claims which may be made for damages due to the Contractor's failure to comply with the Engineer's directions promptly. Insofar as the facts and 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 provided by Law.

12.5 Should the Contractor sustain any damage through any act or omission of any Other Contractor having a contract with the City for the performance of work upon the Site or of work which may be necessary to be performed for the proper prosecution of the Work to be performed hereunder, or through any act or omission of a subcontractor of such Other Contractor, the Contractor shall have no claim against the City for such damage, but shall have a right to recover such damage from the Other Contractor under the provision similar to the following provisions which apply to this Contract and have been or will be inserted in the contracts with such Other Contractors:

12.5.1 Should any Other Contractor having or who shall hereafter have a contract with the City for the performance of work upon the Site sustain any damage through any act or omission of the Contractor hereunder or through any act or omission of any Subcontractor of the Contractor, the Contractor agrees to reimburse such Other Contractor for all such damages and to defend at its own expense any action based upon such claim and if any judgment or claim (even if the allegations of the action are without merit) against the City shall be allowed the Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith and agrees to indemnify and hold the City harmless from all such claims. Insofar as the facts and 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 provided by Law.

12.6 The City's right to indemnification hereunder shall in no way be diminished, waived or discharged by its recourse to assessment of liquidated damages as provided in Article 15, or by the exercise of any other remedy provided for by Contract or by Law.

ARTICLE 13. EXTENSION OF TIME FOR PERFORMANCE FOR THE CONTRACT

13.1 If performance by the Contractor is delayed beyond the Contract completion date for a reason set forth in Article 13.3, the Contractor may be allowed a reasonable extension of time in conformance with this Article 13 and the PPB Rules.

13.2 Any extension of time may be granted only by the ACCO or by the Board for the Extension of Time (hereafter "Board") (as set forth below) upon written application by the Contractor.

13.3 Grounds for Extension: If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of the Work caused solely:

13.3.1 By the acts or omissions of the City, its officials, agents or employees; or

13.3.2 By the act or omissions of Other Contractors on this Project; or

13.3.3 By supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal, or strikes or
13.1.4 The Contractor shall, however, be entitled to an extension of time for such causes only for the number of Days of delay which the ACCO or the Board may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of Articles 9 and 10.

13.4 The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the Work as determined by the ACCO or the Board, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its Subcontractors or Materialmen, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

13.5 The determination made by the ACCO or the Board on an application for an extension of time shall be binding and conclusive on the Contractor.

13.6 The ACCO or the Board acting entirely within their discretion may grant an application for an extension of time for causes of delay other than those herein referred.

13.7 Permitting the Contractor to continue with the Work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the City of any of its rights under this Contract.

13.8 Application for Extension of Time:

13.8.1 Before the Contractor’s time extension request will be considered, the Contractor shall notify the ACCO of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the ACCO identifying:

13.8.1(a) The Contractor; the registration number; and Project description;

13.8.1(b) Liquidated damage assessment rate, as specified in the Contract;

13.8.1(c) Original total bid price;

13.8.1(d) The original Contract start date and completion date;

13.8.1(e) Any previous time extensions granted (number and duration); and

13.8.1(f) The extension of time requested.

13.8.2 In addition, the application for extension of time shall set forth in detail:

13.8.2(a) The nature of each alleged cause of delay in completing the Work;
13.8.2(b) The date upon which each such cause of delay began and ended and the number of Days attributable to each such cause;

13.8.2(c) A statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for Substantial Completion and final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and

13.8.2(d) A statement indicating the Contractor's understanding that the time extension is granted only for purposes of permitting continuation of Contract performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

13.9 Analysis and Approval of Time Extensions:

13.9.1 For time extensions for partial payments, a written determination shall be made by the ACCO who may, for good and sufficient cause, extend the time for the performance of the Contract as follows:

13.9.1(a) If the Work is to be completed within six (6) months, the time for performance may be extended for sixty (60) Days;

13.9.1(b) If the Work is to be completed within less than one (1) year but more than six (6) months, an extension of ninety (90) Days may be granted;

13.9.1(c) If the Contract period exceeds one (1) year, besides the extension granted in Article 13.9.1(b), an additional thirty (30) Days may be granted for each multiple of six (6) months involved beyond the one (1) year period; or

13.9.1(d) If exceptional circumstances exist, the ACCO may extend the time for performance beyond the extensions in Articles 13.9.1(a), 13.9.1(b), and 13.9.1(c). In that event, the ACCO shall file with the Mayor's Office of Contract Services a written explanation of the exceptional circumstances.

13.9.2 For extensions of time for Substantial Completion and final completion payments, the Engineer, in consultation with the ACCO, shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of this Contract). The report shall be subject to review by and approval of the Board, which shall have authority to question its analysis and determinations and request additional facts or documentation. The report as reviewed and made final by the Board shall be made a part of the Agency contract file. Neither the report itself nor anything contained therein shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

13.9.3 Approval Mechanism for Time Extensions for Substantial Completion or Final Completion Payments: An extension shall be granted only with the approval of the Board which is comprised of the ACCO of the Agency, the City Corporation Counsel, and the Comptroller, or their authorized representatives.
13.9.4 Neither the granting of any application for an extension of time to the Contractor or any Other Contractor on this Project nor the papers, records or reports related to any application for or grant of an extension of time or determination related thereto shall be referred to or offered in evidence by the Contractor or its attorneys in any action or proceeding.

13.10 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, except as provided for in Article 11.

**ARTICLE 13A. EXTENSION OF TIME FOR PERFORMANCE OF A WORK ORDER**

13A.1 If performance by the Contractor in connection with a particular Work Order is delayed for a reason set forth below, the Contractor may submit an application for an extension of time in accordance with this Article 13A.

13A.2 The Contractor shall, however, be entitled to an extension of time for such causes only for the number of Days of delay which the Engineer or the ACCO may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of Articles 9 and 10.

13A.3 Grounds for Extension: The Contractor shall be granted an extension of time for delay caused solely:

13A.3.1 By the acts or omissions of the City, its officers, agents, or employees;

13A.3.2 By the act or omissions of other Contractors on a project; or

13A.3.3 By supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, Acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes not brought about by any act or omission of the Contractor).

13A.4 Extension for Concurrent Causes of Delay: The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or its Subcontractors or Materialmen, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

13A.5 Application for Extension of Time for a Work Order.

13A.5.1 The Contractor shall, within five (5) days after commencement of the condition which allegedly has caused or is causing a delay, submit a written application to the Engineer identifying:
a) the Contractor, the Contract registration number, the Work Order number, and project description;

b) liquidated damage assessment rate, if applicable;

c) the original Work Order start date, completion date and approved construction schedule;

d) any previous time extensions granted (number and duration);

e) the number of days for which an extension of time is requested along with a new construction schedule showing the requested completion date;

f) the nature of each alleged cause of delay; and

g) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause; and

h) a statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and

i) a statement indicating the Contractor's understanding that the time extension is granted only for purposes of permitting continuation of the Work Order performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future; and

j) A statement indicating the Contractor's understanding that the time extension is granted only for purposes of permitting continuation of Work Order performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

13A.6 The Engineer shall prepare a written determination granting or denying the application for an extension of time setting forth the reasons for such determination and the new completion date. The determination made by the Engineer granting or denying an extension of time shall be binding and conclusive on the Contractor.

13A.7 A determination to grant an extension of time for causes of delay other than those set forth herein shall be entirely within the discretion of the Engineer.

13A.8 Permitting the Contractor to continue with the Work Order after the time for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall not operate as a waiver by the City of any of its rights under this Contract. Neither the granting of any application for an extension of time to the Contractor or any Other Contractor on this Work Order nor the papers, records or reports related to any application for or grant of an extension of time or determination related thereto shall be referred to or
offered in evidence by the Contractor or its attorneys in any action or proceeding.

13A.9 Assessment of Liquidated Damages: In the event, a request for an extension is denied, a report including the written determination, analysis and related documentation shall be forwarded to the ACCO for consideration and assessment of liquidated damages. Notwithstanding the foregoing, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension, shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

ARTICLE 14. COMPLETION AND FINAL ACCEPTANCE OF THE WORK

14.1 Date for Substantial Completion: The Contractor shall substantially complete the Work within the time fixed in the Work Order, Schedule A of the General Conditions, or within the time to which such Substantial Completion may be extended by Supplemental Work Order.

14.2 Determining the Date of Substantial Completion: The Work will be deemed to be substantially complete when the two conditions set forth below have been met.

14.2.1 Inspection: The Engineer has inspected the Work and has made a written determination that it is substantially complete.

14.2.2 Approval of Final Approved Punch List and Date for Final Acceptance: Following inspection of the Work, the Engineer shall furnish the Contractor with a final punch list, specifying all items of Work to be completed and proposing dates for the completion of each specified item of Work. The Contractor shall then submit in writing to the Engineer within ten (10) Days of the Engineer furnishing the final punch list either acceptance of the dates or proposed alternative dates for the completion of each specified item of Work. If the Contractor proposes alternative dates, then, within a reasonable time after receipt, the Engineer, in a written notification to the Contractor, shall approve the Contractor’s completion dates or, if they are unable to agree the Engineer shall establish dates for the completion of each item of Work. If the Contractor neither accepts the dates nor proposes alternative dates within ten (10) Days, the schedule proposed by the Engineer shall be deemed accepted. The latest completion date specified shall be the date for Final Acceptance of the Work.

14.3 Date of Substantial Completion. The date of approval of the Final Approved Punch List, shall be the date of Substantial Completion. The date of approval of the Final Approved Punch List shall be either (a) if the Contractor approves the final punch list and proposed dates for completion furnished by the Engineer, the date of the Contractor’s approval; or (b) if the Contractor neither accepts the dates nor proposes alternative dates, ten (10) Days after the Engineer furnishes the Contractor with a final punch list and proposed dates for completion; or (c) if the Contractor proposes alternative dates, the date that the Engineer sends written notification to the Contractor either approving the Contractor’s proposed alternative dates or establishing dates for the completion for each item of Work.

14.4 Determining the Date of Final Acceptance: The Work will be accepted as final and complete as of the date of the Engineer’s inspection if, upon such inspection, the Engineer finds that all items on the Final Approved Punch List are complete and no further Work remains to be done. The Commissioner will then issue a written determination of Final Acceptance.

14.5 Request for Inspection: Inspection of the Work by the Engineer for the purpose of Substantial Completion or Final Acceptance shall be made within ten (10) Days after receipt of the Contractor’s written
14.2 Request for Re-inspection: If upon inspection for the purpose of Substantial Completion or Final Acceptance, the Engineer determines that there are items of Work still to be performed, the Contractor shall promptly perform them and then request a re-inspection. If upon re-inspection, the Engineer determines that the Work is substantially complete or finally accepted, the date of such re-inspection shall be the date of Substantial Completion or Final Acceptance. Re-inspection by the Engineer shall be made within ten (10) Days after receipt of the Contractor's written request therefor.

14.7 Initiation of Inspection by the Engineer: If the Contractor does not request inspection or re-inspection of the Work for the purpose of Substantial Completion or Final Acceptance, the Engineer may initiate such inspection or re-inspection.

**ARTICLE 15. LIQUIDATED DAMAGES**

15.1 In the event the Contractor fails to substantially complete the Work within the time fixed for such Substantial Completion in a Work Order, plus authorized time extensions, or if the Contractor, in the sole determination of the Commissioner, has abandoned the Work, the Contractor shall pay to the City the sum fixed in Schedule A of the General Conditions, for each and every Day that the time consumed in substantially 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 Substantial 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. This Article 15 shall also apply to the Contractor whether or not the Contractor is defaulted pursuant to Chapter X of this Contract. Neither the failure to assess liquidated damages nor the granting of any time extension shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

15.2 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 in this Contract or by Law.

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

**ARTICLE 16. OCCUPATION OR USE PRIOR TO COMPLETION**

16.1 Unless otherwise provided for in the Specifications or a Work Order, the Commissioner may take over, use, occupy or operate any part of the Work at any time prior to Final Acceptance, upon written notification to the Contractor. The Engineer shall inspect the part of the Work to be taken over, used, occupied, or operated, and will furnish the Contractor with a written statement of the Work, if any, which remains to be performed on such part. The Contractor shall not object to, nor interfere with, the Commissioner's decision to exercise the rights granted by Article 16. In the event the Commissioner takes over, uses, occupies, or operates any part of the Work:

16.1.1 the Engineer shall issue a written determination of Substantial Completion with respect to such part of the Work;
16.1.2 the Contractor shall be relieved of its absolute obligation to protect such part of the unfinished Work in accordance with Article 7;

16.1.3

16.1.4 the Contractor's guarantee on such part of the Work shall begin on the date of such use by the City; and;

16.1.5 the Contractor shall be entitled to a return of so much of the amount retained in accordance with Article 21 as it relates to such part of the Work, except so much thereof as may be retained under Articles 24 and 44.

CHAPTER IV
SUBCONTRACTS AND ASSIGNMENTS

ARTICLE 17. SUBCONTRACTS

17.1 The Contractor shall not make subcontracts totaling an amount more than the percentage of the total Contract price fixed in Schedule A of the General Conditions or a particular Work Order, without prior written permission from the Commissioner. All subcontracts made by the Contractor shall be in writing. No Work may be performed by a Subcontractor prior to the Contractor entering into a written subcontract with the Subcontractor and complying with the provisions of this Article 17.

17.2 Before making any subcontracts, the Contractor shall submit a written statement to the Commissioner giving the name and address of the proposed Subcontractor; the portion of the Work and materials which it is to perform and furnish; the cost of the subcontract; the VENDEX questionnaire if required; the proposed subcontract if requested by the Commissioner; 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.

17.3 In addition to the requirements in Article 17.2, Contractor is required to list the Subcontractor in the web based Subcontractor Reporting System through the City's Payee Information Portal (PIP), available at www.nyc.gov/PIP. For each Subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of Subcontractor's 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.

17.4 Failure of the Contractor to list a Subcontractor and/or to report Subcontractor payments in a timely fashion may result in the Commissioner 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. Article 15 shall govern the issue of liquidated damages.

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¹ 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 www.nyc.gov/PIP. Additional assistance with PIP may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.
17.5 If an approved Subcontractor elects to subcontract any portion of its subcontract, the proposed subcontract shall be submitted in the same manner as directed above.

17.6 The Commissioner will notify the Contractor in writing whether the proposed Subcontractor is approved. If the proposed Subcontractor is not approved, the Contractor may submit another proposed Subcontractor unless the Contractor decides to do the Work. No Subcontractor shall be permitted to enter or perform any work on the Site unless approved.

17.7 Before entering into any subcontract hereunder, the Contractor shall provide the proposed Subcontractor with a complete copy of this document and inform the proposed 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 Subcontractor shall expressly stipulate that all labor performed and materials furnished by the Subcontractor shall strictly comply with the requirements of this Contract.

17.8 Documents given to a prospective Subcontractor for the purpose of soliciting the Subcontractor's bid shall include either a copy of the bid cover or a separate information sheet setting forth the Project name, the Contract number (if available), the Agency (as noted in Article 2.1.6), and the Project's location.

17.9 The Commissioner's approval of a Subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities hereunder. The Contractor shall be solely responsible to the City for the acts or defaults of its 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 its subcontract.

17.10 If the Subcontractor fails to maintain the necessary facilities, skill, integrity, past experience, and financial resources (other than due to the Contractor's failure to make payments where required) to perform the Work in accordance with the terms and conditions of this Contract, the Contractor shall promptly notify the Commissioner and replace such Subcontractor with a newly approved Subcontractor in accordance with this Article 17.

17.11 The Contractor shall be responsible for ensuring that all Subcontractors performing Work at the Site maintain all insurance required by Law.

17.12 The Contractor shall promptly, upon request, file with the Engineer a conformed copy of the subcontract and its cost. The subcontract shall provide the following:

17.12.1 Payment to Subcontractors: The agreement between the Contractor and its Subcontractor 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.

17.12.2 Prevailing Rate of Wages: The agreement between the Contractor and its Subcontractor shall include the prevailing wage rates and supplemental benefits to be paid in accordance with Labor Law Section 220.

17.12.3 Section 6-123 of the Administrative Code: Pursuant to the requirements of Section 6-123 of the Administrative Code, every agreement between the Contractor and a Subcontractor in excess of fifty thousand ($50,000) dollars shall include a provision that the Subcontractor shall not engage in any unlawful discriminatory practice as defined in Title VIII of the Administrative Code (Section 8-101 et seq.).
17.12.4 All requirements required pursuant to federal and/or state grant agreement(s), if applicable to the Work.

17.12 The Commissioner may 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 its Subcontractor, or Subcontractors, as to the amount due and owing, the Commissioner 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 resolved.

17.13 On contracts where performance bonds and payment bonds are executed, the Contractor shall include on each requisition for payment the following data: Subcontractor's name, value of the subcontract, total amount previously paid to Subcontractor for Work previously requisitioned, and the amount, including retainage, to be paid to the Subcontractor for Work included in the requisition.

17.14 On Contracts where performance bonds and payment bonds are not executed, the Contractor shall include with each requisition for payment submitted hereunder, a signed statement from each and every Subcontractor and/or Materialman for whom payment is requested in such requisition. Such signed statement shall be on the letterhead of the Subcontractor and/or Materialman for whom payment is requested and shall: (i) verify that such Subcontractor and/or Materialman has been paid in full for all Work performed and/or material supplied to date, exclusive of any amount retained and any amount included on the current requisition, and (ii) state the total amount of retainage to date, exclusive of any amount retained on the current requisition.

**ARTICLE 18. ASSIGNMENTS**

18.1 The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or the right to execute it, or the right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this Contract, unless the previous written consent of the Commissioner shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments.

18.2 Such assignment, transfer, conveyance or other disposition of this Contract shall not be valid until filed in the office of the Commissioner and the Comptroller, with the written consent of the Commissioner endorsed thereon or attached thereto.

18.3 Failure to obtain the previous written consent of the Commissioner to such an assignment, transfer, conveyance or other disposition may result in the revocation and annulment of this Contract. The City shall thereupon be relieved and discharged from any further liability to the Contractor, its assignees, transferees or sublessees, who shall forfeit and lose all monies therefor earned under the Contract, except so much as may be required to pay the Contractor's employees.

18.4 The provisions of this clause 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 of New York.

18.5 This Contract may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.
CHAPTER V
CONTRACTOR'S SECURITY AND GUARANTEE

ARTICLE 19. SECURITY DEPOSIT

19.1 If performance and payment bonds are required, the City shall retain the bid security to ensure that the successful bidder executes the Contract and furnishes the required payment and performance security within ten (10) Days after notice of the award of the Contract. If the successful bidder fails to execute the Contract and furnish the required payment and performance security, the City shall retain such bid security as set forth in the Information for Bidders. If the successful bidder executes the Contract and furnishes the required payment and performance security, the City shall return the bid security within a reasonable time after the furnishing of such bonds and execution of the Contract by the City.

19.2 If performance and payment bonds are not required, the bid security shall be retained by the City as security for the Contractor's faithful performance of the Contract. If partial payments are provided, the bid security will be returned to the Contractor after the sum retained under Article 21 equals the amount of the bid security, subject to other provisions of this Contract. If partial payments are not provided, the bid security will be released when final payment is certified by the City for payment.

19.3 If the Contractor is declared in default under Article 48 prior to the return of the deposit, or if any claim is made such as referred to in Article 23, the amount of such deposit, or so much thereof as the Comptroller may deem necessary, may be retained and then applied by the Comptroller:

19.3.1 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 re-letting and liquidated damages; or

19.3.2 To indemnify the City against any and all claims.

ARTICLE 20. PAYMENT GUARANTEE

20.1 On Contracts where one hundred (100%) percent performance bonds and payment bonds are executed, this Article 20 does not apply.

20.2 In the event the terms of this Contract do not require the Contractor to provide a payment bond or where the Contract does not require a payment bond for one hundred (100%) percent of the Contract price, the City shall, in accordance with the terms of this Article 20, guarantee payment of all lawful claims for:

20.2.1 Wages and compensation for labor performed and/or services rendered; and

20.2.2 Materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with the City as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of the City or the Contractor.

20.3 The provisions of Article 20.2 are subject to the following limitations and conditions:
20.3.1 If the Contractor provides a payment bond for a value that is less than one hundred (100%) percent of the value of the Contract Work, the payment bond provided by the Contractor shall be primary (and non-contributing) to the payment guarantee provided under this Article 20.

20.3.2 The guarantee is made for the benefit of all beneficiaries as defined in Article 20.2 provided that those beneficiaries strictly adhere to the terms and conditions of Article 20.3.4 and 20.3.5.

20.3.3 Nothing in this Article 20 shall prevent a beneficiary providing labor, services or material for the Work from suing the Contractor for any amounts due and owing the beneficiary by the Contractor.

20.3.4 Every person who has furnished labor or material, to the Contractor or to a Subcontractor of the Contractor, in the prosecution of the Work and who has not been paid in full therefor before the expiration of a period of ninety (90) Days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he /she shall have given written notice to the Contractor within one hundred twenty (120) Days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by the Contractor by other means, such notice shall be deemed sufficient.

20.3.5 Except as provided in Labor Law Section 220-g, no action on this payment guarantee shall be commenced after the expiration of the one-year limitations period set forth in Section 137(4)(b) of the State Finance Law.

20.3.6 The Contractor shall promptly forward to the City any notice or demand received pursuant to Article 20.3.4. The Contractor shall inform the City of any defenses to the notice or demand and shall forward to the City any documents the City requests concerning the notice or demand.

20.3.7 All demands made against the City by a beneficiary of this payment guarantee shall be presented to the Engineer along with all written documentation concerning the demand which the Engineer deems reasonably appropriate or necessary, which may include, but shall not be limited to: the subcontract; any invoices presented to the Contractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Contractor and that the demand has not been paid by the Contractor within the time allowed for such payment by the subcontract; and copies of any correspondence between the beneficiary and the Contractor concerning such demand. The City shall notify the Contractor that a demand has been made. The Contractor shall inform the City of any defenses to the demand and shall forward to the City any documents the City requests concerning the demand.

20.3.8 The City shall make payment only if, after considering all defenses presented by the Contractor, it determines that the payment is due and owing to the beneficiary making the demand.
20.3.9 No beneficiary shall be entitled to interest from the City, or to any other costs, including, but not limited to, attorneys’ fees, except to the extent required by State Finance Law Section 137.

20.4 Upon the receipt by the City of a demand pursuant to this Article 20, the City may withhold from any payment otherwise due and owing to the Contractor under this Contract an amount sufficient to satisfy the demand.

20.4.1 In the event the City determines that the demand is valid, the City shall notify the Contractor of such determination and the amount thereof and direct the Contractor to immediately pay such amount to the beneficiary. In the event the Contractor, within seven (7) Days of receipt of such notification from the City, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the Contractor to the beneficiary for the amount of the demand determined by the City to be valid. The Contractor, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the City, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.

20.4.2 In the event that the amount otherwise due and owing to the Contractor by the City is insufficient to satisfy such demand, the City may, at its option, require payment from the Contractor of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the City may have under Law or Contract.

20.4.3 In the event the City determines that the demand is invalid, any amount withheld pending the City’s review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a claim or an action has been filed, the terms and conditions set forth in Article 23 shall apply. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York.

20.5 The provisions of this Article 20 shall not prevent the City and the Contractor from resolving disputes in accordance with the PPB Rules, where applicable.

20.6 In the event the City determines that the beneficiary is entitled to payment pursuant to this Article 20, such determination and any defenses and counterclaims raised by the Contractor shall be taken into account in evaluating the Contractor's performance.

20.7 Nothing in this Article 20 shall relieve the Contractor of the obligation to pay the claims of all persons with valid and lawful claims against the Contractor relating to the Work.

20.8 The Contractor shall not require any performance, payment or other bonds of any Subcontractor if this Contract does not require such bonds of the Contractor.

20.9 The payment guarantee made pursuant to this Article 20 shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to the Contractor or its Subcontractors in the prosecution of the Work under this Contract all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the City on the payment guarantee provided by this Article 20 within the one-year limitations period set forth in Section 137(4)(b).
ARTICLE 21. RETAINED PERCENTAGE

21.1 If this Contract requires one hundred (100%) percent performance and payment security, then as further security for the faithful performance of this Contract, the Commissioner shall deduct, and retain until the substantial completion of the Work, five (5%) percent of the value of Work certified for payment in each partial payment voucher.

21.2 If this Contract does not require one hundred (100%) percent performance and payment security and if the price for which this Contract was awarded does not exceed one million ($1,000,000) dollars, then as further security for the faithful performance of this Contract, the Commissioner shall deduct, and retain until the substantial completion of the Work, five (5%) percent of the value of Work certified for payment in each partial payment voucher, except as set forth in Section 21.3.

21.3 If this Contract does not require one hundred (100%) percent performance and payment security and if the price for which this Contract was awarded exceeds one million ($1,000,000) dollars, either at the time of solicitation or as the value of the Contract may be increased during the term thereof, then as further security for the faithful performance of this Contract, the Commissioner shall deduct, and retain until the substantial completion of the Work, ten (10%) percent of the value of Work certified for payment in each partial payment voucher unless a lesser percentage to be retained is set forth in the Specifications or Schedule A of the General Conditions. Notwithstanding the foregoing, if the value of the Contract is increased to exceed one million ($1,000,000) dollars, the Agency reserves the right to require the Contractor to provide performance and payment security, the fair and reasonable cost of which shall be reimbursed by the Agency after submission of acceptable documentation of such cost.

ARTICLE 22. INSURANCE

22.1 Types of Insurance: The Contractor shall procure and maintain the following types of insurance if, and as indicated in Schedule A of the General Conditions (with the minimum limits and special conditions specified in Schedule A). Such insurance shall be maintained from the date the Contractor is required to provide Proof of Insurance pursuant to Article 22.3.1 through the date of completion of all required Work (including punch list work as certified in writing by the Resident Engineer), except for insurance required pursuant to Article 22.1.4, which may terminate upon Substantial Completion of the Contract. All insurance shall meet the requirements set forth in this Article 22. Wherever this Article requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

22.1.1 Commercial General Liability Insurance: The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office (“ISO”) Form CG 0001. Such insurance shall be "occurrence" based rather than "claims-made" and include, without limitation, the following types of coverage: premises operations; products and completed operations; contractual liability (including the tort liability of another assumed in a contract); broad form property damage; independent contractors; explosion, collapse and underground (XCU); construction means and methods; and incidental malpractice. Such insurance shall contain a “per project” aggregate limit, as specified in Schedule A, that applies separately to operations under this Contract.

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22.1.1(a) Such Commercial General Liability Insurance shall name the City as an Additional Insured. Coverage for the City shall specifically include the City’s officials and employees, be at least as broad as the latest edition of ISO Form CG 20 10 and provide completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37.

22.1.1(b) Such Commercial General Liability Insurance shall name all other entities designated as additional insureds in Schedule A but only for claims arising from the Contractor’s operations under this Contract, with coverage at least as broad as the latest edition of ISO Form CG 20 26.

22.1.1(c) If the Work requires a permit from the Department of Buildings pursuant to 1 RCNY Section 101-08, at http://www.nyc.gov/html/dob/downloads/rules/1_RCNY_101-08.pdf, the Contractor shall provide Commercial General Liability Insurance with limits of at least those required by 1 RCNY section 101-08. If the Work does not require such a permit, the minimum limits shall be those provided for in Schedule A.

22.1.1(d) If any of the Work includes repair of a waterborne vessel owned by or to be delivered to the City, such Commercial General Liability shall include, or be endorsed to include, Ship Repairer’s Legal Liability Coverage to protect against, without limitation, liability arising from navigation of such vessels prior to delivery to and acceptance by the City.

22.1.2 Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance: The Contractor shall provide, and shall cause its Subcontractors to provide, Workers Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract (except for those employees, if any, for which the Laws require insurance only pursuant to Article 22.1.3).

22.1.3 United States Longshoremen’s and Harbor Workers Act and/or Jones Act Insurance: If specified in Schedule A of the General Conditions or if required by Law, the Contractor shall provide insurance in accordance with the United States Longshoremen’s and Harbor Workers Act and/or the Jones Act, on behalf of all qualifying employees providing services under this Contract.

22.1.4 Builders Risk Insurance: If specified in Schedule A of the General Conditions or in a particular Work Order, the Contractor shall provide Builders Risk Insurance on a completed value form for the total value of the Work in the Work Order through Substantial Completion of the Work in its entirety. Such insurance shall be provided on an All Risk basis and include coverage, without limitation, for windstorm (including named windstorm), storm surge, flood and earth movement. Unless waived by the Commissioner, it shall include coverage for ordinance and law, demolition and increased costs of construction, debris removal, pollutant clean up and removal, and expediting costs. Such insurance shall cover, without limitation, (a) all buildings and/or structures involved in the Work, as well as temporary structures at the Site, and (b) any property that is intended to become a permanent part of such building or structure, whether such property is on the Site, in transit or in temporary storage. Policies shall name the Contractor as Named Insured and list the City as both an Additional Insured and a Loss Payee as its interest may appear.

22.1.4(a) Policies of such insurance shall specify that, in the event a loss occurs at an occupied facility, occupancy of such facility is permitted without the consent of the issuing insurance company.
22.1.4(b) Such insurance may be provided through an Installation Floater, at the Contractor’s option, if it otherwise conforms with the requirements of this Article 22.1.4.

22.1.5 Commercial Automobile Liability Insurance: The Contractor shall provide Commercial Automobile Liability Insurance for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, the 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.

22.1.6 Contractors Pollution Liability Insurance: If specified in Schedule A of the General Conditions, the Contractor shall maintain, or cause the Subcontractor doing such Work to maintain, Contractors Pollution Liability Insurance covering bodily injury and property damage. Such insurance shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including asbestos), including any loss, cost or expense incurred as a result of any cleanup of pollutants (including asbestos) or in the investigation, settlement or defense of any claim, action, or proceedings arising from the operations under this Contract. Such insurance shall be in the Contractor's name and list the City as an Additional Insured and any other entity specified in Schedule A. Coverage shall include, without limitation, (a) loss of use of damaged property or of property that has not been physically injured, (b) transportation, and (c) non-owned disposal sites.

22.1.6(a) Coverage for the City as Additional Insured shall specifically include the City’s officials and employees and be at least as broad as provided to the Contractor for this Project.

22.1.6(b) If such insurance is written on a claims-made policy, such policy shall have a retroactive date on or before the effective date of this Contract, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three (3) years from the time the Work under this Contract is completed.

22.1.7 Marine Insurance:

22.1.7(a) Marine Protection and Indemnity Insurance: If specified in Schedule A of the General Conditions or if the Contractor engages in marine operations in the execution of any part of the Work, the Contractor shall maintain, or cause the Subcontractor doing such Work to maintain, Marine Protection and Indemnity Insurance with coverage at least as broad as Form SP-23. The insurance shall provide coverage for the Contractor or Subcontractor (whichever is doing this Work) and for the City (together with its officials and employees) and any other entity specified in Schedule A as an Additional Insured for bodily injury and property damage arising from marine operations under this Contract. Coverage shall include, without limitation, injury or death of crew members (if not fully provided through other insurance), removal of wreck, damage to piers, wharves and other fixed or floating objects and loss of or damage to any other vessel or craft, or to property on such other vessel or craft.

22.1.7(b) Hull and Machinery Insurance: If specified in Schedule A of the General Conditions or if the Contractor engages in marine operations in the execution of any part of the Work, the Contractor shall maintain, or cause the Subcontractor doing such Work to maintain, Hull and Machinery Insurance with coverage for the Contractor or Subcontractor (whichever is doing
this Work) and for the City (together with its officials and employees) as Additional Insured at least as broad as the latest edition of American Institute Tug Form for all tugs used under this Contract and Collision Liability at least as broad as the latest edition of American Institute Hull Clauses.

22.1.7(c) Marine Pollution Liability Insurance: If specified in Schedule A of the General Conditions or if the Contractor engages in marine operations in the execution of any part of the Work, the Contractor shall maintain, or cause the Subcontractor doing such Work to maintain, Marine Pollution Liability Insurance covering itself (or the Subcontractor doing such Work) as Named Insured and the City (together with its officials and employees) and any other entity specified in Schedule A as an Additional Insured. Coverage shall be at least as broad as that provided by the latest edition of Water Quality Insurance Syndicate Form and include, without limitation, liability arising from the discharge or substantial threat of a discharge of oil, or from the release or threatened release of a hazardous substance including injury to, or economic losses resulting from, the destruction of or damage to real property, personal property or natural resources.

22.1.8 The Contractor shall provide such other types of insurance, at such minimum limits and with such conditions, as are specified in Schedule A of the General Conditions.

22.2 General Requirements for Insurance Coverage and Policies:

22.2.1 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 Corporation Counsel.

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

22.2.3 In his/her sole discretion, the Commissioner may, subject to the approval of the Comptroller and the City Corporation Counsel, accept Letters of Credit and/or custodial accounts in lieu of required insurance.

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

22.2.5 The Contractor may satisfy its insurance obligations under this Article 22 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

22.2.6 Policies of insurance provided pursuant to this Article 22 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

22.3 Proof of Insurance:

22.3.1 For all types of insurance required by Article 22.1 and Schedule A, except for insurance
required by Articles 22.1.4 and 22.1.7, the **Contractor** shall file proof of insurance in accordance with this Article 22.3 within ten (10) **Days** of award. For insurance provided pursuant to Articles 22.1.4 and 22.1.7, proof shall be filed by a date specified by the **Commissioner** or ten (10) **Days** prior to the commencement of the portion of the **Work** covered by such policy, whichever is earlier.

**22.3.2** For Workers’ Compensation Insurance provided pursuant to Article 22.1.2, the **Contractor** shall submit one of the following forms: C-105.2 Certificate of Workers’ Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers’ Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers’ Compensation Board; or other proof of insurance in a form acceptable to the **Commissioner**. For Disability Benefits Insurance provided pursuant to Article 22.1.2, the Contractor shall submit DB-120.1 - Certificate Of Insurance Coverage Under The NYS Disability Benefits Law, Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers’ Compensation Board; or other proof of insurance in a form acceptable to the **Commissioner**. ACORD forms are not acceptable.

**22.3.3** For policies provided pursuant to all of Article 22.1 other than Article 22.1.2, the **Contractor** shall submit one or more Certificates of Insurance on forms acceptable to the **Commissioner**. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to Article 22.1.1 that the **City** and any other entity specified in Schedule A is an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 10, CG 20 37, and CG 20 26, as applicable; (c) in the event insurance is required pursuant to Article 22.1.6 and/or Article 22.1.7, that the City is an Additional Insured thereunder; (d) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number); and (e) the number assigned to the **Contract** by the **City**. All such Certificates of Insurance shall be accompanied by either a duly executed “Certification by Broker” in the form contained in Part III of Schedule A or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

**22.3.4** Documentation confirming renewals of insurance shall be submitted to the **Commissioner** prior to the expiration date of coverage of policies required under this **Contract**. Such proofs of insurance shall comply with the requirements of Articles 22.3.2 and 22.3.3.

**22.3.5** The **Contractor** shall be obligated to provide the **City** with a copy of any policy of insurance provided pursuant to this Article 22 upon the demand for such policy by the **Commissioner** or the **City** Corporation Counsel.

**22.4** Operations of the **Contractor**:

**22.4.1** The **Contractor** shall not commence the **Work** unless and until all required certificates have been submitted to and accepted by the **Commissioner**. Acceptance by the **Commissioner** of a certificate does not excuse the **Contractor** from securing insurance consistent with all provisions of this Article 22 or of any liability arising from its failure to do so.

**22.4.2** The **Contractor** shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this **Contract** and shall be authorized to perform **Work** only during the effective period of all required coverage.
22.4.3 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the **Contractor** shall immediately stop all **Work**, and shall not recommence **Work** until authorized in writing to do so by the **Commissioner**. Upon quitting the **Site**, except as otherwise directed by the **Commissioner**, the **Contractor** shall leave all plant, materials, equipment, tools, and supplies on the **Site**. **Contract** time shall continue to run during such periods and no extensions of time will be granted. The **Commissioner** may also declare the **Contractor** in default for failure to maintain required insurance.

22.4.4 In the event the **Contractor** receives notice, from an insurance company or other person, that any insurance policy required under this Article 22 shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the **Contractor** shall immediately forward a copy of such notice to both the **Commissioner** and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the **Contractor** shall ensure that there is no interruption in any of the insurance coverage required under this Article 22.

22.4.5 Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article 22, the **Contractor** shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this **Contract** (including notice to Commercial General Liability insurance carriers for events relating to the **Contractor**’s own employees) no later than 20 days after such event. For any policy where the **City** is an Additional Insured, such notice shall expressly specify that “this notice is being given on behalf of the City of New York as Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The **Contractor** shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

22.4.6 In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 22, the **Contractor** shall at all times fully cooperate with the **City** with regard to such potential or actual claim.

22.5 **Subcontractor** Insurance: In the event the **Contractor** requires any **Subcontractor** to procure insurance with regard to any operations under this **Contract** and requires such **Subcontractor** to name the **Contractor** as an Additional Insured thereunder, the **Contractor** shall ensure that the **Subcontractor** name the **City**, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

22.6 Wherever reference is made in Article 7 or this Article 22 to documents to be sent to the **Commissioner** (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Schedule A of the General Conditions. In the event no address is set forth in Schedule A, such documents are to be sent to the **Commissioner**’s address as provided elsewhere in this **Contract**.

22.7 Apart from damages or losses covered by insurance provided pursuant to Articles 22.1.2, 22.1.3, or 22.1.5, 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 22 (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 employees, agents, or Subcontractors.

22.8 In the event the Contractor utilizes a self-insurance program to satisfy any of the requirements of this Article 22, the Contractor shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article 22, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

22.9 Materiality/Non-Waiver: The Contractor's failure to secure policies in complete conformity with this Article 22, or to give an insurance company timely notice of any sort required in this Contract or to do anything else required by this Article 22 shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

22.10 Pursuant to General Municipal Law Section 108, this Contract shall be void and of no effect unless Contractor maintains Workers’ Compensation Insurance for the term of this Contract to the extent required and in compliance with the New York State Workers’ Compensation Law.

22.11 Other Remedies: Insurance coverage provided pursuant to this Article 22 or otherwise shall not relieve the Contractor of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Contract or Law.

ARTICLE 23. MONEY RETAINED AGAINST CLAIMS

23.1 If any claim shall be made by any person or entity (including Other Contractors with the City on this Project) against the City or against the Contractor and the City for any of the following:

(a) An alleged loss, damage, injury, theft or vandalism of any of the kinds referred to in Articles 7 and 12, plus the reasonable costs of defending the City, which in the opinion of the Comptroller may not be paid by an insurance company (for any reason whatsoever); or

(b) An infringement of copyrights, patents or use of patented articles, tools, etc., as referred to in Article 57; or

(c) Damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract,

the amount of such claim, or so much thereof as the Comptroller may deem necessary, may be withheld by the Comptroller, as security against such claim, from any money due hereunder. The Comptroller, in his/her discretion, may permit the Contractor to substitute other satisfactory security in lieu of the monies so withheld.

23.2 If an action on such claim is timely commenced and the liability of the City, or the Contractor, or both, shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the Comptroller shall pay such judgment or admitted claim out of the monies retained by the Comptroller under the provisions of this Article 23, and return the balance, if any, without interest, to the Contractor.
ARTICLE 24. MAINTENANCE AND GUARANTY

24.1 The Contractor shall promptly repair, replace, restore or rebuild, as the Commissioner may determine, any finished Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one (1) year period subsequent to the date of Substantial Completion (or use and occupancy in accordance with Article 16), except where other periods of maintenance and guaranty are provided for in Schedule A and/or a Work Order.

24.2 As security for the faithful performance of its obligations hereunder, the Contractor, upon filing its requisition for payment on Substantial Completion, shall deposit with the Commissioner a sum equal to one (1%) percent of the price (or the amount fixed in Schedule A of the General Conditions) in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the Comptroller, or obligations of the City, which the Comptroller may approve as of equal value with the sum so required.

24.3 In lieu of the above, the Contractor may make such security payment to the City by authorizing the Commissioner in writing to deduct the amount from the Substantial Completion payment which shall be deemed the deposit required above.

24.4 If the Contractor has faithfully performed all of its obligations hereunder the Commissioner shall so certify to the Comptroller within five (5) Days after the expiration of one (1) year from the date of Substantial Completion and acceptance of the Work or within thirty (30) Days after the expiration of the guarantee period fixed in the Specifications. The security payment shall be repaid to the Contractor without interest within thirty (30) Days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all of its obligations hereunder.

24.5 Notice by the Commissioner to the Contractor to repair, replace, rebuild or restore such defective or damaged Work shall be timely, pursuant to this article, if given not later than ten (10) Days subsequent to the expiration of the one (1) year period or other periods provided for herein.

24.6 If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving such notice, the Commissioner shall have the right to have the Work done by others in the same manner as provided for in the completion of a defaulted Contract, under Article 51.

24.7 If the security payment so deposited is insufficient to cover the cost of such Work, the Contractor shall be liable to pay such deficiency on demand by the Commissioner.

24.8 The Engineer's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor, shall be binding and conclusive upon the Contractor as to the amount thereof.

24.9 The Contractor shall obtain all manufacturers’ warranties and guaranties of all equipment and materials required by this Contract in the name of the City and shall deliver same to the Commissioner. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent purchasers of such equipment and materials or lessees of the premises into which the equipment and materials have been installed.
CHAPTER VI
CHANGES, EXTRA WORK, AND DOCUMENTATION OF CLAIM

ARTICLE 25. CHANGES/SUPPLEMENTAL WORK ORDERS

25.1 Changes may be made to this Contract or any Work Order by Supplemental Work Order as duly authorized in writing by the Commissioner in accordance with the Laws and this Contract. All such Supplemental Work Orders will become a part of the Contract. Work so ordered shall be performed by the Contractor.

25.2 Supplemental Work Orders will be issued for Work necessary to complete the Work included in the original scope of a Work Order or for changes to the scope of such Work Order deemed necessary by the Commissioner, in his/her sole discretion, to meet the programmatic or operational needs of DOHMH or its client agencies.

25.3 The Contractor shall be not entitled to a price adjustment for Work performed pursuant to a Work Order or Supplemental Work Order unless the cost of such Work cannot be determined:

25.3.1 By applicable Unit Prices specified in the Contract; and/or

25.3.2 By labor and Materials (time and materials) records subject to the Percentage Mark-Up.

25.4 Work required by a Work Order or Supplemental Work Order which cannot be paid under Section 25.3 shall be considered as Extra Work and payment for such Extra Work shall be computed in one or more of the following ways:

25.4.1 agreement of a fixed price; and/or

25.4.2 In any other manner approved by the CCPO.

25.5 All payments for price adjustments for Extra Work are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller and/or the Agency.

ARTICLE 26. METHODS OF PAYMENT FOR OVERRUNS AND EXTRA WORK

26.1 Overrun of Unit Price Item: An overrun is any quantity of a Unit Price item which the Contractor is directed to provide which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule.

26.1.1 For any Unit Price item, the Contractor will be paid at the Unit Price bid for any quantity up to one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule. If during the progress of the Work, the actual quantity of any Unit Price item required to complete the Work approaches the estimated quantity for that item, and for any reason it appears that the actual quantity of any Unit Price item necessary to complete the Work will exceed the estimated quantity for that item by twenty-five (25%) percent, the Contractor shall immediately notify the Engineer of such anticipated overrun. The Contractor shall not be compensated for any quantity of a Unit Price item provided which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule without written authorization from the Engineer.
26.1.2 If the actual quantity of any **Unit Price** item necessary to complete the **Work** will exceed one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule, the **City** reserves the right and the **Contractor** agrees to negotiate a new **Unit Price** for such item. In no event shall such negotiated new **Unit Price** exceed the unit bid price. If the **City** and **Contractor** cannot agree on a new **Unit Price**, then the **City** shall order the **Contractor** and the **Contractor** agrees to provide additional quantities of the item on the basis of time and material records for the actual and reasonable cost as determined under Article 26.2, but in no event at a **Unit Price** exceeding the **Unit Price** bid.

26.2 **Extra Work:** For **Extra Work** where payment is by agreement on a fixed price in accordance with Article 25.4.1 the price to be paid for such **Extra Work** shall be based on the fair and reasonable estimated cost of the items set forth below. For **Extra Work** where payment is based on time and material records in accordance with Article 25.3.3, the price to be paid for such **Extra Work** shall be the actual and reasonable cost of the items set forth below, calculated in accordance with the formula specified therein, if any.

26.2.1 Necessary materials (including transportation to the Site); plus

26.2.2 Necessary direct labor, including payroll taxes (subject to statutory wage caps) and supplemental benefits; plus

26.2.3 Sales and personal property taxes, if any, required to be paid on materials not incorporated into such **Extra Work**; plus

26.2.4 Reasonable rental value of **Contractor**-owned (or **Subcontractor**-owned, as applicable), necessary plant and equipment other than **Small Tools**, plus fuel/energy costs. Except for fuel costs for pick-up trucks which shall be reimbursed based on a consumption of five (5) gallons per shift, fuel costs shall be reimbursed based on actual costs or, in the absence of auditable documentation, the following fuel consumption formula per operating hour: (.035) x (HP rating) x (Fuel cost/gallon). Reasonable rental value is defined as the lower of either seventy-five percent of the monthly prorated rental rates established in “The AED Green Book, Rental Rates and Specifications for Construction Equipment” published by Equipment Watch (the “Green Book”), or seventy-five percent of the monthly prorated rental rates established in the “Rental Rate Blue Book for Construction Equipment” published by Equipment Watch (the “Blue Book”) (the applicable Blue Book rate being for rental only without the addition of any operational costs listed in the Blue Book). The reasonable rental value is deemed to be inclusive of all operating costs except for fuel/energy consumption and equipment operator’s wages/costs. For multiple shift utilization, reimbursement shall be calculated as follows: first shift shall be seventy-five (75%) percent of such rental rates; second shift shall be sixty (60%) percent of the first shift rate; and third shift shall be forty (40%) percent of the first shift rate. Equipment on standby shall be reimbursed at one-third (1/3) the prorated monthly rental rate. **Contractor**-owned (or **Subcontractor**-owned, as applicable) equipment includes equipment from rental companies affiliated with or controlled by the **Contractor** (or **Subcontractor**, as applicable), as determined by the **Commissioner**. In establishing cost reimbursement for non-operating **Contractor**- owned (or **Subcontractor**-owned, as applicable) equipment (scaffolding, sheeting systems, road plates, etc.), the **City** may restrict reimbursement to a purchase-salvage/life cycle basis if less than the computed rental costs; plus

26.2.5 Necessary installation and dismantling of such plant and equipment, including transportation to and from the Site, if any, provided that, in the case of non-**Contractor**-owned (or non- **Subcontractor**-owned, as
applicable) equipment rented from a third party, the cost of installation and dismantling are not allowable if such costs are included in the rental rate; plus

26.2.6 Necessary fees charged by governmental entities; plus

26.2.7 Necessary construction related service fees charged by non-governmental entities, such as landfill tipping fees; plus

26.2.8 Reasonable rental costs of non-Contractor-owned (or non-Subcontractor-owned, as applicable) necessary plant and equipment other than Small Tools, plus fuel/energy costs. Except for fuel costs for pick-up trucks which shall be reimbursed based on a consumption of five (5) gallons per shift, fuel costs shall be reimbursed based on actual costs or, in the absence of auditable documentation, the following fuel consumption formula per hour of operation: \((0.035) \times (\text{HP rating}) \times (\text{Fuel cost/gallon})\). In lieu of renting, the City reserves the right to direct the purchase of non-operating equipment (scaffolding, sheeting systems, road plates, etc.), with payment on a purchase-salvage/life cycle basis, if less than the projected rental costs; plus

26.2.9 Workers’ Compensation Insurance and any insurance coverage expressly required by the City for the performance of the Extra Work which is different than the types of insurance required by Article 22 and Schedule A of the General Conditions. The cost of Workers’ Compensation Insurance is subject to applicable payroll limitation caps and shall be based upon the carrier’s Manual Rate for such insurance derived from the applicable class Loss Cost (“LC”) and carrier’s Lost Cost Multiplier (“LCM”) approved by the New York State Department of Financial Services, and with the exception of experience rating, rate modifiers as promulgated by the New York Compensation Insurance Rating Board (“NYCIRB”); plus

26.2.10 Additional costs incurred as a result of the Extra Work for performance and payment bonds; plus

26.2.11 Twelve percent (12%) of the total of items in Articles 26.2.1 through 26.2.5 as compensation for overhead, except that no percentage for overhead will be allowed on Payroll Taxes or on the premium portion of overtime pay or on sales and personal property taxes. Overhead shall include without limitation, all costs and expenses in connection with administration, management superintendence, small tools, and insurance required by Schedule A of the General Conditions other than Workers’ Compensation Insurance; plus

26.2.12 Ten (10%) percent of the total of items in Articles 26.2.1 through 26.2.5, plus the items in Article 26.2.11, as compensation for profit, except that no percentage for profit will be allowed on Payroll Taxes or on the premium portion of overtime pay or on sales and personal property taxes; plus

26.2.13 Five (5%) percent of the total of items in Articles 26.2.6 through 26.2.10 as compensation for overhead and profit.

26.3 Where the Extra Work is performed in whole or in part by other than the Contractor’s own forces pursuant to Article 26.2, the Contractor shall be paid, subject to pre-audit by the Engineering Audit Officer, the cost of such Work computed in accordance with Article 26.2 above, plus an additional allowance of five (5%) percent to cover the Contractor’s overhead and profit.
26.4 Where a change is ordered, involving both Extra Work and omitted or reduced Contract Work, the Contract price shall be adjusted, subject to pre-audit by the EAO, in an amount based on the difference between the cost of such Extra Work and of the omitted or reduced Work.

26.5 Where the Contractor and the Commissioner can agree upon a fixed price for Extra Work in accordance with Article 25.3.2 or another method of payment for Extra Work in accordance with Article 25.3.4, or for Extra Work ordered in connection with omitted Work, such method, subject to pre-audit by the EAO, may, at the option of the Commissioner, be substituted for the cost plus a percentage method provided in Article 26.2; provided, however, that if the Extra Work is performed by a Subcontractor, the Contractor shall not be entitled to receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such Subcontractor's Work as computed in accordance with Article 26.2.

ARTICLE 27. RESOLUTION OF DISPUTES

27.1 All disputes between the City and the Contractor of the kind delineated in this Article 27.1 that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this Article 27 and the PPB Rules. This procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.

27.1.1 This Article 27 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.

27.1.2 This Article 27 shall apply only to disputes about the scope of Work delineated by the Contract, the interpretation of Contract documents, the amount to be paid for Extra Work or disputed work performed in connection with the Contract, the conformity of the Contractor's Work to the Contract, and the acceptability and quality of the Contractor's Work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the Contractor disagrees.

27.2 All determinations required by this Article 27 shall be made in writing clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Article 27 shall be deemed a non-determination without prejudice that will allow application to the next level.

27.3 During such time as any dispute is being presented, heard, and considered pursuant to this Article 27, the Contract terms shall remain in force and the Contractor shall continue to perform Work as directed by the ACCO or the Engineer. Failure of the Contractor to continue Work as directed shall constitute a waiver by the Contractor of its claim.

27.4 Presentation of Disputes to Commissioner.

Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing (“Notice of Dispute”) to the Commissioner 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 Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the detailed written submission comprising the complete Notice of Dispute, the Engineer, Resident
Engineer, Engineering Audit Officer, or other designee of the Commissioner shall submit to the Commissioner all materials he or she deems pertinent to the dispute. Following initial submissions to the Commissioner, 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 Commissioner 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.

27.4.1 Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor, the ACCO, and the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner to resolve the issue by mutual consent prior to reaching a determination. The Commissioner 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 Commissioner’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 Commissioner participated therein. The Commissioner may or, at the request of any party to the dispute, shall compel the participation of any Other Contractor with a contract related to the Work of this Contract, and that Contractor shall be bound by the decision of the Commissioner. Any Other Contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Article 27 as the Contractor initiating the dispute.

27.4.2 Commissioner 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 Commissioner shall make his or her determination and shall deliver or send a copy of such determination to the Contractor, the ACCO, and Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, as applicable, together with a statement concerning how the decision may be appealed.

27.4.3 Finality of Commissioner’s Decision. The Commissioner’s decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board pursuant to this Article 27. The City may not take a petition to the Contract Dispute Resolution Board. However, should the Contractor make such a petition, the City may seek, and the Contract Dispute Resolution Board may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Commissioner.

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

27.5.1 Time, Form, and Content of Notice. Within thirty (30) Days of its receipt of a decision by the Commissioner, the Contractor shall submit to the Comptroller and to the Commissioner a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the written decision of the Commissioner; 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 Commissioner, except at the request of the Comptroller.
27.5.2 **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 **Commissioner** in connection with the dispute. The **Agency** may not present to the **Comptroller** any material not presented to the **Commissioner** except at the request of the **Comptroller**.

27.5.3 **Comptroller** Investigation. The **Comptroller** may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Sections 7-201 and 7-203 of the Administrative Code. In addition, the **Comptroller** may demand of either party, and such party shall provide, whatever additional material the **Comptroller** deems pertinent to the claim, including original business records of the **Contractor**. Willful failure of the **Contractor** to produce 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**.

27.5.4 **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 Article 27.5.3 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 materials. The **Contractor** may not present its petition to the Contract Dispute Resolution Board until the period for investigation and compromise delineated in this Article 27.5.4 has expired. In compromising or adjusting any claim hereunder, the **Comptroller** may not revise or disregard the terms of the **Contract** between the parties.

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

27.6.1 The chief administrative law judge of the Office of Administrative Trials and Hearings (OATH) or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Article 27 as may be necessary in the execution of the Contract Dispute Resolution Board’s functions, including, but not limited to, granting extensions of time to present or respond to submissions;

27.6.2 The **CCPO** or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

27.6.3 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 individual may not have a contract or dispute with the **City** or be an officer or employee of any company or organization that does, or regularly represents persons, companies, or organizations having disputes with the **City**.

27.7 **Petition to the Contract Dispute Resolution Board.** In the event the claim has not been settled or adjusted by the **Comptroller** within the period provided in this Article 27, the **Contractor**, within thirty (30) **Days** thereafter, may petition the Contract Dispute Resolution Board to review the **Commissioner**'s determination.

27.7.1 **Form and Content of Petition by Contractor.** The **Contractor** shall present its dispute to
the Contract Dispute Resolution Board in the form of a petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the written Decision of the Commissioner, (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the written decision of the Comptroller, if any, and (v) copies of all correspondence with, or written material submitted by the Contractor, to the Comptroller. The Contractor shall concurrently submit four (4) complete sets of the Petition: one set to the City Corporation Counsel (Attn: Commercial and Real Estate Litigation Division) and three (3) sets to the Contract Dispute Resolution Board at OATH’s offices with proof of service on the City Corporation Counsel. In addition, the Contractor shall submit a copy of the written statement of the substance of the dispute, cited in (i) above, to both the Commissioner and the Comptroller.

27.7.2 Agency Response. Within thirty (30) Days of its receipt of the Petition by the City Corporation Counsel, the Agency shall respond to the brief written statement of the Contractor and make available to the Contract Dispute Resolution Board all material it submitted to the Commissioner and Comptroller. Three (3) complete copies of the Agency response shall be provided to the Contract Dispute Resolution Board 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 consent of the parties, for an initial period of up to thirty (30) Days.

27.7.3 Further Proceedings. The Contract Dispute Resolution Board shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The Contract Dispute Resolution Board 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 City 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 Contract Dispute Resolution Board. The Contract Dispute Resolution Board, 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 Contract Dispute Resolution Board, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

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

27.7.5 Notification of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the City Corporation Counsel, the CCPO, and the PPB. 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 Contract Dispute Resolution Board’s decision.
27.7.6 Finality of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board’s decision shall be final and binding on all parties. Any party may seek review of the Contract Dispute Resolution Board’s decision solely in the form of a challenge, filed within four (4) months of the date of the Contract Dispute Resolution Board’s decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the Contract Dispute Resolution Board’s decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the Contract Dispute Resolution Board in accordance with this Article 27.

27.8 Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this Article 27 shall not affect or impair the ability of the Commissioner or Contract Dispute Resolution Board to make a binding and final decision pursuant to this Article 27.

ARTICLE 28. RECORD KEEPING FOR EXTRA OR DISPUTED WORK OR WORK ON A TIME & MATERIALS BASIS

28.1 While the Contractor or any of its Subcontractors is performing Work on a time and material basis or Extra Work on a time and material basis ordered by the Commissioner under Article 25, or where the Contractor believes that it or any of its Subcontractors is performing Extra Work but a final determination by Agency has not been made, or the Contractor or any of its Subcontractors is performing disputed Work (whether on or off the Site), or complying with a determination or order under protest in accordance with Articles 11, 27 and 30, in each such case the Contractor shall furnish the Resident Engineer daily with three (3) copies of written statements signed by the Contractor’s representative at the Site showing:

28.1.1 The name, trade, and number of each worker employed on such Work or engaged in complying with such determination or order, the number of hours employed, and the character of the Work each is doing; and

28.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work or compliance with such determination or order, and from whom purchased or rented.

28.2 A copy of such statement will be countersigned by the Resident Engineer, noting thereon any items not agreed to or questioned, and will be returned to the Contractor within two (2) Days after submission.

28.3 The Contractor and its Subcontractors, when required by the Commissioner, or the Comptroller, shall also produce for inspection, at the office of the Contractor or Subcontractor, any and all of its books, bid documents, financial statements, vouchers, records, records, daily job diaries and reports, and cancelled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such Work, or in complying with such determination or order, and the amounts expended therefor, and shall permit the Commissioner and the Comptroller to make such extracts therefrom, or copies thereof, as they or either of them may desire.

28.4 In connection with the examination provided for herein, the Commissioner, upon demand therefor, will produce for inspection by the Contractor such records as the Agency may have with respect to such Extra Work or disputed Work performed under protest pursuant to order of the Commissioner, except those

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records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

28.6 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Work or compliance with such determination or order.

ARTICLE 29. OMITTED WORK

29.1 If any Contract Work in a lump sum Contract, or if any part of a lump sum item in a Unit Price, lump sum, or percentage-bid Contract is omitted by the Commissioner pursuant to Article 33, the Contract price, subject to audit by the EAO, shall be reduced by a pro rata portion of the lump sum bid amount based upon the percent of Work omitted subject to Article 29.4. For the purpose of determining the pro rata portion of the lump sum bid amount, the bid breakdown submitted in accordance with Article 41 shall be considered, but shall not be the determining factor.

29.2 If the whole of a lump sum item or units of any other item is so omitted by the Commissioner in a Unit Price, lump sum, or percentage-bid Contract, then no payment will be made therefor except as provided in Article 29.4.

29.3 For units that have been ordered but are only partially completed, the Unit Price shall be reduced by a pro rata portion of the Unit Price bid based upon the percentage of Work omitted subject to Article 29.4.

29.4 In the event the Contractor, with respect to any omitted Work, has purchased any non-cancelable material and/or 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 yet incorporated into the Work, the Contractor shall be paid for such material and/or equipment in accordance with Article 64.2.1(b); provided, however, such payment is contingent upon the Contractor's delivery of such material and/or equipment in acceptable condition to a location designated by the City.

29.5 The Contractor agrees to make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

ARTICLE 30. NOTICE AND DOCUMENTATION OF COSTS AND DAMAGES; PRODUCTION OF FINANCIAL RECORDS

30.1 If the Contractor shall claim to be sustaining damages by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request. On failure of the Contractor to strictly comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action or dispute resolution procedure arising under or by reason of this Contract shall not be different from or in excess of the
In addition to the foregoing statements, the Contractor shall, upon notice from the Commissioner, produce for examination at the Contractor’s office, by the Engineer, Architect or Project Manager, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, and cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract, and submit itself and persons in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

In addition to the statements required under Article 28 and this Article 30, the Contractor and/or its Subcontractor shall, within thirty (30) Days upon notice from the Commissioner or Comptroller, produce for examination at the Contractor’s and/or Subcontractor’s office, by a representative of either the Commissioner or Comptroller, all of its books of account, bid documents, financial statements, accountant workpapers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, and cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract. Further, the Contractor and/or its Subcontractor shall submit any person in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

Unless the information and examination required under Article 30.3 is provided by the Contractor and/or its Subcontractor upon thirty (30) Days’ notice from the Commissioner or Comptroller, or upon the Commissioner’s or Comptroller’s written authorization to extend the time to comply, the City shall be released from all claims arising under, relating to or by reason of this Contract, except for sums certified by the Commissioner to be due under the provisions of this Contract. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the City to recover any sum in excess of the sums certified by the Commissioner to be due under or by reason of this Contract, the Contractor must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article 30.

In addition, after the commencement of any action or dispute resolution procedure by the Contractor arising under or by reason of this Contract, the City shall have the right to require the Contractor to produce for examination under oath, up until the trial of the action or hearing before the Contract Dispute Resolution Board, the books and documents described in Article 30.3 and submit itself and all persons in its employ for examination under oath. If this Article 30 is not complied with as required, then the Contractor hereby consents to the dismissal of the action or dispute resolution procedure.

CHAPTER VII
POWERS OF THE RESIDENT ENGINEER,
The Engineer or Architect and the Commissioner

ARTICLE 31. THE RESIDENT ENGINEER

The Resident Engineer, who may also serve as or be described as the “Engineer,” “Architect,” “Project Manager,” or “Construction Project Manager,” shall have the power to inspect, supervise, and control the performance of the Work, subject to review by the Commissioner. The Resident Engineer shall not, however, have the power to issue an Extra Work order, except as specifically designated in writing by the Commissioner.
ARTICLE 32. THE ENGINEER OR ARCHITECT OR PROJECT MANAGER

32.1 The Engineer or Architect or Project Manager, in addition to those matters elsewhere herein delegated to the Engineer and expressly made subject to his/her determination, direction or approval, shall have the power, subject to review by the Commissioner:

32.1.1 To determine the amount, quality, and location of the Work to be paid for hereunder; and

32.1.2 To determine all questions in relation to the Work, to interpret the Contract Drawings, Specifications, and Addenda, and to resolve all patent inconsistencies or ambiguities therein; and

32.1.3 To determine how the Work of this Contract shall be coordinated with Work of Other Contractors engaged simultaneously on this Project, including the power to suspend any part of the Work, but not the whole thereof; and

32.1.4 To make minor changes in the Work as he/she deems necessary, provided such changes do not result in a net change in the cost to the City or to the Contractor of the Work to be done under the Contract; and

32.1.5 To amplify the Contract Drawings, add explanatory information and furnish additional Specifications and drawings, consistent with this Contract.

32.2 The foregoing enumeration shall not imply any limitation upon the power of the Engineer or Architect or Project Manager, for it is the intent of this Contract that all of the Work shall generally be subject to his/her determination, direction, and approval, except where the determination, direction or approval of someone other than the Engineer or Architect or Project Manager is expressly called for herein.

32.3 The Engineer or Architect or Project Manager shall not, however, have the power to issue an Extra Work order, except as specifically designated in writing by the Commissioner.

ARTICLE 33. THE COMMISSIONER

33.1 The Commissioner, in addition to those matters elsewhere herein expressly made subject to his/her determination, direction or approval, shall have the power:
33.1.1 To review and make determinations on any and all questions in relation to this Contract and its performance; and

33.1.2 To modify or change this Contract so as to require the performance of Extra Work (subject, however, to the limitations specified in Article 25) or the omission of Contract Work; and

33.1.3 To suspend the whole or any part of the Work whenever in his/her judgment such suspension is required:

33.1.3(a) In the interest of the City generally; or

33.1.3(b) To coordinate the Work of the various contractors engaged on this Project pursuant to the provisions of Article 12; or

33.1.3(c) To expedite the completion of the entire Project even though the completion of this particular Contract may thereby be delayed.

ARTICLE 34. NO ESTOPPEL

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

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

34.1.2 From demanding and recovering from the Contractor any overpayment made to it, or such damages as the City may sustain by reason of the Contractor's failure to perform each and every part of its Contract.

CHAPTER VIII
LABOR PROVISIONS

ARTICLE 35. EMPLOYEES

35.1 The Contractor and its Subcontractors shall not employ on the Work:

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

35.1.2 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 workers employed by the Contractor or its Subcontractors, or by any of the

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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, 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 it as set forth in Chapter X of this Contract, or such other article of this Contract as the Commissioner may deem proper; or

35.1.3 In accordance with Section 220.3-e of the Labor Law of the State of New York (hereinafter "Labor Law"), the Contractor and its Subcontractors shall not employ on the Work any apprentice, unless he/she is a registered individual, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journey-level workers in any craft classification shall not be greater than the ratio permitted to the Contractor as to its 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 for the classification of Work actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of its 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.

35.2 If the total cost of the Work under this Contract is at least two hundred fifty thousand ($250,000) dollars, all laborers, workers, and mechanics employed in the performance of the Contract on the public work site, either by the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States Department of Labor’s Occupational Safety and Health Administration that is at least ten (10) hours in duration.

35.3 In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the Administrative Code, respectively,

35.3.1 The 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 (a) the Commissioner of the Department of Investigation, (b) a member of the New York City Council, the Public Advocate, or the Comptroller, or (c) the CCPO, ACCO, Agency head, or Commissioner.

35.3.2 If any of the Contractor’s officers or employees believes that he or she has been the subject of an adverse personnel action in violation of Article 35.3.1, he or she shall be entitled to bring a cause of action against the Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (a) an injunction to restrain continued retaliation, (b) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (c) reinstatement of full fringe benefits and seniority rights, (d) payment of two times back pay, plus interest, and (e) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney’s fees.

35.3.3 The 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:
35.3.3(a) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and

35.3.3(b) the rights and remedies afforded to its employees under 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.

35.3.4 For the purposes of this Article 35.3, “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.

35.3.5 This Article 35.3 is applicable to all of the Contractor’s Subcontractors having subcontracts with a value in excess of $100,000; accordingly, the Contractor shall include this rider in all subcontracts with a value a value in excess of $100,000.

35.4 Article 35.3 is not applicable to this Contract if it is valued at $100,000 or less. Articles 35.3.1, 35.3.2, 35.3.4, and 35.3.5 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency.

ARTICLE 36. NO DISCRIMINATION

36.1 The Contractor specifically agrees, as required by Labor Law Section 220-e, as amended, that:

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

36.1.2 Neither the Contractor, Subcontractor, nor any person on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, creed, color or national origin;

36.1.3 There may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of fifty ($50.00) dollars for each person for each Day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and

36.1.4 This Contract may be cancelled or terminated by the City and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Article 36.

36.1.5 This Article 36 covers all construction, alteration and repair of any public building or public work occurring in the State of New York and the manufacture, sale, and distribution of materials, equipment, and supplies to the extent that such operations are performed within the State of New York pursuant to this Contract.
36.2 The Contractor specifically agrees, as required by Section 6-108 of the Administrative Code, as amended, that:

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

36.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in Article 36.1.2, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

36.2.3 Breach of the foregoing provisions shall be deemed a violation of a material provision of this Contract.

36.2.4 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 Article 36.2 shall, upon conviction thereof, be punished by a fine of not more than one hundred ($100.00) dollars or by imprisonment for not more than thirty (30) Days, or both.

36.3 This Contract is subject to the requirements of Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules and regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Contractor agrees that it:

36.3.1 Will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation 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; and

36.3.2 Will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation; and

36.3.3 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, creed, color, national origin, sex, age, citizens status, disability, marital status, sexual orientation, or that it is an equal employment opportunity employer; and

36.3.4 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; and

36.3.5 Will furnish, before the award of the Contract, all information and reports, including an employment report, that are required by E.O. 50, the rules and regulations promulgated thereunder,
and orders of the City Department of Business Services, Division of Labor Services (DLS) and will permit access to its books, records, and accounts by the DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

36.4.1 Disapproval of the Contractor; and/or

36.4.2 Suspension or termination of the Contract; and/or

36.4.3 Declaring the Contractor in default; and/or

36.4.4 In lieu of any of the foregoing sanctions, the Director of the DLS may impose an employment program.

In addition to any actions taken under this Contract, failure to comply with E.O. 50 and the rules and regulations promulgated thereunder, in one or more instances, may result in a City Agency declaring the Contractor to be non-responsible in future procurements. The Contractor further agrees that it will refrain from entering into any Contract or Contract modification 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.

36.5 The Contractor specifically agrees, as required by Section 6-123 of the Administrative Code, that:

36.5.1 The Contractor will not engage in any unlawful discriminatory practice in violation of Title 8 of the Administrative Code; and

36.5.2 Any failure to comply with this Article 36.5 may subject the Contractor to the remedies set forth in Section 6-123 of the Administrative Code, including, where appropriate, sanctions such as withholding of payment, imposition of an employment program, finding the Contractor to be in default, cancellation of the Contract, or any other sanction or remedy provided by Law or Contract.

ARTICLE 37. LABOR LAW REQUIREMENTS

37.1 The Contractor shall strictly comply with all applicable provisions of the Labor Law, as amended. Such compliance is a material term of this Contract.

37.2 The Contractor specifically agrees, as required by Labor Law Sections 220 and 220-d, as amended, that:

37.2.1 Hours of Work: No laborer, worker, 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 (8) hours in any one (1) Day, or more than five (5) Days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

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37.2.2 In situations in which there are not sufficient laborers, workers, 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 Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) Day; or five (5) Days in any one (1) week; provided, however, that upon application of any Contractor, the Commissioner shall have first certified to the Commissioner of Labor of the State of New York (hereinafter "Commissioner of Labor") 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 Commissioner of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

37.2.3 Failure of the Commissioner to make such a certification to the Commissioner of Labor shall not entitle the Contractor to damages for delay or for any cause whatsoever.

37.2.4 Prevailing Rate of Wages: The wages to be paid for a legal day’s Work to laborers, workers, 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 wage" (including the wage and benefit rate) set by law for each trade or occupation for employees of contractors performing public works projects and building service work for government agencies pursuant to Labor Law Section 220, and as fixed by the Comptroller Wage Schedule of Wage Rates established by the Comptroller of the City of New York pursuant to §220 of the Labor Law and in updated schedules thereto. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed. See more at:

http://comptroller.nyc.gov/general-information/prevailing-wage/

37.2.5 Requests for interpretation or correction in the Information for 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 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.

37.2.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, 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.

37.3 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 this 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 Article 37.3.

37.4 Prevailing Wage Enforcement: The Contractor agrees to pay for all costs incurred by the City in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the Agency or the Comptroller, where the City discovers a failure to comply with any of the requirements of this
Article 37 by the Contractor or its Subcontractor(s). The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Agency is hereby authorized to deduct from a Contractor’s account an amount equal to the cost of such investigation.

37.4.1 The Labor Law Section 220 and Section 220-d, as amended, provide that this Contract shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than:

37.4.1(a) The stipulated prevailing wage scale as provided in Labor Law section 220, as amended, or

37.4.1(b) The stipulated minimum hourly wage scale as provided in Labor Law section 220-d, as amended.

37.4.2 For any breach or violation of either working conditions (Article 37.3) or minimum wages (Article 37.2.6) provisions, the party responsible therefor 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 actions brought by the City Corporation Counsel in the name of the City, in addition to damages for any other breach of this Contract, for 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 contracts 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 Comptroller, 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 two (2) years from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

37.4.3 A determination by the Comptroller that a Contractor and/or its Subcontractor willfully violated Labor Law Section 220 will be forwarded to the City’s five District Attorneys for review.

37.4.4 The Contractor’s or Subcontractor’s noncompliance with this Article 37.4 and Labor Law Section 220 may result in an unsatisfactory performance evaluation and the Comptroller may also find and determine that the Contractor or Subcontractor willfully violated the New York Labor Law.

37.4.4(a) An unsatisfactory performance evaluation for noncompliance with this Article 37 may result in a determination that the Contractor is a non-responsive bidder on subsequent procurements with the City and thus a rejection of a future award of a contract with the City, as well as any other sanctions provided for by Law.

37.4.4(b) Labor Law Section 220-b, as amended, provides that when two (2) final determinations have been rendered against a Contractor or Subcontractor within any consecutive six (6) year period determining that such Contractor or Subcontractor has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor Law and this Article 37.4, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public works projects are rendered simultaneously, such Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public works contract with the City for a period of five (5) years from the second final
determination. If the final determination involves the falsification of payroll records or the kickback of wages or supplements, the Contractor or Subcontractor shall be ineligible to submit a bid on or be awarded any public works contract with the City for a period of five (5) years from the first final determination.

37.4.4(c) Labor Law Section 220, as amended, provides that the Contractor or Subcontractor found to have violated this Article 37.4 may be directed to make payment of wages or supplements including interest found to be due, and the Contractor or Subcontractor may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

37.4 The Contractor and its 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 its 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 Sections 220 and 220-h of the Labor Law, and the Contractor and its 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.

37.5 The Contractor shall strictly comply with all of the provisions of Articles 37.6.1 through 37.6.5, and provide for all workers, laborers or mechanics in its employ, the following:

37.5.1 Notices Posted At Site: Post, in a location designated by the City, schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the Workers' Compensation Law Section 51 notice, all other notices required by Law to be posted at the Site, the City notice that this Project is a public works project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the City directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the City. The Contractor shall maintain and keep current such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Contractor shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete; and

37.5.2 Daily Site Sign-in Sheets: Maintain daily Site sign-in sheets, and require that Subcontractors maintain daily Site sign-in sheets for its employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began work and the time the employee left work, until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services to be furnished or rendered under this Contract unless exception is granted by the Comptroller upon application by the Agency. In the alternative, subject to the approval of the CCPO, the Contractor and Subcontractor may maintain an electronic or biometric sign-in system, which provides the information required by this Article 37.6.2; and

37.5.3 Individual Employee Information Notices: Distribute a notice to each worker, laborer or mechanic employed under this Contract, in a form provided by the Agency, that this Project is a public works project on which each worker, laborer or mechanic is entitled to receive the prevailing rate of wages and supplements for the occupation at which he or she is working. If the total cost of the Work under this Contract is at least two hundred fifty thousand ($250,000) dollars, such notice shall also include a statement that each worker, laborer or mechanic must be certified prior to performing any Work as
having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten (10) hours in duration. Such notice shall be distributed to each worker before he or she starts performing any Work of this Contract and with the first paycheck after July first of each year. “Worker, laborer or mechanic” includes employees of the Contractor and all Subcontractors and all employees of suppliers entering the Site. At the time of distribution, the Contractor shall have each worker, laborer or mechanic sign a statement, in a form provided by the Agency, certifying that the worker has received the notice required by this Article 37.5.3, which signed statement shall be maintained with the payroll records required by this Contract; and Section 37.6. The Contractor and each Subcontractor shall notify each worker, laborer or mechanic employed under this Contract in writing of the prevailing rate of wages for their particular job classification. Such notification shall be given to every worker, laborer, and mechanic on their first pay stub and with every pay stub thereafter; and

37.5.4 Site Laminated Identification Badges: The Contractor shall provide laminated identification badges which include a photograph of the worker’s, laborer’s or mechanic’s face and indicate the worker’s, laborer’s or mechanic's name, trade, employer’s name, and employment starting date (month/day/year). Further, the Contractor shall require, as a condition of employment on the Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the City. The Commissioner may grant a written waiver from the requirement that the laminated identification badge include a photograph if the Contractor demonstrates that the identity of an individual wearing a laminated identification badge can be easily verified by another method.; and

37.5.5 Language Other Than English Used On-Site: Provide the ACCO notice when three (3) or more employees (worker and/or laborer and/or mechanic) on the Site, at any time, speak a language other than English. The ACCO will then provide the Contractor the notices described in Article 37.6.1 in that language or languages as may be required. The Contractor is responsible for all distributions under this Article 37; and

37.5.6 Provision of Records: The Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Engineer, the Commissioner, the ACCO, the Agency EAO, or the Comptroller, such records as are required to be kept by this Article 37.6; and

37.5.7 The Contractor and Subcontractor(s) shall pay employees by check or direct deposit. If this Contract is for an amount greater than one million ($1,000,000) dollars, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency). For any subcontract for an amount greater than seven hundred fifty thousand ($750,000) dollars, checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency); and

37.5.8 The failure of the Contractor or Subcontractor(s) to comply with the provisions of Articles 37.6.1 through 37.6.7 may result in the Commissioner declaring the Contractor in default and/or the withholding of payments otherwise due under the Contract.

37.6 The Contractor and its Subcontractors shall keep such employment and payroll records as are required by Section 220 of the Labor Law. The failure of the Contractor or Subcontractor(s) to comply with the
provisions of this Article 37.7 may result in the Commissioner declaring the Contractor in default and/or the withholding of payments otherwise due under the Contract.

37.7 At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to the Commissioner a written payroll certification, in the form provided by this Contract, of compliance with the prevailing wage, minimum wage, and other provisions and stipulations required by Labor Law Section 220 and of compliance with the training requirements of Labor Law Section 220-h set forth in Article 35.2. This certification of compliance 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.

37.8 This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of Section 220 of the Labor Law from the award of the Contract.

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

ARTICLE 38. PAYROLL REPORTS

38.1 The Contractor and its Subcontractor(s) shall maintain on the Site during the performance of the Work the original payrolls or transcripts thereof which the Contractor and its Subcontractor(s) are required to maintain and shall submit such it original payrolls or transcripts, subscribed and affirmed by it as true, within thirty (30) Days after issuance of its first payroll, and every thirty (30) Days thereafter, pursuant to Labor Law Section 220(3-a)(a)(iii). The Contractor and Subcontractor(s) shall submit such original payrolls or transcripts along with each and every payment requisition. If payment requisitions are not submitted at least once a month, the Contractor and its Subcontractor(s) shall submit original payrolls and transcripts both along with its payment requisitions and independently of its payment requisitions.

38.2 The Contractor shall maintain payrolls or transcripts thereof for six (6) years from the date of completion of the Work on this Contract. If such payrolls and transcripts are maintained outside of New York City after the completion of the Work and their production is required pursuant to this Article 38, the Contractor shall produce such records in New York City upon request by the City.

38.3 The Contractor and Subcontractor(s) shall comply with any written order, direction, or request made by the Engineer, the Commissioner, the ACCO, the Agency EAO, the Agency Labor Law Investigator(s), or the Comptroller, to provide to the requesting party any of the following information and/or records within five (5) Days of such written order, direction, or request:

38.1.1 Such original payrolls or transcripts thereof subscribed and affirmed by it as true and the statements signed by each worker pursuant to this Chapter VIII; and/or

38.1.2 Attendance sheets for each Day on which any employee of the Contractor and/or any of the Subcontractor(s) performed Work on the Site, which attendance sheet shall be in a form acceptable to the Agency and shall provide information acceptable to the Agency to identify each such employee; and/or

38.1.3 Any other information to satisfy the Engineer, the Commissioner, the ACCO, the Agency EAO, the Agency Labor Law Investigator(s) or the Comptroller, that this Chapter VIII and the Labor Law,
as to the hours of employment and prevailing rates of wages and/or supplemental benefits, are being observed;

38.4 The failure of the Contractor or Subcontractor(s) to comply with the provisions of Articles 38.1 and/or 38.2 may result in the Commissioner declaring the Contractor in default and/or the withholding of payments otherwise due under the Contract.

ARTICLE 39. DUST HAZARDS

39.1 Should a harmful dust hazard be created in performing the Work of this Contract, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the City of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard. Failure to comply with this provision after notice shall make this Contract voidable at the sole discretion of the City.

CHAPTER IX
PARTIAL AND FINAL PAYMENTS

ARTICLE 40. CONTRACT PRICE

40.1 The City shall pay, and the Contractor agrees to accept, in full consideration for the Contractor's performance of the Work subject to the terms and conditions hereof, the price set forth in a Work Order, plus the amount required to be paid for any Supplemental Work Orders or Extra Work ordered by the Commissioner under Article 25, less credit for any Work omitted pursuant to Article 29.

ARTICLE 41. BID BREAKDOWN

41.1 Within fifteen (15) Days after the commencement date specified in the Notice to Proceed or Order to Work in any Work Order, unless otherwise directed by the Resident Engineer, the Contractor shall submit to the Resident Engineer a breakdown of its cost for the Work required by a Work Order, showing the various operations to be performed under the Work Order, how much will be performed as Unit Price Work and in what quantities, and how much as labor and Materials as directed in the progress schedule required under Article 9, and the value of each of such operations, the total of such items to equal the price set forth in the Work Order. Said breakdown must be approved in writing by the Resident Engineer.

41.2 No partial payment will be approved until the Contractor submits a cost breakdown that is acceptable to the Resident Engineer.

41.3 The Contractor shall also submit such other information relating to the cost breakdown as directed by the Resident Engineer. Thereafter, the breakdown may be used only for checking the Contractor's applications for partial payments hereunder, but shall not be binding upon the City, the Commissioner, or the Engineer for any purpose whatsoever.

ARTICLE 42. PARTIAL PAYMENTS

42.1 From time to time as the Work progresses satisfactorily, but not more often than once each calendar month (except where the Commissioner approves in writing the submission of invoices on a more frequent basis and for invoices relating to Work performed pursuant to a change order), the Contractor may submit to the Engineer a
requisition for a partial payment in the prescribed form, which shall contain an estimate of the quantity and the fair value of the **Work** done during the payment period.

42.2 Partial payments may be made for materials, fixtures, and equipment in advance of their actual incorporation in the **Work**, as the **Commissioner** may approve, and upon the terms and conditions set forth in the General Conditions.

42.3 The **Contractor** shall also submit to the **Commissioner** in connection with every application for partial payment a verified statement in the form prescribed by the **Comptroller** setting forth the information required under Labor Law Section 220-a.

42.4 Within thirty (30) **Days** after receipt of a satisfactory payment application, and within sixty (60) **Days** after receipt of a satisfactory payment application in relation to **Work** performed pursuant to a change order, the **Engineer** will prepare and certify, and the **Commissioner** will approve, a voucher for a partial payment in the amount of such approved estimate, less any and all deductions authorized to be made by the **Commissioner** under the terms of this **Contract** or by **Law**.

**ARTICLE 43. PROMPT PAYMENT**

43.1 The Prompt Payment provisions of the **PPB** Rules in effect at the time of the bid will be applicable to payments made under this **Contract**. The provisions require the payment to the **Contractor** of interest on payments made after the required payment date, except as set forth in the **PPB** Rules.

43.2 The **Contractor** shall 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.

43.3 Determination of interest due will be made in accordance with the **PPB** Rules.

43.4 If the **Contractor** is paid interest, the proportionate share(s) of that interest shall be forwarded by the **Contractor** to its **Subcontractor(s)**.

43.5 The **Contractor** shall pay each **Subcontractor** or **Materialman** not later than seven (7) **Days** after receipt of payment out of amounts paid to the **Contractor** by the **City** for **Work** performed by the **Subcontractor** or **Materialman** under this **Contract**.

43.5.1 If **Contractor** fails to make any payment to any **Subcontractor** or **Materialman** within seven (7) **Days** after receipt of payment by the **City** pursuant to this Article 43.5, then the **Contractor** shall pay interest on amounts due to such **Subcontractor** or **Materialman** at the rate of interest in effect on the date such payment is made by the **Contractor** computed in accordance with Section 756-b (1)(b) of the New York General Business Law. Accrual of interest shall commence on the **Day** immediately following the expiration of the seventh **Day** following receipt of payment by the **Contractor** from the **City** and shall end on the date on which payment is made.

43.6 The **Contractor** shall include in each of its subcontracts a provision requiring each **Subcontractor** to make payment to each of its **Subcontractors** or **Materialmen** for **Work** performed under this **Contract** in the same manner and within the same time period set forth above.
ARTICLE 44. SUBSTANTIAL COMPLETION PAYMENT

44.1 When the Work required by a particular Work Order, in the opinion of the Commissioner, has been substantially but not entirely completed, he/she shall issue a certificate of Substantial Completion with respect to such Work Order.

44.2 The Contractor shall submit with the Substantial Completion requisition for a Work Order:

44.2.1 A final verified statement of any pending Article 27 disputes in accordance with the PPB Rules and this Contract and any and all alleged claims against the City, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 11, 27, 28, and 30) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof was delayed, and an itemized statement and breakdown of the amount claimed for each such delay.

44.2.1(a) With respect to each such claim, the Commissioner, the Comptroller and, in the event of litigation, the City Corporation Counsel shall have the same right to inspect, and to make extracts or copies of, the Contractor’s books, vouchers, records, etc., as is referred to in Articles 11, 27, 28, and 30. Nothing contained in this Article 44.1(a) is intended to or shall relieve the Contractor from the obligation of complying strictly with Articles 11, 27, 28, and 30. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor upon acceptance of the Substantial Completion payment pursuant to this Article 44, will have waived any such claims.

44.2.2 A Final Commissioner approved Punch List.

44.2.3 Where required, a request for an extension of time to achieve Substantial Completion or final extension of time.

44.3 The Commissioner shall issue a voucher calling for payment of any part or all of the balance due for Work performed under the Work Order, including monies retained under Article 21, less any and all deductions authorized to be made by the Commissioner, under this Contract or by Law, and less twice the amount the Commissioner considers necessary to ensure the completion of the balance of the Work by the Contractor. Such a payment shall be considered a partial and not a final payment. No Substantial Completion payment shall be made under this Article 44 where the Contractor failed to complete the Work within the time fixed for such completion in the Work Order, or within the time to which completion may have been extended by Supplemental Work Order, until an extension or extensions of time for the completion of Work have been acted upon pursuant to Article 13.

44.4 No further partial payments shall be made to the Contractor after the Commissioner issues a Certificate of Substantial Completion for a Work Order, except the Substantial Completion payment and payment pursuant to any Contractor’s requisition that were properly filed with the Commissioner prior to the date of Substantial Completion; however, the Commissioner may grant a waiver for further partial payments after the date of Substantial Completion to permit payments for change order Work and/or release of retainage and deposits pursuant to Articles 21 and 24. Such waiver shall be in writing.
44.5 The Contractor acknowledges that nothing contained in this Article 44 is intended to, or shall, in any way, diminish the force and effect of Article 13.

ARTICLE 45. FINAL PAYMENT

45.1 After completion and Final Acceptance of the Work for a Work Order, the Contractor shall submit all required certificates and documents, together with a requisition for the balance claimed to be due under the Contract, less the amount authorized to be retained for maintenance under Article 24. Such submission shall be within 90 days of the date of the Commissioner’s written determination of Final Acceptance, or within such additional time as may be granted by the Commissioner in writing. If the Contractor fails to submit all required certificates and documents within the time allowed, no payment of the balance claimed shall be made to the Contractor and the Contractor shall be deemed to have forfeited its right to payment of any balance claimed. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Commissioner.

45.2 Amended Verified Statement of Claims: The Contractor shall also submit with the final requisition any amendments to the final verified statement of any pending dispute resolution procedures in accordance with the PPB Rules and this Contract and any and all alleged claims against the City, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 11, 27, 28, and 30) that have occurred subsequent to Substantial Completion, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Commissioner, the Comptroller and, in the event of litigation, the City Corporation Counsel shall have the same right to inspect, and to make extracts or copies of, the Contractor’s books, vouchers, records, etc., as is referred to in Articles 11, 27, 28, and 30. Nothing contained in this Article 45.2, is intended to or shall relieve the Contractor from the obligation of complying strictly with Articles 11, 27, 28, and 30. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor, upon acceptance of the Final Payment pursuant to Article 46, will have waived any such claims.

45.3 Preparation of Final Voucher: Upon determining the balance due hereunder other than on account of claims, the Engineer will prepare and certify, for the Commissioner’s approval, 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 for such Work Order. 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.

45.3.1 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 Engineer thereon and the approval of the Commissioner thereof, shall be conditions precedent to the right of the Contractor to receive any money hereunder. Such final voucher shall be binding and conclusive upon the Contractor.

45.3.2 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 Comptroller within thirty (30) Days after the filing of such voucher in his/her office.

45.4 The Contractor acknowledges that nothing contained in this Article 45 is intended to, or shall, in any way diminish the force and effect of Article 13.

ARTICLE 46. ACCEPTANCE OF FINAL PAYMENT

46.1 The acceptance by the Contractor, or by anyone claiming by or through it, 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 of the City from any and all claims of and liability to the Contractor for anything heretofore done or furnished for the Contractor 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 officials, 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 any claims, not otherwise waived, or any pending dispute resolution procedures which are contained in the verified statement filed with the Contractor's substantial and final requisitions pursuant to Articles 44 and 45.

46.2 The Contractor is warned that the execution by it 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 46, or those for amounts deducted by the Commissioner from the final requisition or from the final payment as certified by the Engineer and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any official, agent or employee of the City to the contrary notwithstanding.

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

46.4 The Contractor, however, shall not be barred by this Article 46 from commencing an action for breach of Contract to the extent permitted by Law and by the terms of the Contract for any claims that are contained in the verified statement filed with the Contractor's substantial and final requisitions pursuant to Articles 44 and 45 or that arose after submission of the final payment requisition, 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 making of such final payment by electronic funds transfer (EFT) or 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 47. APPROVAL BY PUBLIC DESIGN COMMISSION

47.1 All works of art, including paintings, mural decorations, stained glass, statues, bas-reliefs, and other sculptures, monuments, fountains, arches, and other structures of a permanent character intended for ornament or commemoration, and every design of the same to be used in the performance of this Contract, and the design of all bridges, approaches, buildings, gates, fences, lamps, or structures to be erected, pursuant to the terms of this Contract, shall be submitted to the Art Commission, d/b/a the Public Design Commission of the City of New York, and shall be approved by the Public Design Commission prior to the erection or placing in position of the same. The final payment shall not become due or payable under this Contract unless and until the Public Design Commission shall certify that the design for the Work herein contracted for has been approved by the said Public Design Commission.
Commission, and that the same has been executed in substantial accordance with the design so approved, pursuant to the provisions of Chapter 37, Section 854 of the City Charter, as amended.

CHAPTER X
CONTRACTOR'S DEFAULT

ARTICLE 48. COMMISSIONER’S RIGHT TO DECLARE CONTRACTOR IN DEFAULT

48.1 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 this Contract or any Work Order issued hereunder if:

48.1.1 The Contractor fails to commence Work when notified to do so by the Commissioner; or if

48.1.2 The Contractor shall abandon the Work; or if

48.1.3 The Contractor shall refuse to proceed with the Work when and as directed by the Commissioner; or if

48.1.4 The Contractor shall, without just cause, reduce its 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 progress schedule; or if

48.1.5 The Contractor shall fail or refuse to increase sufficiently such working force when ordered to do so by the Commissioner; or if

48.1.6 The Contractor shall sublet, assign, transfer, convert or otherwise dispose of this Contract other than as herein specified; or sell or assign a majority interest in the Contractor; or if

48.1.7 The Contractor fails to secure and maintain all required insurance; or if

48.1.8 A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if

48.1.9 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

48.1.4 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

48.1.5 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
48.1.6 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; or if

48.1.7 Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Work, the Project, or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made; or if

48.1.8 The Contractor or any of its officers, directors, partners, five (5%) percent shareholders, principals, or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the PPB Rules.

48.2 Before the Commissioner shall exercise his/her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard, upon not less than two (2) Days’ notice.

ARTICLE 49. EXERCISE OF THE RIGHT TO DECLARE DEFAULT

49.1 The right to declare the Contractor in default for any of the grounds specified or referred to in Article 48 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 (hereinafter referred to as a "Notice of Default").

49.2 The Commissioner’s determination that the Contractor is in default shall be conclusive, final, and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the determination of the Commissioner, the Contractor may commence an action in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

ARTICLE 50. QUITTING THE SITE

50.1 Upon receipt of such notice the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit the Site, leaving untouched all plant, materials, equipment, tools, and supplies then on the Site.

ARTICLE 51. COMPLETION OF THE WORK

51.1 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/she 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/she may deem advisable.

51.2 After such completion, the Commissioner shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages (at the rate provided for in the Contract) 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, its sureties, and any person claiming under the Contractor, as to the amount thereof.

51.3 The 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, shall be charged against and deducted out of monies which are earned by the Contractor prior to the date of default. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the
**Contract** if it had been completed by the **Contractor**, any excess shall be paid by the Contractor.

**ARTICLE 52. PARTIAL DEFAULT**

52.1 In case the **Commissioner** shall declare the **Contractor** in default as to a part of the **Work** only, the **Contractor** shall discontinue such part, shall continue performing the remainder of the **Work** in strict conformity with the terms of this **Contract**, and shall in no way hinder or interfere with any **Other Contractor(s)** or persons whom the **Commissioner** may engage to complete the **Work** as to which the **Contractor** was declared in default.

52.2 The provisions 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, except that the **Commissioner** shall be entitled to utilize for completion of the part of the **Work** as to which the **Contractor** was declared in default only such plant, materials, equipment, tools, and supplies as had been previously used by the **Contractor** on such part.

**ARTICLE 53. PERFORMANCE OF UNCOMPLETED WORK**

53.1 In completing the whole or any part of the **Work** under the provisions of this Chapter X, the **Commissioner** shall have the power to depart from or change or vary the terms and provisions of this **Contract**, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the **Commissioner's** certificate of the cost of completion referred to in Article 51, 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 its default.

**ARTICLE 54. OTHER REMEDIES**

54.1 In addition to the right to declare the **Contractor** in default pursuant to this Chapter X, the **Commissioner** shall have the absolute right, in his/her sole discretion and without a hearing, to complete or cause to be completed in the same manner as described in Articles 51 and 53, any or all unsatisfactory or uncompleted punch list **Work** that remains after the completion date specified in the **Final Approved Punch List**. 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 50.

54.2 The expense of completion permitted under Article 54.1, including any and all related and incidental costs, as so certified by the **Commissioner**, shall be charged against and deducted out of monies which have been earned by the **Contractor** prior to the date of the exercise of the right set forth in Article 54.1; 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, as certified by the **Commissioner**, exceed the total sum which would have been payable under the **Contract** if it had been completed by the **Contractor**, any excess shall be paid by the **Contractor**.

54.3 The previous provisions of this Chapter X shall be in addition to any and all other remedies available under **Law** or in equity.

54.4 The exercise by the **City** of any remedy set forth herein shall not be deemed a waiver by the **City** of any other legal or equitable remedy contained in this **Contract** or provided under **Law**.
CHAPTER XI
MISCELLANEOUS PROVISIONS

ARTICLE 55. CONTRACTOR’S WARRANTIES

55.1 In consideration of, and to induce, the award of this Contract to the Contractor, the Contractor represents and warrants:

55.1.1 That it is financially solvent, sufficiently experienced and competent to perform the Work; and

55.1.2 That the facts stated in its bid and the information given by it pursuant to the Information for Bidders is true and correct in all respects; and

55.1.3 That it has read and complied with all requirements set forth in the Contract.

ARTICLE 56. CLAIMS AND ACTIONS THEREON

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

56.2 Nor shall any action be instituted or maintained on any such claims unless such action is commenced within six (6) months after the date the Commissioner issues a Certificate of Substantial Completion pursuant to Article 44; except that:

56.2.1 Any claims arising out of events occurring after the date the Commissioner issues a Certificate of Substantial Completion and before Final Acceptance of the Work for a particular Work Order shall be asserted within six (6) months of Final Acceptance of the Work for a particular Work Order;

56.2.2 Any claims for monies deducted, retained or withheld under the provisions of this Contract shall be asserted within six (6) months after the date when such monies otherwise become due and payable hereunder; and

56.2.3 If the Commissioner exercises his/her right to terminate the Contract pursuant to Article 64, any such action shall be commenced within six (6) months of the date the Commissioner exercises said right.

ARTICLE 57. INFRINGEMENT

57.1 The Contractor shall be solely responsible for and shall defend, indemnify, and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) and 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 or completion of the 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.

ARTICLE 58. NO CLAIM AGAINST OFFICIALS, AGENTS OR EMPLOYEES

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

ARTICLE 59. SERVICE OF NOTICES

59.1 The Contractor hereby designates the business address, fax number, and email address specified in its bid, as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. 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.

59.2 Contractor’s notice address, email address, or fax number may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor, and delivered to the Commissioner.

59.3 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 thereof.

ARTICLE 60. UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

60.1 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 61. ALL LEGAL PROVISIONS DEEMED INCLUDED

61.1 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 be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be 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 62. TAX EXEMPTION

62.1 The City is exempt from payment of Federal, State, and local taxes, including sales and compensating use taxes of the State of New York and its cities and counties on all tangible personal property 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, Subcontractor or Materialman or to tangible personal property which, even though it is consumed, is not

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incorporated into the completed Work (consumable supplies) and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work. The Contractor and its Subcontractors and Materialmen 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 consumable supplies and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work.

62.2 The Contractor agrees to sell and the City agrees to purchase all tangible personal property, other than consumable supplies and other tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work, that is required, necessary or proper for or incidental to the construction of the Project covered by this Contract. The sum paid under this Contract for such tangible personal property shall be in full payment and consideration for the sale of such tangible personal property.

62.2.1 The Contractor agrees to construct the Project and to perform all Work, labor and services rendered, 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 Contract for such Work, labor, and services, shall be in full consideration for the performance by the Contractor of all its duties and obligations under this Contract in connection with said Work, labor, and services.

62.3 20 NYCRR Section 541.3(d) provides that a Contractor’s purchases of tangible personal property that is either incorporated into real property owned by a governmental entity or purchased for and sold to a governmental entity are exempt from sales and use tax. The City shall not pay sales tax for any such tangible personal property that it purchases from the Contractor pursuant to the Contract. With respect to such tangible personal property, 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 the City, properly executed, acknowledged and delivered assuring to the City title to such tangible personal property, free of liens and/or encumbrances, and the Contractor shall mark or otherwise identify all such tangible personal property as the property of the City.

62.4 Title to all tangible personal property 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 tangible personal property to the Site. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such tangible personal property in accordance with the provisions of this Contract, protect it, maintain it in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional tangible personal property 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 the tangible personal property is rejected as being defective or otherwise unsatisfactory, title to all such tangible personal property shall be deemed to have been transferred back to the Contractor.

62.5 The purchase by Subcontractors or Materialmen of tangible personal property to be sold hereunder shall be a purchase or procurement for resale to the Contractor (either directly or through other Subcontractors) and therefore not subject to the aforesaid sales and compensating use taxes, provided that the subcontracts and purchase agreements provide for the resale of such tangible personal property and that such subcontracts and purchase agreements are in a form similar to this Contract with respect to the separation of the sale of consumable supplies and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work from the Work and labor, services, and any other matters to be provided, and provided further that the subcontracts and purchase agreements provide separate prices for tangible personal property and all other services and matters. Such
separation shall actually be followed in practice, including the separation of payments for tangible personal property from the payments for other Work and labor and other things to be provided.

62.6 The Contractor and its Subcontractors and Materialmen shall furnish a Contractor Exempt Purchase Certificate to all persons, firms or corporations from which they purchase tangible personal property for the performance of the Work covered by this Contract.

62.7 In the event any of the provisions of this Article 62 shall be deemed to be in conflict with any other provisions of this Contract or create any ambiguity, then the provisions of this Article 62 shall control.

ARTICLE 63. INVESTIGATION(S) CLAUSE

63.1 The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a United States, a State of New York (State) or a City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

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

63.3 If any person refuses to testify for a reason other than the assertion of his/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;

63.4 The Commissioner 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.

63.5 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license, pending the final determination pursuant to Article 63.7 without the City incurring any penalty or damages for delay or otherwise.

63.6 The penalties which may attach after a final determination by the Commissioner may include but shall not exceed:
63.6.1 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

63.6.2 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 Contract, 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.

63.7 The Commissioner shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in Articles 63.7.1 and 63.7.2. The Commissioner may also consider, if relevant and appropriate, the criteria established in Articles 63.7.3 and 63.7.4, in addition to any other information which may be relevant and appropriate:

63.7.1 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.

63.7.2 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.

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

63.7.4 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 Article 63.6, provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in Article 63.4, gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

63.8 Definitions:

63.8.1 The term "license" or "permit" as used in this Article 63 shall be defined as a license, permit, franchise or concession not granted as a matter of right.

63.8.2 The term "person" as used in this Article 63 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.
63.8.3 The term "entity" as used in this Article 63 shall be defined as any firm, partnership, corporation, association, joint venture, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

63.8.4 The term "member" as used in this Article 63 shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

63.9 In addition to and notwithstanding any other provision of this Contract, the Commissioner may in his/her sole discretion terminate this Contract upon not less than three (3) Days’ written notice in the event the Contractor fails to promptly report in writing to the Commissioner of the Department of Investigations ("DOI") of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

ARTICLE 64. TERMINATION BY THE CITY

64.1 In addition to termination pursuant to any other article of this Contract, the Commissioner may, at any time, terminate this Contract by written notice to the Contractor. In the event of termination, the Contractor shall, upon receipt of such notice, unless otherwise directed by the Commissioner:

64.1.1 Stop Work on the date specified in the notice;

64.1.2 Take such action as may be necessary for the protection and preservation of the City's materials and property;

64.1.3 Cancel all cancelable orders for material and equipment;

64.1.4 Assign to the City and deliver to the Site or another 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;

64.1.5 Take no action which will increase the amounts payable by the City under this Contract.

64.2 In the event of termination by the City pursuant to this Article 64, payment to the Contractor shall be in accordance with Articles 64.2.1, 64.2.2 or 64.2.3, to the extent that each respective article applies.

64.2.1 Lump Sum Contracts or Items: On all lump sum Contracts, or on lump sum items in a Contract, the City will pay the Contractor the sum of the amounts described in Articles 64.2.1(a) and 64.2.1(b), less all payments previously made pursuant to this Contract. On lump sum Contracts only, the City will also pay the Contractor an additional sum as provided in Article 64.2.1(c).

64.2.1(a) For Work completed prior to the notice of termination, the Contractor shall be paid a pro rata portion of the lump sum bid amount, plus approved change orders, based upon the percent completion of the Work, as determined by the Commissioner. For the purpose of determining the pro rata portion of the lump sum bid amount to which the Contractor is entitled, the bid breakdown submitted in accordance with Article 41 shall be considered, but shall not be dispositive. The
Commissioner's determination hereunder shall be final, binding, and conclusive.

64.2.1(b) For 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 yet incorporated in the Work, the Contractor shall be paid the lesser of the following, less salvage value:

64.2.1(b)(i) The Direct Cost, as defined in Article 64.2.4; or

64.2.1(b)(ii) The fair and reasonable value, if less than Direct Cost, of such material and equipment, plus necessary and reasonable delivery costs.

64.2.1(b)(iii) In addition, the Contractor shall be paid five (5%) percent of the amount described in Article 64.2.1(b)(i) or Article 64.2.1(b)(ii), whichever applies.

64.2.1(c) Except as otherwise provided in Article 64.2.1(d), on all lump sum Contracts, the Contractor shall be paid the percentage indicated below applied to the difference between the total lump sum bid amount and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to Articles 64.2.1(a) and 64.2.1(b):

64.2.1(c)(i) Five (5%) percent of the first five million ($5,000,000) dollars; and

64.2.1(c)(ii) Three (3%) percent of any amount between five million($5,000,000) dollars and fifteen million ($15,000,000) dollars; plus

64.2.1(c)(iii) One (1%) percent of any amount over fifteen million ($15,000,000) dollars.

64.2.1(d) In the event the City terminates a lump sum Contract pursuant to this Article 64 within ninety (90) Days after registration of the Contract with the Comptroller, the Contractor shall be paid one (1%) percent of the difference between the lump sum bid amount and the total of all payments made pursuant to this Article 64.2.

64.2.2 Unit Price Contracts or Items: On all Unit Price Contracts, or on Unit Price items in a Contract, the City will pay the Contractor the sum of the amounts described in Articles 64.2.2(a) and 64.2.2(b), less all payments previously made pursuant to this Contract:

64.2.2(a) For all completed units, the Unit Price stated in the Contract, and

64.2.2(b) For units that have been ordered but are only partially completed, the Contractor will be paid:

64.2.2(b)(i) A pro rata portion of the Unit Price stated in the Contract based upon the percent completion of the unit and

64.2.2(b)(ii) For non-cancelable material and equipment, payment will be made pursuant to Article 64.2.1(b).

64.2.3 Time and Materials Contracts or Items Based on Time and Material Records: On all
Contracts or items in a Contract where payment for the Work is based on time and material records, the Contractor shall be paid in accordance with Article 26, less all payments previously made pursuant to this Contract.

64.2.4 Direct Costs: Direct Costs as used in this Article 64.2 shall mean:

64.2.4(a) The actual purchase price of material and equipment, plus necessary and reasonable delivery costs, and

64.2.4(b) The actual cost of labor involved in construction and installation at the Site, and

64.2.4(c) The 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.

64.2.4(d) Direct Costs shall not include overhead.

64.3 In no event shall any payments under this Article 64 exceed the Contract price for such items.

64.4 All payments pursuant to Article 64 shall be in the nature of liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the City.

64.5 The City may deduct or set off against any sums due and payable pursuant to this Article 64, any deductions authorized by this Contract or by Law (including, but not limited to, liquidated damages) and any claims it may have against the Contractor. The City's exercise of the right to terminate the Contract pursuant to this Article 64 shall not impair or otherwise effect the City's right to assert any claims it may have against the Contractor in a plenary action.

64.6 Where the Work covered by the Contract has been substantially completed, as determined in writing by the Commissioner, termination of the Work shall be handled as an omission of Work pursuant to Articles 29 and 33, 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, such amount shall be paid by the Contractor.
65.1 This Contract shall be deemed to be executed in the City 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 and the Laws of the United States, where applicable.

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

65.2.1 If the City initiates any action against the Contractor in Federal court or in a New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and

65.2.2 With respect to any action between the City and the Contractor in a New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have:

65.2.2(a) To move to dismiss on grounds of forum non conveniens;

65.2.2(b) To remove to Federal Court; and

65.2.2(c) To move for a change of venue to a New York State Court outside New York County.

65.2.3 With respect to any action brought by the City against the Contractor in a Federal Court located in the City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

65.2.4 If the Contractor commences any action against the City in a court located other than in the City and County of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a New York State Court of competent jurisdiction located in the City and County of New York or, if the Court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstate the action in a New York State Court of competent jurisdiction in New York County.

65.3 If any provision(s) of this Article 65 is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 66. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

66.1 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, or the regulations of the United States Department of Commerce (Commerce Department) promulgated thereunder.

66.2 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 for 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/her option, render forfeit and void this Contract.

66.3 The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code and the rules and regulations issued by the Comptroller thereunder.

ARTICLE 67. LOCALLY BASED ENTERPRISE PROGRAM

67.1 This Contract is subject to the requirements of Section 6-108.1 of the Administrative Code and regulations promulgated thereunder. No construction contract shall be awarded unless and until these requirements have been complied with in their entirety; however, compliance with this Article 67 is not required if the Agency sets Subcontractor Participation Goals for Minority- and Women-Owned Business Enterprises (M/WBEs).

67.2 Unless specifically waived by the Commissioner with the approval of the Division of Economic and Financial Opportunity of the City Department of Business Services, if any portion of the Contract is subcontracted, not less than ten (10%) percent of the total dollar amount of the Contract shall be awarded to locally based enterprises (LBEs); except that where less than ten (10%) percent of the total dollar amount of the Contract is subcontracted, such lesser percentage shall be so awarded.

67.3 The Contractor shall not require performance and payment bonds from LBE Subcontractors.

67.4 If the Contractor has indicated prior to award that no Work will be subcontracted, no Work shall be subcontracted without the prior approval of the Commissioner, which shall be granted only if the Contractor makes a good faith effort beginning at least six (6) weeks before the Work is to be performed to obtain LBE Subcontractors to perform the Work.

67.5 If the Contractor has not identified sufficient LBE Subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Section 6-108.1 of the Administrative Code, recognizes that achieving the LBE requirement is a condition of its Contract, and shall submit documentation demonstrating its good faith efforts to obtain LBEs. After award, the Contractor shall begin to solicit LBE’s to perform subcontracted Work at least six (6) weeks before the date such Work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBEs on each subcontract until it meets the required percentage.

67.6 Failure of the Contractor to comply with the requirements of Section 6-108.1 of the Administrative Code and the regulations promulgated thereunder shall constitute a material breach of this Contract. Remedy for such breach may include the imposition of any or all of the following sanctions:

67.6.1 Reducing the Contractor's compensation by an amount equal to the dollar value of the percentage of the LBE subcontracting requirement not complied with;

67.6.2 Declaring the Contractor in default;

67.6.3 If the Contractor is an LBE, de-certifying and declaring the Contractor ineligible to participate in the LBE program for a period of up to three (3) years.

ARTICLE 68. ANTITRUST

68.1 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 New York State or of the United States relating to the particular goods or services purchased or procured by the City under
69.1 Notice To All Prospective Contractors:

69.1.1 Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 of the Administrative Code. The local Law provides for certain restrictions on City Contracts to express the opposition of the people of the City to employment discrimination practices in Northern Ireland to promote freedom of work-place opportunity.

69.1.2 Pursuant to Section 6-115.1, prospective Contractors for Contracts to provide goods or services involving an expenditure of an amount greater than ten thousand ($10,000.) dollars, or for construction involving an amount greater than fifteen thousand ($15,000.) dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their Contract, that any business operations in Northern Ireland conducted by the Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

69.1.3 Prospective Contractors are not required to agree to these conditions. However, in the case of Contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a Contract to supply goods, services or contraction of comparable quality, the Agency shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable Law, that it is in the best interest of the City that the Contract be awarded to other than the lowest responsible pursuant to Section 313(b)(2) of the City Charter.

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

69.2 In accordance with Section 6-115.1 of the Administrative Code, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor either:

69.2.1 Have no business operations in Northern Ireland, or

69.2.2 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.

69.3 For purposes of this Article, the following terms shall have the following meanings:
69.3.1 "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of work-place opportunity which require employers doing business in Northern Ireland to:

69.3.1(a) increase the representation of individuals from under-represented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;

69.3.1(b) take steps to promote adequate security for the protection of employees from under-represented religious groups both at the work-place and while traveling to and from Work;

69.3.1(c) ban provocative religious or political emblems from the workplace;

69.3.1(d) publicly advertise all job openings and make special recruitment efforts to attract applicants from under-represented religious groups;

69.3.1(e) establish layoff, recall, and termination procedures which do not in practice favor a particular religious group;

69.3.1(f) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

69.3.1(g) develop training programs that will prepare substantial numbers of current employees from under-represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of workers from under-represented religious groups;

69.3.1(h) establish procedures to assess, identify, and actively recruit employees from under-represented religious groups with potential for further advancement; and

69.3.1(i) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

69.4 The Contractor agrees that the covenants and representations in Article 69.2 are material conditions to this Contract. In the event the Agency receives information that the Contractor who made the stipulation required by this Article 69 is in violation thereof, the Agency shall review such information and give the Contractor an opportunity to respond. If the Agency finds that a violation has occurred, the Agency shall have the right to declare the Contractor in default in default and/or terminate this Contract for cause and procure supplies, services or Work from another source in the manner the Agency deems proper. In the event of such termination, the Contractor shall pay to the Agency, or the Agency in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and the cost to the Agency of completing performance of this Contract either itself or by engaging another Contractor or Contractors. In the case of a requirement Contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the Agency for the uncompleted term of Contractor's Contract. In the case of a construction Contract, the Agency shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the Agency
hereunder shall be in addition to, and not in lieu of, any rights and remedies the Agency has pursuant to this Contract or by operation of Law.

**ARTICLE 70. ELECTRONIC FILING/NYC DEVELOPMENT HUB**

70.1 The Contractor shall electronically file all alteration type-2 and alteration type-3 applications via the New York City Development Hub Web site, except applications for the following types of minor alterations: enlargements, curb cuts, legalizations, fire alarms, builders pavement plans, and jobs filed on Landmark Preservation Commission calendared properties. All such filings must be professionally certified. Information about electronic filing via the New York City Development Hub is available on the City Department of Buildings Web site at www.nyc.gov/buildings.

**ARTICLE 71. PROHIBITION OF TROPICAL HARDWOODS**

71.1 Tropical hardwoods, as defined in Section 165 of the New York State Finance Law (Finance Law), shall not be utilized in the performance of this Contract except as expressly permitted by Section 165 of the Finance Law.

**ARTICLE 72. CONFLICTS OF INTEREST**

72.1 Section 2604 of the City Charter and other related provisions of the City Charter, the Administrative Code, and the Penal Law are applicable under the terms of this Contract in relation to conflicts of interest and shall be extended to Subcontractors authorized to perform Work, labor and services pursuant to this Contract and further, it shall be the duty and responsibility of the Contractor to so inform its respective Subcontractors. Notice is hereby given that, under certain circumstances, penalties may be invoked against the donor as well as the recipient of any form of valuable gift.

**ARTICLE 73. MERGER CLAUSE**

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

**ARTICLE 74. STATEMENT OF WORK**

74.1 The Contractor shall furnish all labor and materials and perform all Work in strict accordance with the Specifications and Addenda thereto, numbered as shown in Schedule A.

**ARTICLE 75. COMPENSATION TO BE PAID TO CONTRACTOR**

75.1 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 sum shown in Schedule A, this said sum being the amount at which the Contract was awarded to the Contractor at a public letting thereof, based upon the Contractor’s bid for the Contract.

**ARTICLE 76. ELECTRONIC FUNDS TRANSFER**

76.1 In accordance with Section 6-107.1 of the Administrative Code, the Contractor agrees to accept payments under this Contract from the City by electronic funds transfer (EFT). An EFT 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 Contract, the 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 the City Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through a 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 Contract. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

76.2 The Commissioner may waive the application of the requirements of this Article 76 to payments on contracts entered into pursuant to Section 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 Agency may waive the requirements of this Article 76 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 77. RECORDS
RETENTION

77.1 The Contractor agrees to retain all books, records, and other documents relevant to this Contract for six years after the final payment or termination of this Contract, whichever is later. City, state, and federal auditors and any other persons duly authorized by the City shall have full access to and the right to examine any such books, records, and other documents during the retention period.

[NO FURTHER TEXT ON THIS PAGE—SIGNATURE PAGE TO FOLLOW AFTER BLANK PAGE]
IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate as of the date on which the last party to this Agreement executes this Agreement.

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

By: ______________________________________________________
    Chief Operating Officer and Executive Deputy Commissioner

CONTRACTOR:

___________________________________________________
(Print full legal name of Contractor)

By: _____________________________________________________
    (Partner, Member of Firm or Officer of Corporation)
CORPORATION COUNSEL CONTRACT APPROVAL

Agency  DOHMH

E-PIN  81615B0001

Contractor

Approved as to form

Certified as to legal authority

Electronically Signed By STEVEN CUSHMAN         Date 12/05/2014 18:24

Acting Corporation Counsel
ACKNOWLEDGMENT BY COMMISSIONER

STATE OF QUEENS

ss:

COUNTY OF NEW YORK

On this __________ day of ____________________, 20______ before me personally came ______________________________, to me known and known to me to be the Agency Chief Contracting Officer of the Department of Health and Mental Hygiene of the City of New York, the person described in whom, as such Commissioner, executed the foregoing agreement, and he duly acknowledged to me that he executed the same on behalf of the City of New York and the Department of Health and Mental Hygiene for the purpose herein mentioned.

=================================
Notary Public or Commissioner of Deeds
[THIS PAGE LEFT BLANK INTENTIONALLY]
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

DOHMH Requirements Contract
September 24, 2014
**APPENDIX A**

**GENERAL CONDITIONS**

**SCHEDULE A**

**GENERAL CONDITIONS TO CONSTRUCTION CONTRACT**

*(INCLUDING GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)*

**PART I. REQUIRED INFORMATION**

<table>
<thead>
<tr>
<th>INFORMATION FOR BIDDERS</th>
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<tbody>
<tr>
<td><strong>BID BOND</strong></td>
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<tr>
<td>The Contractor shall obtain a bid bond in the amount indicated to the right.</td>
<td>In an amount equal to 10% of the Bid</td>
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<tr>
<th>INFORMATION FOR BIDDERS</th>
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</thead>
<tbody>
<tr>
<td><strong>PERFORMANCE AND PAYMENT BONDS</strong></td>
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<tr>
<td>The Contractor shall obtain performance and payment bonds in the amount indicated to the right.</td>
<td>No Performance and Payment Bonds are required under this Contract.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>CONTRACT ARTICLE 14.</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>DATE FOR SUBSTANTIAL COMPLETION</strong></td>
<td></td>
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<tr>
<td>The Contractor shall substantially complete the Work in the number of calendar days indicated to the right.</td>
<td>1825 consecutive calendar days</td>
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</tbody>
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<thead>
<tr>
<th>CONTRACT ARTICLE 15.</th>
<th></th>
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<tbody>
<tr>
<td><strong>LIQUIDATED DAMAGES</strong></td>
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<tr>
<td>If the Contractor fails to substantially complete the Work within the time fixed for substantial completion plus authorized time extensions or if the Contractor, in the sole determination of the Commissioner, has abandoned the Work, the Contractor shall pay to the City the amount indicated to the right.</td>
<td>$100.00 for each consecutive calendar day over substantial completion time</td>
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<thead>
<tr>
<th>CONTRACT ARTICLE 17.</th>
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<tbody>
<tr>
<td><strong>SUB-CONTRACTOR</strong></td>
<td></td>
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<tr>
<td>The Contractor shall not make subcontracts totaling an amount more than the percentage of the total Contract price indicated to the right.</td>
<td>Not to exceed 20% of the Contract price</td>
</tr>
</tbody>
</table>
### CONTRACT ARTICLE 21. RETAINAGE

The **Commissioner** shall deduct and retain until the substantial completion of the **Work** the percent value of the **Work** indicated to the right.

5% of the value of the **Work**

### CONTRACT ARTICLE 22. (Per Directions Below)

### CONTRACT ARTICLE 24. DEPOSIT GUARANTEE

As security for the faithful performance of its obligations, the **Contractor**, upon filing its requisition for payment on **Substantial Completion**, shall deposit with the **Commissioner** a sum equal to the percentage of the **Contract** price indicated to the right.

1% of **Contract** price

### CONTRACT ARTICLE 24. PERIOD OF GUARANTEE

Periods of maintenance and guarantee other than the period set forth in Article 24.1 are indicated to the right.

1 year after substantial completion
| **CONTRACT ARTICLE 74.**  
| **STATEMENT OF WORK**  
| The Contractor shall furnish all labor and materials and perform all Work in strict accordance with the Contract Drawings, Specifications, and all Addenda thereto, numbered as shown in the column to the right. | Insert the Required Information Below.  
| As specified in individual Work Orders  
|  
|  
| **CONTRACT ARTICLE 75.**  
| **COMPENSATION TO BE PAID TO CONTRACTOR**  
| The City shall pay and the Contractor shall accept in the total sum shown in the column to the right, this said sum being the amount at which the Contract was awarded to the Contractor at a public letting thereof, based upon the Contractor's bid for the Contract. | Amount for which the Contract was awarded:  
| Not to Exceed $ _________________  
[Agency: If the Bid Price, or any portion thereof, is based on unit prices, insert the words “Not to Exceed” before the amount.] |
(GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)

PART II. TYPES OF INSURANCE, MINIMUM LIMITS AND SPECIAL CONDITIONS

Note: All certificate(s) of insurance submitted pursuant to Contract Article 22.3.3 must be accompanied by a Certification by Broker consistent with Part III below and include the following information:

- For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;
- Policy limits consistent with the requirements listed below;
- Additional insureds or loss payees consistent with the requirements listed below; and
- The number assigned to the Contract by the City (in the “Description of Operations” field).

Insurance indicated by a blackened box (■) or by X in a □ to left will be required under this contract.

<table>
<thead>
<tr>
<th>Types of Insurance (per Article 22 in its entirety, including listed paragraph)</th>
<th>Minimum Limits and Special Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>■ Commercial General Liability Art. 22.1.1</td>
<td>If the Work requires a permit from the Department of Buildings pursuant to 1 RCNY section 101-08, available at <a href="http://www.nyc.gov/html/dob/downloads/rules/1_RCNY_101-08.pdf">http://www.nyc.gov/html/dob/downloads/rules/1_RCNY_101-08.pdf</a>, the Contractor shall provide Commercial General Liability Insurance with limits of at least those by 1 RCNY section 101-08. If the Work does not require such a permit, the minimum limits shall be $1,000,000 per occurrence and $2,000,000 per project aggregate applicable to this Contract. Additional Insureds: 1. City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10 and CG 20 37, and 2. All person(s) or organization(s), if any, that Article 22.1.1(b) of the Contract requires to be named as Additional Insured(s), with coverage at least as broad as ISO Form CG 20 26. The Additional Insured endorsement shall either specify the entity's name, if known, or the entity's title (e.g., Project Manager). 3. [Agency: If appropriate, insert names of other entities to be covered as Additional Insureds] NONE</td>
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<tr>
<td>Insurance Type</td>
<td>Article</td>
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<td>----------------------------------------------------</td>
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<tr>
<td>Workers’ Compensation</td>
<td>Art. 22.1.2</td>
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<tr>
<td>Disability Benefits Insurance</td>
<td>Art. 22.1.2</td>
</tr>
<tr>
<td>Employers’ Liability</td>
<td>Art. 22.1.2</td>
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<tr>
<td>Jones Act</td>
<td>Art. 22.1.3</td>
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<tr>
<td>U.S. Longshoremen’s and Harbor Workers Compensation Act</td>
<td>Art. 22.1.3</td>
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<tr>
<td>Builders Risk</td>
<td>Art. 22.1.4</td>
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<tr>
<td>Commercial Auto Liability</td>
<td>Art. 22.1.5</td>
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<td>Coverage</td>
<td>Art.</td>
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<td>----------------------------------------------</td>
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<tr>
<td>Contractors Pollution Liability</td>
<td>Art. 22.1.6</td>
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<td>Marine Protection and Indemnity</td>
<td>Art. 22.1.7(a)</td>
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<td>Hull and Machinery Insurance</td>
<td>Art. 22.1.7(b)</td>
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<tr>
<td>Marine Pollution Liability</td>
<td>Art. 22.1.7(c)</td>
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| [OTHER] | Art. 22.1.8 | [If other type(s) of insurance need to be required under the **Contract**, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s). Note that if Railroad Protective Liability Insurance is required, the appropriate Named Insured is the owner of the railroad and there are no additional insureds.]
| [OTHER] | Art. 22.1.8 | [See directly above.] |
SCHEDULE A
(GENERAL CONDITIONS TO CONSTRUCTION CONTRACT)
(GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)
PART III. BROKER’S CERTIFICATION

[Note to Contracting Agency: Pursuant to Article 22.3.3 of the Contract, 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 certified copies of all policies referenced in the Certificate of Insurance.]

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)]

________________________________________
[Email address of broker (typewritten)]

________________________________________
[Phone number/Fax number of broker (typewritten)]

________________________________________
[Signature of authorized official or broker]

________________________________________
[Name and title of authorized official (typewritten)]

State of ..................................)
                           ) ss.: 
County of ............................

Sworn to before me this _____ day of ___________ 20___

________________________________________
NOTARY PUBLIC FOR THE STATE OF ____________________
PART IV. ADDRESS OF COMMISSIONER

Wherever reference is made in Article 7 or Article 22 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth below or, in the absence of such address, to the Commissioner's address as provided elsewhere in this Contract:

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

[Note to Contracting Agency: Fill in Risk Manager, ACCO or other person responsible for insurance and contact information in the above blanks.]
CERTIFICATION BY BROKER

[Pursuant to Article Seven of the Agreement portion of this IFB, 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.
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)  
12/10/14  
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:  Dorothy Thompson
Phone: (347) 396-6448       Email: dthomps1@health.nyc.gov

Please specifically identify the service(s) being procured.

Competitive Sealed Bid (CSB) - The Department of Health and Mental Hygiene (DOHMH) requires a qualified vendor to perform Plumbing Services on an as needed basis for all of the DOHMH Facilities. The Plumbing services include all labor, materials, tools equipment, traveling and trucking required for the proper performance and completion of the work and for the vendor to be completely responsible and liable for the performance of any subcontractors.

☐ 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.

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.


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).
[THIS PAGE IS INTENTIONALLY LEFT BLANK]
APPENDIX E

LABOR LAW §220 PREVAILING WAGE SCHEDULES
(Wage Rate Schedule Excerpts are Separately Attached)

NOTE WELL: For ease of reference, the prevailing wage rates attached hereto as Appendix E have been excerpted from the §220 Prevailing Wage Rate Schedules promulgated by the Comptroller of New York City. Each Bidder must familiarize itself with the prevailing wage rates and the prevailing wage rate laws and requirements. For the full schedules and information regarding applicability, the following link is provided for informational purposes:

http://comptroller.nyc.gov/general-information/prevailing-wage/
LJAFORCE OF THE COMPTROLLER, CITY OF NEW YORK
§220 PREVAILING WAGE SCHEDULE

LABOR LAW §220 PREVAILING WAGE SCHEDULE

Workers, Laborers and Mechanics employed on a public work project must receive not less than the prevailing rate of wage and benefits for the classification of work performed by each upon such public work. Pursuant to Labor Law §220 the Comptroller of the City of New York has promulgated this schedule solely for Workers, Laborers and Mechanics engaged by private contractors on New York City public work contracts.

This schedule is a compilation of separate determinations of the prevailing rate of wage and supplements made by the Comptroller for each trade classification listed herein pursuant to New York State Labor Law section 220 (5). The source of the wage and supplement rates, whether a collective bargaining agreement, survey data or other, is listed at the end of each classification.

Agency Chief Contracting Officers should contact the Bureau of Labor Law’s Classification Unit with any questions concerning trade classifications, prevailing rates or prevailing practices with respect to procurement on New York City public works contracts. Contractors are advised to review the Comptroller’s Prevailing Wage Schedule before bidding on public works contracts. Contractors with questions concerning trade classifications, prevailing rates or prevailing practices with respect to public works contracts in the procurement stage must contact the contracting agency responsible for the procurement.

Any error as to compensation under the prevailing wage law or other information as to trade classification, made by the contracting agency in the contract documents or in any other communication, will not preclude a finding against the contractor of prevailing wage violation.

Any questions concerning trade classifications, prevailing rates or prevailing practices on New York City public works contracts that have already been awarded may be directed to the Bureau of Labor Law’s Classification Unit by calling (212) 669-7974. All callers must have the agency name and contract registration number available when calling with questions on public works contracts. Please direct all other compliance issues to: Bureau of Labor Law, Attn: Wasyl Kinach, P.E., Office of the Comptroller, 1 Centre Street, Room 1122, New York, N.Y. 10007; Fax (212) 669-4002.

The appropriate schedule of prevailing wages and benefits must be posted at all public work sites pursuant to Labor Law §220 (3-ej (a)).

This schedule is applicable to work performed during the effective period, unless otherwise noted. Changes to this schedule are published on our web site www.comptroller.nyc.gov. Contractors must pay the wages and supplements in effect when the worker, laborer, mechanic performs the work. Preliminary schedules for future one year periods appear in the City Record on or about June 1 each succeeding year. Final schedules appear on or about July 1 in the City Record and on our web site www.comptroller.nyc.gov.

The Comptroller’s Office has attempted to include all overtime, shift and night differential, Holiday, Saturday, Sunday or other premium time work. However, this schedule does not set forth every prevailing practice with respect to such rates with which employers must comply. All such practices are nevertheless part of the employer’s prevailing wage obligation and contained in the collective bargaining agreements of the prevailing wage unions. These collective bargaining agreements are available for inspection by appointment. Requests for appointments may be made by calling (212) 669-4443, Monday through Friday between the hours of 9 a.m. and 5 p.m.

PUBLISH DATE: 7/1/2014   EFFECTIVE PERIOD: JULY 1, 2014 THROUGH JUNE 30, 2015   Page 1 of 4
Prevailing rates and ratios for apprentices are attached to this schedule in the Appendix. Pursuant to Labor Law §220 (3-e), only apprentices who are individually registered in a bona fide program to which the employer contractor is a participant, registered with the New York State Department of Labor, may be employed on a public work project. Workers who are not journey persons or not registered apprentices pursuant to Labor Law §220 (3-e) may not be substituted for apprentices and must be paid as journey persons.

Public Work construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement contracts awarded pursuant to a Project Labor Agreement ("PLA") in accordance with Labor Law section 222 may have different labor standards for shift, premium and overtime work. Please refer to the PLA’s pre-negotiated labor agreements for wage and benefit rates applicable to work performed outside of the regular workday. More information is available at the Mayor’s Office of Contract Services (MOCS) web page at http://www.nyc.gov/html/mocs/html/vendors/pla.shtml.

All the provisions of Labor Law section 220 remain applicable to PLA work including, but not limited to, the enforcement of prevailing wage requirements by the Comptroller; however, we will enforce shift, premium, overtime and other non-standard rates as they appear in a project’s pre-negotiated labor agreement.

In order to meet their obligation to provide prevailing supplemental benefits to each covered employee, employers must either:

1) Provide bona fide benefits which cost the employer no less than the prevailing supplemental benefits rate; or
2) Supplement the employee’s hourly wage by an amount no less than the prevailing supplemental benefits rate; or
3) Provide a combination of bona fide benefits and wage supplements which cost the employer no less than the prevailing supplemental benefits rate in total.

Particular attention should be given to the supplemental benefits requirement. Although in most instances the payment or provision for supplemental benefits is for each hour worked, some classifications require the payment or provision of supplemental benefits for each hour paid. Consequently, some prevailing practices require benefits to be purchased at the overtime, shift differential, Holiday, Saturday, Sunday or other premium time rate.

Benefits are paid for EACH HOUR WORKED unless otherwise noted.

Wasyl Kinach, P.E.
Director of Classifications
Bureau of Labor Law

PUBLISH DATE: 7/1/2014 EFFECTIVE PERIOD: JULY 1, 2014 THROUGH JUNE 30, 2015 Page 2 of 84
OFFICE OF THE COMPTROLLER, CITY OF NEW YORK
$220 PREVAILING WAGE SCHEDULE

Wage Rate per Hour: $25.53
Supplemental Benefit Rate per Hour: $26.31

Overtime
Time and one half the regular rate after an 8 hour day.
Time and one half the regular rate for Saturday.
Double time the regular rate for Sunday.
Saturday may be used as a make-up day at straight time when a day is lost during that week to inclement weather.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Presidential Election Day
Thanksgiving Day
Christmas Day

Paid Holidays
None

Shift Rates
When work commences outside regular work hours, workers receive an hour additional (differential) wage and supplement payment. Eight hours pay for seven hours work or nine hours pay for eight hours work.

(Mason Tenders District Council)

---

PLUMBER

Plumber

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $55.27
Supplemental Benefit Rate per Hour: $25.78
Supplemental Rate: Overtime supplemental benefit rate per hour: $40.78

Plumber - Temporary Services

Temporary Services - When there are no Plumbers on the job site, there may be three shifts designed to cover the entire twenty-four hour period, including weekends if necessary, at the following rate straight time.

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $52.24
Supplemental Benefit Rate per Hour: $20.20

PUBLISH DATE: 7/1/2014	EFFECTIVE PERIOD: JULY 1, 2014 THROUGH JUNE 30, 2015	Page 64 of 84
Overtime Description
Double time the regular rate after a 7 hour day - unless for new construction site work where the plumbing contract price is $1.5 million or less, the hours of labor can be 8 hours per day at the employers option. On Alteration jobs when other mechanical trades at the site are working an eighth hour at straight time, then the plumber shall also work an eighth hour at straight time.

Overtime
Double time the regular time rate for Saturday.
Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year’s Day
President’s Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran’s Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Shift Rates
Shift work, when directly specified in public agency or authority documents where plumbing contract is $8 million or less, will be permitted. 30% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shifts Monday to Friday. 50% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shift work performed on weekends. For shift work on holidays, double time wages and fringe benefits shall be paid.

(Plumbers Local #1)

PLUMBER (MECHANICAL EQUIPMENT AND SERVICE)
(Mechanical Equipment and Service work shall include any repair and/or replacement of the present plumbing system.)

Plumber
Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $38.27
Supplemental Benefit Rate per Hour: $12.84

Overtime
Time and one half the regular rate after an 8 hour day.
Time and one half the regular rate for Saturday.
Time and one half the regular rate for Sunday.
OFFICE OF THE COMPTROLLER, CITY OF NEW YORK
§220 PREVAILING WAGE SCHEDULE

Overtime Holidays
Time and one half the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Memorial Day
Independence Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None

(Plumbers Local # 1)

PLUMBER (RESIDENTIAL RATES FOR 1, 2 AND 3 FAMILY HOME CONSTRUCTION)

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $45.19
Supplemental Benefit Rate per Hour: $18.79

Overtime
Double time the regular rate after an 8 hour day.
Double time the regular time rate for Saturday.
Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None

Shift Rates
30% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shifts Monday to Friday.
50% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shift work performed on weekends. For shift work on holidays, double time wages and fringe benefits shall be paid.

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PLUMBER: PUMP & TANK
Oil Trades (Installation and Maintenance)

Plumber - Pump & Tank
Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $62.83
Supplemental Benefit Rate per Hour: $21.37

Overtime
Time and one half the regular rate after an 8 hour day.
Time and one half the regular rate for Saturday.
Time and one half the regular rate for Sunday.

Overtime Holidays
Time and one half the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None

Shift Rates
All work outside the regular workday (9:00 A.M. to 3:30 P.M.) is to be paid at time and one half the regular hourly rate.

(Pointer - WATERPROOFER, CAULKER MECHANIC (EXTERIOR BUILDING RENOVATION))

Pointer - Waterproofer, Caulker Mechanic

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Overtime
Time and one half the regular rate after an 8 hour day.
Double time the regular rate for Sunday.
Time and one half the regular hourly rate after 40 hours in any work week.

Paid Holidays
New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

(Local #1281)

HEAT AND FROST INSULATOR

Heat & Frost Insulator
Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $56.96
Supplemental Benefit Rate per Hour: $34.81

Overtime Description
Double time shall be paid for supplemental benefits during overtime work.
8th hour paid at time and one half.

Overtime
Double time the regular rate after an 8 hour day.
Double time the regular time rate for Saturday.
Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
Martin Luther King Jr. Day
President's Day
Memorial Day
Independence Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Triple time the regular rate for work on the following holiday(s).
Labor Day
OFFICE OF THE COMPTROLLER, CITY OF NEW YORK
§20 PREVAILING WAGE SCHEDULE

Paid Holidays
None

Shift Rates
The first shift shall work seven hours at the regular straight time rate. The second and third shift shall work
seven hours the regular straight time hourly rate plus a fourteen percent wage and benefit premium.
Off hour work in occupied or retail buildings may be worked on weekdays with an increment of $1.00 per hour
and eight hours pay for seven (7) hours worked. Double time will apply for over seven (7) hours worked on
weekdays, weekends or holidays.

(Local #12)

_________________________________

HOUSE WRECKER
(TOTAL DEMOLITION)

House Wrecker - Tier A
On all work sites the first, second, eleventh and every third House Wrecker thereafter will be Tier A House
Wreckers (i.e. 1st, 2nd, 11th, 14th etc). Other House Wreckers may be Tier B House Wreckers.

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $34.51
Supplemental Benefit Rate per Hour: $25.59

House Wrecker - Tier B
Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $24.02
Supplemental Benefit Rate per Hour: $19.12

Overtime
Time and one half the regular rate after an 8 hour day.
Time and one half the regular rate for Saturday.
Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year’s Day
President’s Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

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PIN15BS000600R0X00  201
Overtime Description
Supplemental Benefit contributions are to be made at the applicable overtime rates. Time and one half the regular rate after a 7 hour day or time and one half the regular rate after an 8 hour day - chosen by Employer at the start of the project and then would last for the full duration of the project.

Overtime
Time and one half the regular rate for Saturday.
Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Good Friday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None
(Local #7)

MASSON TENDER

Mason Tender

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $36.05
Supplemental Benefit Rate per Hour: $26.74

Overtime
Time and one half the regular rate after an 8 hour day.
Time and one half the regular rate for Saturday.
Double time the regular rate for Sunday.
Saturday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day
MEMORIAL DAY
INDEPENDENCE DAY
LABOR DAY
THANKSGIVING DAY
CHRISTMAS DAY

PAID HOLIDAYS
NONE

SHIFT RATES
The Employer may work two (2) shifts with the first shift at the straight time wage rate and the second shift receiving eight (8) hours paid for seven (7) hours work at the straight time wage rate.

(Local #79)

MASON TENDER (INTERIOR DEMOLITION WORKER)
(The erection, building, moving, servicing and dismantling of enclosures, scaffolding, barricades, protection and site safety structures etc., on Interior Demolition jobs.)

Mason Tender Tier A
Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $34.99
Supplemental Benefit Rate per Hour: $21.10

Mason Tender Tier B
On Interior Demolition job sites 33 1/3 % of the employees shall be classified as Tier A Interior Demolition Workers and 66 2/3 % shall be classified as Tier B Interior Demolition Workers; provided that the employer may employ more than 33 1/3 %. Tier A Interior Demolition Workers on the job site. Where the number of employees on a job site is not divisible by 3, the first additional employee (above the number of employees divisible by three) shall be a Tier B Interior Demolition Worker, and the second additional employee shall be a Tier A Interior Demolition Worker.
Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $24.18
Supplemental Benefit Rate per Hour: $15.42

OVERTIME
Time and one half the regular rate after an 8 hour day.
Time and one half the regular rate for Sunday.

OVERTIME HOLIDAYS
Double time the regular rate for work on the following holiday(s).
New Year’s Day

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Shift Rates
Time and one half the regular hourly rate is to be paid for all hours worked outside the regular workday either (7:00 A.M. through 2:30 P.M.) or (8:00 A.M. through 3:30 P.M.)

(Local #137)

STEAMFITTER

Steamfitter I

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $53.25
Supplemental Benefit Rate per Hour: $51.04
Supplemental Note: Overtime supplemental benefit rate: $104.34

Overtime
Double time the regular rate after a 7 hour day.
Double time the regular time rate for Saturday.
Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None

Shift Rates
Work performed between 3:30 P.M. and 7:00 A.M. and on Saturdays, Sundays and Holidays shall be at double time the regular hourly rate and paid at the overtime supplemental benefit rate above.
OFFICE OF THE COMPTROLLER, CITY OF NEW YORK
§220 PREVAILING WAGE SCHEDULE

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $53.25
Supplemental Benefit Rate per Hour: $51.04
Supplemental Note: Overtime supplemental benefit rate: $101.34

Overtime
Double time the regular rate after an 8 hour day.
Double time the regular time rate for Saturday.
Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None

Shift Rates
May be performed outside of the regular workday except Saturday, Sunday and Holidays. A shift shall consist of
eight working hours. All work performed in excess of eight hours shall be paid at double time. No shift shall
commence after 7:00 P.M. on Friday or 7:00 P.M. the day before holidays. All work performed after 12:01 A.M.
Saturday or 12:01 A.M. the day before a holiday will be paid at double time. When shift work is performed the
wage rate for regular time worked is a thirty percent premium together with fringe benefits.

On Transit Authority projects, where work is performed in the vicinity of tracks all shift work on weekends and
holidays may be performed at the regular shift rates.
Local #636

STEAMFITTER - REFRIGERATION AND AIR CONDITIONER
(Maintenance and Installation Service Person)

Refrigeration and Air Conditioner Mechanic

Effective Period: 7/1/2014 - 6/30/2015
Wage Rate per Hour: $38.30
Supplemental Benefit Rate per Hour: $12.76

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APPENDIX F

CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DOHMH)
OFFICE OF THE AGENCY CHIEF CONTRACTING OFFICER
“NO BID RESPONSE”

PIN: PIN15BS00060000R0X00

________________________________________

HAS OPTED NOT TO BID ON

(Contractor name)

PLUMBING SERVICES

For the following reason(s):

Contact Name __________________________ Phone________________________

(Signature)

Date _____/_____/_____

Please return this form to the DOHMH Authorized Agency Contact(s) or fax to , Attention, no later than the bid opening date.
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.

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 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.

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 of 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.
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.
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.
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
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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.
NOTICE TO BIDDERS

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 Appendix A 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 J
BEST VALUE LAW

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.
APPENDIX K

NOTICE TO ALL PROSPECTIVE CONTRACTORS

(Attached separately)
NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

NOTE WELL: A DETERMINATION HAS BEEN MADE THAT NO M/WBE PARTICIPATION GOALS ARE REQUIRED TO BE SET FOR THIS AGREEMENT, AND ACCORDINGLY, NO SPECIFIC PARTICIPATION GOALS HAVE BEEN SET.

However, to the extent that subcontracting is permitted hereunder, the Contractor is encouraged to utilize Minority and Women Owned Business Enterprises (W/MBE).

Note Well: A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311.
APPENDIX L

OSHA 300 AND OSHA 300A LOG FORMS: The Contractor must complete and file as required by the U.S. Department of Labor Occupational Safety and Health Administration both the OSHA Log Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Log Form 300A (Summary of Work-Related Injuries and Illnesses, all in accordance with the instructions relating thereto, which all can be located through the following website link:

https://www.osha.gov/recordkeeping/RKforms.html

A copy of each of these forms is included on the following page.
### OSHA's Form 300A (rev. 01/2004)

#### Summary of Work-Related Injuries and Illnesses

**Year:** 20

**Establishment Information**

- **Name of establishment:**
- **City:**
- **State:**
- **Zip Code:**

**Injury and Illness Types**

- **Total number of...**
  - **(a) No. cases from work:**
  - **(b) No. cases with days away from work:**
  - **(c) No. cases with job transfer or restriction:**

**Number of Occurrences**

- **Total number of days away from work:**
- **Total number of days of job transfer or restriction:**

**Injury and Illness Types**

- **Total number of...**
  - **(a) No. cases:**
    - **(1) Fatalities:**
    - **(2) Skin diseases:**
    - **(3) Other injuries and illnesses:**

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Adapted from the National Institute for Occupational Safety and Health (NIOSH) Field Manual, 4th ed. (c) 1989. Published by the U.S. Department of Labor, Occupational Safety and Health Administration, in cooperation with the National Institute for Occupational Safety and Health. OSHA 300A 03/2014. Available at www.osha.gov/data/injury. This form may not be reproduced in whole or in part by any means without the written permission of the U.S. Secretary of Labor. 29 CFR Part 1904. Bureau of Labor Statistics, Washington, DC 20210-0001.

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APPENDIX M

Project Labor Agreement (PLA): Notice and Agreement
PROJECT LABOR AGREEMENT

COVERING SPECIFIED

RENOVATION & REHABILITATION
OF CITY OWNED BUILDINGS AND STRUCTURES
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PROJECT LABOR AGREEMENT COVERING SPECIFIED
RENOVATION & REHABILITATION OF NEW YORK CITY OWNED
FACILITIES & STRUCTURES

ARTICLE 1 - PREAMBLE

WHEREAS, the City of New York desires to provide for the cost efficient, safe,
quality, and timely completion of certain rehabilitation and renovation work ("Program Work,"
as defined in Article 3) for Fiscal Years 2010 - 2014 in a manner designed to afford the lowest
costs to the Agencies covered by this Agreement, and the Public it represents, and the
advancement of permissible statutory objectives;

WHEREAS, this Project Labor Agreement will foster the achievement of these
goals, inter alia, by:

(1) providing a mechanism for responding to the unique construction needs
associated with this Program Work and achieving the most cost effective means of construction,
including direct labor cost savings, by the Building and Construction Trades Council of Greater
New York and Vicinity and the signatory Local Unions and their members waiving various shift
and other hourly premiums and other work and pay practices which would otherwise apply to
Program Work;

(2) expediting the construction process and otherwise minimizing the
disruption to the covered Agencies’ ongoing operations at the facilities that are the subject of the
Agreement;

(3) avoiding the costly delays of potential strikes, slow downs, walkouts,
picketing and other disruptions arising from work disputes, reducing job site friction on common
situs worksites, and promoting labor harmony and peace for the duration of the Program Work;

(4) standardizing the terms and conditions governing the employment of labor
on the Program Work;

(5) permitting wide flexibility in work scheduling and shift hours and times to
allow maximum work to be done during off hours yet at affordable pay rates;

(6) permitting adjustments to work rules and staffing requirements from those
which otherwise might obtain;

(7) providing comprehensive and standardized mechanisms for the settlement
of work disputes, including those relating to jurisdiction;
(8) ensuring a reliable source of skilled and experienced labor; and
(9) securing applicable New York State Labor Law exemptions.

WHEREAS, the Building and Construction Trades Council of Greater New York and Vicinity, its participating affiliated Local Unions and their members, desire to assist the City in meeting these operational needs and objectives as well as to provide for stability, security and work opportunities which are afforded by this Project Labor Agreement; and

WHEREAS, the Parties desire to maximize Program Work safety conditions for both workers and the community in the project area.

NOW, THEREFORE, the Parties enter into this Agreement:

SECTION 1. PARTIES TO THE AGREEMENT

This is a Project Labor Agreement ("Agreement") entered into by the City of New York, on behalf of itself and the Agencies covered herein, including in their capacity as construction manager of covered projects and/or on behalf of any third party construction manager which may be utilized, and the Building and Construction Trades Council of Greater New York and Vicinity ("Council") (on behalf of itself) and the signatory affiliated Local Union’s ("Unions" or "Local Unions"). The Council and each signatory Local Union hereby warrants and represents that it has been duly authorized to enter into this Agreement.

ARTICLE 2 - GENERAL CONDITIONS

SECTION 1. DEFINITIONS

Throughout this Agreement, the various Union parties including the Building and Construction Trades Council of Greater New York and Vicinity and its participating affiliated Local Unions, are referred to singularly and collectively as "Union(s)" or "Local Unions"; the term "Contractor(s)" shall include any Construction Manager, General Contractor and all other
contractors, and subcontractors of all tiers engaged in Program Work within the scope of this Agreement as defined in Article 3; “Agency” means the following New York City agencies: the Department for the Aging (DFTA), Administration for Children’s Services (ACS), Department of Citywide Administrative Services (DCAS), Department of Corrections (DOC), Department of Design and Construction (DDC), Fire Department (FDNY), Department of Homeless Services (DHS), Human Resources Administration (HRA), Department of Health and Mental Hygiene (DOHMH), Department of Parks and Recreation (DPR), Police Department (NYPD); Department of Sanitation (DSNY); the New York City Agency that awards a particular contract subject to this Agreement may be referred to hereafter as the “Agency”; when an Agency acts as Construction Manager, unless otherwise provided, it has the rights and obligations of a “Construction Manager” in addition to the rights and obligations of an Agency; the Building and Construction Trades Council of Greater New York and Vicinity is referred to as the “Council”; and the work covered by this Agreement (as defined in Article 3) is referred to as “Program Work.”

SECTION 2. CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE

This Agreement shall not become effective unless each of the following conditions are met: the Agreement is executed by (1) the Council, on behalf of itself; (2) the participating affiliated Local Unions; and (3) the mayor of the City of New York or his designee.

SECTION 3. ENTITIES BOUND & ADMINISTRATION OF AGREEMENT

This Agreement shall be binding on all participating Unions and their affiliates, the Construction Manager (in its capacity as such) and all Contractors of all tiers performing Program Work, as defined in Article 3. The Contractors shall include in any subcontract that they let for performance during the term of this Agreement a requirement that their subcontractors, of all tiers, become signatory and bound by this Agreement with respect to that subcontracted work.
falling within the scope of Article 3 and all Contractors (including subcontractors) performing Program Work shall be required to sign a "Letter of Assent" in the form annexed hereto as Exhibit "A". This Agreement shall be administered by the applicable Agency or a Construction Manager or such other designee as may be named by the Agency or Construction Manager, on behalf of all Contractors.

SECTION 4. SUPREMACY CLAUSE

This Agreement, together with the local Collective Bargaining Agreements appended hereto as Schedule A, represents the complete understanding of all signatories and supersedes any national agreement, local agreement or other collective bargaining agreement of any type which would otherwise apply to this Program Work, in whole or in part, except that Program Work which falls within the jurisdiction of the Operating Engineers Locals 14 and 15 and/or the Teamsters Local 282 will be performed under the terms and conditions set out in the Schedule A agreements of Operating Engineers Locals 14 and 15 and Teamsters Local 282. Subject to the foregoing, where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. It is further understood that no Contractor shall be required to sign any other agreement as a condition of performing Program Work. No practice, understanding or agreement between a Contractor and a Local Union which is not set forth in this Agreement shall be binding on this Program Work unless endorsed in writing by the Construction Manager or such other designee as may be designated by the Agency.

SECTION 5. LIABILITY

The liability of any Contractor and the liability of any Union under this Agreement shall be several and not joint. The Construction Manager and any Contractor shall not be liable for any violations of this Agreement by any other Contractor; and the Council and
Local Unions shall not be liable for any violations of this Agreement by any other Union.

SECTION 6. THE AGENCY

The Agency (or Construction Manager where applicable) shall require in its bid specifications for all Program Work within the scope of Article 3 that all successful bidders, and their subcontractors of all tiers, become bound by, and signatory to, this Agreement. The Agency (or Construction Manager) shall not be liable for any violation of this Agreement by any Contractor. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of the Agency or Construction Manager in determining which Contractors shall be awarded contracts for Program Work. It is further understood that the Agency or Construction Manager has sole discretion at any time to terminate, delay or suspend the Program Work, in whole or part, on any Program.

SECTION 7. AVAILABILITY AND APPLICABILITY TO ALL SUCCESSFUL BIDDERS

The Unions agree that this Agreement will be made available to, and will fully apply to, any successful bidder for (or subcontractor of) Program Work who becomes signatory thereto, without regard to whether that successful bidder (or subcontractor) performs work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder (or subcontractor) are, or are not, members of any unions. This Agreement shall not apply to the work of any Contractor which is performed at any location other than the site of Program Work.

SECTION 8. SUBCONTRACTING

Contractors will subcontract Program Work only to a person, firm or corporation who is or agrees to become party to this Agreement.

ARTICLE 3-SCOPE OF THE AGREEMENT

SECTION 1. WORK COVERED

...
Program Work shall be limited to designated rehabilitation and renovation construction contracts bid and let by an Agency (or its Construction Manager where applicable) after the effective date of this Agreement with respect to rehabilitation and renovation work performed for an Agency on City-owned property under contracts let prior to June 30, 2014. Subject to the foregoing, and the exclusions below, such Program Work shall mean any and all contracts that predominantly involve the renovation, repair, alteration, rehabilitation or expansion of an existing City-owned building or structure within the five boroughs of New York City. Examples of Program Work include, but are not limited to, the renovation, repair, alteration and rehabilitation of an existing temporary or permanent structure, or an expansion of above ground structures located in the City on a City-owned building. This Program Work shall also include JOCS contracts, demolition work, site work, asbestos and lead abatement, painting services, carpentry services, and carpet removal and installation, to the extent incidental to such building rehabilitation of City-owned buildings or structures.

It is understood that Program Work does not include, and this Project Labor Agreement shall not apply to, any other work, including:

1. Contracts let and work performed in connection with projects carried over, recycled from, or performed under bids or rebids relating to work that were bid prior to the effective date of this Agreement or after June 30, 2014;

2. Contracts procured on an emergency basis;

3. Small purchases (purchases not more than $100,000) awarded pursuant to New York City Charter §314, New York City Charter § 316 and New York City Procurement Policy Board Rules §5-08;

4. Contracts for work on streets and bridges and for the closing or environmental remediation of landfills;
5. Contracts with not-for-profit corporations where the City is not awarding or performing the work performed for that entity;

6. Contracts with governmental entities where the City is not awarding or performing the work performed for that entity;

7. Contracts with electric utilities, gas utilities, telephone companies, and railroads, except that it is understood and agreed that these entities may only install their work to a demarcation point, e.g. a telephone closet or utility vault, the location of which is determined prior to construction and employees of such entities shall not be used to replace employees performing Program Work pursuant to this agreement; and

8. Contracts for installation of information technology that are not otherwise Program Work.

SECTION 2. TIME LIMITATIONS

In addition to falling within the scope of Article 3, Section 1, to be covered by this Agreement Program Work must be (1) advertised and let for bid after the effective date of this Agreement, and (2) let for bid prior to June 30, 2014, the expiration date of this Agreement. It is understood that this Agreement, together with all of its provisions, shall remain in effect for all such Program Work until completion, even if not completed by the expiration date of the Agreement. If Program Work otherwise falling within the scope of Article 3, Section 1 is not let for bid by the expiration date of this Agreement, this Agreement may be extended to that work by mutual agreement of the parties.

SECTION 3. EXCLUDED EMPLOYEES

The following persons are not subject to the provisions of this Agreement, even though performing Program Work:

A. Superintendents, supervisors (excluding general and forepersons
specifically covered by a craft's Schedule A), engineers, professional engineers and/or licensed architects engaged in inspection and testing, quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons;

B. Employees of the Agency, New York City, or any other municipal or State agency, authority or entity, or employees of any other public employer, even though working on the Program site while covered Program Work is underway;

C. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of project components, materials, equipment or machinery or involved in deliveries to and from the Program site, except to the extent they are lawfully included in the bargaining unit of a Schedule A agreement;

D. Employees of the Construction Manager (except that in the event the Agency engages a Contractor to serve as Construction Manager, then those employees of the Construction Manager performing manual, on site construction labor will be covered by this Agreement);

E. Employees engaged in on-site equipment warranty work unless employees are already working on the site and are certified to perform warranty work;

F. Employees engaged in geophysical testing other than boring for core samples;

G. Employees engaged in laboratory, specialty testing, or inspections, pursuant to a professional services agreement between the Agency, or any of the Agency's other professional consultants, and such laboratory, testing, inspection or surveying firm; and

H. Employees engaged in on-site maintenance of installed equipment or systems which maintenance is awarded as part of a contract that includes Program Work but
which maintenance occurs after installation of such equipment or system and is not directly related to construction services.

SECTION 4. NON-APPLICATION TO CERTAIN ENTITIES

This Agreement shall not apply to those parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor which do not perform Program Work. It is agreed that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status among the Agency (including in its capacity as Construction Manager) or any Contractor. The Agreement shall further not apply to any New York City or other municipal or State agency, authority, or entity other than a listed Agency and nothing contained herein shall be construed to prohibit or restrict the Agency or its employees, or any State, New York City or other municipal or State authority, agency or entity and its employees, from performing on or off-site work related to Program Work.

As the contracts involving Program Work are completed and accepted, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, check-out and/or warranty work are assigned in writing (copy to Local Union involved) by the Agency (or Construction Manager) for performance under the terms of this Agreement.

ARTICLE 4- UNION RECOGNITION AND EMPLOYMENT

SECTION 1. PRE-HIRE RECOGNITION

The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all employees who are performing on-site Program Work, with respect to that work.

SECTION 2. UNION REFERRAL
A. The Contractors agree to employ and hire craft employees for Program Work covered by this Agreement through the job referral systems and hiring halls established in the Local Unions' area collective bargaining agreements. Notwithstanding this, Contractors shall have sole right to determine the competency of all referrals; to determine the number of employees required; to select employees for layoff (subject to Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union, subject to the show-up payments. In the event that a Local Union is unable to fill any request for qualified employees within a 48 hour period after such requisition is made by a Contractor (Saturdays, Sundays and holidays excepted), a Contractor may employ qualified applicants from any other available source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Contractor shall notify the Local Union of craft employees hired for Program Work within its jurisdiction from any source other than referral by the Union.

B. A Contractor may request by name, and the Local will honor, referral of persons who have applied to the Local for Program Work and who meet the following qualifications:

1. possess any license required by New York State law for the Program Work to be performed;
2. have worked a total of at least 1000 hours in the Construction field during the prior 3 years; and
3. were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award.

No more than twelve per centum (12%) of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above. Under this provision, name referrals begin with the eighth employee needed and continue on that same...
basis.

C. Notwithstanding Section 2(B), above, certified MWBE contractors for which participation goals are set pursuant to New York City Administrative Code §6-129, that are not signatory to any Schedule A CBAs, with contracts valued at or under five hundred thousand ($500,000), may request by name, and the Local will honor, referral of the second (2\textsuperscript{nd}), fourth (4\textsuperscript{th}), sixth (6\textsuperscript{th}), and eighth (8\textsuperscript{th}) employee, who have applied to the Local for Program Work and who meet the following qualifications:

1. possess any license required by New York State law for the Program Work to be performed;

2. have worked a total of at least 1000 hours in the Construction field during the prior 3 years; and

3. were on the Contractor's active payroll for at least 60 out of the 180 work days prior to the contract award.

For such contracts valued at above $500,000 but less than $1 million, the Local will honor referrals by name of the second (2\textsuperscript{nd}), fifth (5\textsuperscript{th}), and eighth (8\textsuperscript{th}) employee subject to the foregoing requirements. In both cases, name referrals will thereafter be in accordance with Section 2(B), above.

D. Where a certified MWBE Contractor voluntarily enters into a Collective Bargaining Agreement ("CBA") with a BCTC Union, the employees of such Contractor at the time the CBA is executed shall be allowed to join the Union for the applicable trade subject to satisfying the Union's basic standards of proficiency for admission.

\textbf{SECTION 3. NON-DISCRIMINATION IN REFERRALS}

The Council represents that each Local Union hiring hall and referral system will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations which require equal employment opportunities. Referrals
shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or
any other aspects or obligations of union membership, policies or requirements and shall be
subject to such other conditions as are established in this Article. No employment applicant shall
be discriminated against by any referral system or hiring hall because of the applicant’s union
membership, or lack thereof.

SECTION 4: MINORITY AND FEMALE REFERRALS

In the event a Local Union either fails, or is unable to refer qualified minority or
female applicants in percentages equaling the workforce participation goals adopted by the City
and set forth in the Agency’s (or, if applicable, Construction Manager’s) bid specifications,
within 48 hours of the request for same, the Contractor may employ qualified minority or female
applicants from any other available source.

SECTION 5. CROSS AND QUALIFIED REFERRALS

The Local Unions shall not knowingly refer to a Contractor an employee then
employed by another Contractor working under this Agreement. The Local Unions will exert
their utmost efforts to recruit sufficient numbers of skilled and qualified craft employees to
fulfill the requirements of the Contractor.

SECTION 6. UNION DUES

All employees covered by this Agreement shall be subject to the union security
provisions contained in the applicable Schedule A local agreements, as amended from time to
time, but only for the period of time during which they are performing on-site Program Work
and only to the extent of tendering payment of the applicable union dues and assessments
uniformly required for union membership in the Local Unions which represent the craft in which
the employee is performing Program Work. No employee shall be discriminated against at any
Program Work site because of the employee’s union membership or lack thereof. In the case of
unaffiliated employees, the dues payment will be received by the Local Unions as an agency shop fee.

SECTION 7. CRAFT FOREPERSONS AND GENERAL FOREPERSONS

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor except where otherwise provided by specific provisions of an applicable Schedule A, and provided that all craft forepersons shall be experienced and qualified journeypersons in their trade as determined by the appropriate Local Union. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor, except when an existing local Collective Bargaining Agreement prohibits a foreperson from working when the craft persons he is leading exceed a specified number.

ARTICLE 5. UNION REPRESENTATION

SECTION 1. LOCAL UNION REPRESENTATIVE

Each Local Union representing on-site employees shall be entitled to designate in writing (copy to Contractor involved and Construction Manager) one representative, and/or the Business Manager, who shall be afforded access to the Program Work site.

SECTION 2. STEWARDS

A. Each Local Union shall have the right to designate a working journeyperson as a Steward and an alternate, and shall notify the Contractor and Construction Manager of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions and will receive the regular rate of pay for their craft classifications. All Stewards shall be working Stewards.

B. In addition to their work as an employee, the Steward shall have the right
to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's trade and, if applicable, subcontractors of their Contractor, but not with the employees of any other trade Contractor. No Contractor shall discriminate against the Steward in the proper performance of Union duties.

C. The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except pursuant to a Schedule A provision providing procedures for the equitable distribution of overtime.

SECTION 3. LAYOFF OF A STEWARD

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. If a Steward is protected against layoff by a Schedule A provision, such provision shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

ARTICLE 6- MANAGEMENT'S RIGHTS

SECTION 1. RESERVATION OF RIGHTS

Except as expressly limited by a specific provision of this Agreement, Contractors retain full and exclusive authority for the management of their operations including, but not limited to, the right to: direct the work force, including determination as to the number of employees to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; require compliance with the directives of the Agency including standard restrictions related to security and access to the site that are equally applicable to Agency employees, guests,
or vendors; or the discipline or discharge for just cause of its employees; assign and schedule work; promulgate reasonable Program Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual, as determined by the Contractor, Agency and/or Construction Manager and/or joint working efforts with other employees shall be permitted or observed.

SECTION 2. MATERIALS, METHODS & EQUIPMENT

There shall be no limitation or restriction upon the Contractors’ choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source; provided, however, that where there is a Schedule “A” that includes a lawful union standards and practices clauses, then such clause as set forth in Schedule A Agreements will be complied with, unless there is a lawful Agency specification (or specification issued by a Construction Manager which would be lawful if issued by the Agency directly) that would specifically limit or restrict the Contractor’s choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices, and which would prevent compliance with such Schedule A clause. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in
the installation, check-off or testing of specialized or unusual equipment or facilities as
designated by the Contractor. There shall be no restrictions as to work which is performed off-
site for Program Work.

ARTICLE 7- WORK STOPPAGES AND LOCKOUTS

SECTION 1. NO STRIKES-NO LOCK OUT

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other disruptive activity at the Program Work site for any reason by any Union or employee against any Contractor or employer. There shall be no other Union, or concerted or employee activity which disrupts or interferes with the operation of the Program Work or the objectives of the Agency at any Program Work site. In addition, failure of any Union or employee to cross any picket line established by any Union, signatory or non-
signatory to this Agreement, or the picket or demonstration line of any other organization, at or in proximity to a Program Work site where the failure to cross disrupts or interferes with the operation of Program Work is a violation of this Article. Should any employee breach this provision, the Unions will use their best efforts to try to immediately end that breach and return all employees to work. There shall be no lockout at a Program Work site by any signatory Contractor, Agency or Construction Manager.

SECTION 2. DISCHARGE FOR VIOLATION

A Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

SECTION 3. NOTIFICATION

If a Contractor contends that any Union has violated this Article, it will notify the
Local Union involved advising of such fact, with copies of the notification to the Council. The Local Union shall instruct and order, the Council shall request, and each shall otherwise use their best efforts to cause, the employees (and where necessary the Council shall use its best efforts to cause the Local Union), to immediately cease and desist from any violation of this Article. If the Council complies with these obligations it shall not be liable for the unauthorized acts of a Local Union or its members. Similarly, a Local Union and its members will not be liable for any unauthorized acts of the Council. Failure of a Contractor or the Construction Manager to give any notification set forth in this Article shall not excuse any violation of Section 1 of this Article.

SECTION 4. EXPEDITED ARBITRATION

Any Contractor or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or equity) that may be brought.

A. A party invoking this procedure shall notify J.J. Pierson or Richard Adelman; who shall alternate (beginning with Arbitrator J.J. Pierson) as Arbitrator under this expedited arbitration procedure. If the Arbitrator next on the list is not available to hear the matter within 24 hours of notice, the next Arbitrator on the list shall be called. Copies of such notification will be simultaneously sent to the alleged violator and Council.

B. The Arbitrator shall thereupon, after notice as to time and place to the Contractor, the Local Union involved, the Council and the Construction Manager, hold a hearing within 48 hours of receipt of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours after the notice required by Section 3, above.

C. All notices pursuant to this Article may be provided by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Contractor,
Construction Manager and Local Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case, and conduct their cross examination) unless otherwise agreed. A failure of any Union or Contractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.

D. The sole issue at the hearing shall be whether a violation of Section 1, above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award restraining such violation and serve copies on the Contractor and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages (any damages issue is reserved solely for court proceedings, if any.) The Award shall be issued in writing within 3 hours after the close of the hearing, and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.

E. The Agency and Construction Manager (or such other designee of the Agency) may participate in full in all proceedings under this Article.

F. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union or Contractor involved, and the Construction Manager.

G. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.
II. The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

SECTION 5. ARBITRATION OF DISCHARGES FOR VIOLATION

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

ARTICLE 8 - LABOR MANAGEMENT COMMITTEE

SECTION 1. SUBJECTS

The Program Labor Management Committee will meet on a regular basis to: 1) promote harmonious relations among the Contractors and Unions; 2) enhance safety awareness, cost effectiveness and productivity of construction operations; 3) protect the public interests; 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; and 5) review efforts to meet applicable participation goals for MWBEs and workforce participation goals for minority and female employees.

SECTION 2. COMPOSITION

The Committee shall be jointly chaired by a designee of the Agency and the President of the Council. It may include representatives of the Local Unions and Contractors involved in the issues being discussed. The parties may mutually designate an MWBE representative to participate in appropriate Committee discussions. The Committee may conduct business through mutually agreed upon sub-committees.

ARTICLE 9 - GRIEVANCE & ARBITRATION PROCEDURE
SECTION 1. PROCEDURE FOR RESOLUTION OF GRIEVANCES

Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violations of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedure of the steps described below, provided, in all cases, that the question, dispute or claim arose during the term of this Agreement.

Step 1:

(a) When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall, through the Local Union business representative or job steward give notice of the claimed violation to the work site representative of the involved Contractor and the Construction Manager. To be timely, such notice of the grievance must be given within 7 calendar days after the act, occurrence or event giving rise to the grievance. The business representative of the Local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 7 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedent except as to the specific Local Union, employee and Contractor directly involved unless the settlement is accepted in writing by the Construction Manager (or designee) as creating a precedent.

(b) Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes or alleged violations of Article 7, Section 1) with any other signatory to
this Agreement and, if after conferring, a settlement is not reached within 7 calendar days, the
dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined in
subparagraph (a) for the adjustment of employee grievances.

Step 2:

The Business Manager or designee of the involved Local Union, together with
representatives of the involved Contractor, Council and the Construction Manager (or designee),
shall meet in Step 2 within 7 calendar days of service of the written grievance to arrive at a
satisfactory settlement.

Step 3:

(a) If the grievance shall have been submitted but not resolved in Step 2, any of
the participating Step 2 entities may, within 21 calendar days after the initial Step 2 meeting,
submit the grievance in writing (copies to other participants, including the Construction Manager
or designee) to J.J. Pierson or Richard Adelman, who shall act, alternately (beginning with
Arbitrator J.J. Pierson), as the Arbitrator under this procedure. The Labor Arbitration Rules of
the American Arbitration Association shall govern the conduct of the arbitration hearing, at
which all Step 2 participants shall be parties. The decision of the Arbitrator shall be final and
binding on the involved Contractor, Local Union and employees and the fees and expenses of
such arbitrations shall be borne equally by the involved Contractor and Local Union.

(b) Failure of the grieving party to adhere to the time limits set forth in this Article
shall render the grievance null and void. These time limits may be extended only by written
consent of the Construction Manager (or designee), involved Contractor and involved Local
Union at the particular step where the extension is agreed upon. The Arbitrator shall have
authority to make decisions only on the issues presented to him and shall not have the authority
to change, add to, delete or modify any provision of this Agreement.
SECTION 2. LIMITATION AS TO RETROACTIVITY

No arbitration decision or award may provide retroactivity of any kind exceeding 60 calendar days prior to the date of service of the written grievance on the Construction Manager and the involved Contractor or Local Union.

SECTION 3. PARTICIPATION BY AGENCY AND/OR CONSTRUCTION MANAGER

The Agency and Construction Manager (or such other designee of the Agency) shall be notified by the involved Contractor of all actions at Steps 2 and 3 and, at its election, may participate in full in all proceedings at these Steps, including Step 3 arbitration.

ARTICLE 10 - JURISDICTIONAL DISPUTES

SECTION 1. NO DISRUPTIONS

There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other disruptive activity of any kind arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted and as assigned by the Contractor. No jurisdictional dispute shall excuse a violation of Article 7.

SECTION 2. ASSIGNMENT

All Program Work assignments shall be made by the Contractor to unions affiliated with the BCTC consistent with the New York Plan for the Settlement of Jurisdictional Disputes ("New York Plan") and its Greenbook decisions, if any. Where there are no applicable Greenbook decisions, assignments shall be made in accordance with the provisions of the New York Plan and local industry practice.

SECTION 3. NO INTERFERENCE WITH WORK

There shall be no interference or interruption of any kind with the Program Work while any jurisdictional dispute is being resolved. The work shall proceed as assigned by the
Contractor until finally resolved under the applicable procedure of this Article. The award shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award.

ARTICLE 11 - WAGES AND BENEFITS

SECTION 1. CLASSIFICATION AND BASE HOURLY RATE

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the hourly wage rates applicable for those classifications as required by the applicable prevailing wage laws.

SECTION 2. EMPLOYEE BENEFITS

A. The Contractors agree to pay on a timely basis contributions on behalf of all employees covered by this Agreement to those established jointly trusted employee benefit funds designated in Schedule A (in the appropriate Schedule A amounts), provided that such benefits are required to be paid on public works under any applicable prevailing wage law. Bona fide jointly trusted fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly required under applicable prevailing wage law. Contractors, not otherwise contractually bound to do so, shall not be required to contribute to benefits, trusts or plans of any kind which are not required by the prevailing wage law provided, however, that this provision does not relieve Contractors signatory to local collective bargaining agreement with any affiliated union from complying with the fringe benefit requirements for all funds contained in the CBA.

B. The Contractors agree to be bound by the written terms of the legally established jointly trusted Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to Program Work done under this Agreement and only for those employees to whom this Agreement
requires such benefit payments.

C. To the extent consistent with New York City's Procurement Policy Board Rules with respect to prompt payment, as published at www.nyc.gov/pbh, §4-06(e), and in consideration of the unions' waiver of their rights to withhold labor from a contractor or subcontractor delinquent in the payment of fringe benefits contributions ("Delinquent Contractor"); the Agency agrees that where any such union and/or fringe benefit fund shall notify the Agency, the General Contractor, and the Delinquent Contractor in writing with back-up documentation that the Delinquent Contractor has failed to make fringe benefit contributions to it as provided herein and the Delinquent Contractor shall fail, within ten (10) calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the union and/or fringe benefit fund is in dispute, the Agency shall withhold from amounts then or thereafter becoming due and payable to the General Contractor an amount equal to that portion of such payment due to the General Contractor that relates solely to the work performed by the Delinquent Contractor which the union or fringe benefit fund claims to be due it, and shall remit the amount when and so withheld to the fringe benefit fund and deduct such payment from the amounts then otherwise due and payable to the General Contractor, which payment shall, as between the General Contractor and the Agency, be deemed a payment by the Agency to the General Contractor; provided however, that in any month, such withholding shall not exceed the amount contained in the General Contractor's monthly invoice for work performed by the Delinquent Contractor. The union or its employee benefit funds shall include in its notification of delinquent payment of fringe benefits only such amount it asserts the Delinquent Contractor failed to pay on the specific project against which the claim is made and the union or its employee benefit funds may not include in such notification any amount such Delinquent Contractor may have failed to pay on any other City or non-City project.
D. In the event the General Contractor or Delinquent Contractor shall notify the Agency as above provided that the claim of the union or fringe benefit fund is in dispute, the Agency shall withhold from amounts then or thereafter becoming due and payable to the General Contractor an amount equal to that portion of such payment due to the General Contractor that relates solely to the work performed by the Delinquent Contractor which the union and/or fringe benefit fund claims to be due it, and deposit such amount when and so withheld in a separate interest-bearing account pending resolution of the dispute pursuant to the union's Schedule A agreement, and the amount so deposited together with the interest thereon shall be paid to the party or parties ultimately determined to be entitled thereto, or held until the Delinquent Contractor and union or fringe benefit fund shall otherwise agree as to the disposition thereof, provided however, that such withholding shall not exceed the amount contained in the General Contractor's monthly invoice for work performed by the Delinquent Contractor. In the event the Agency shall be required to withhold amounts from a General Contractor for the benefit of more than one fringe benefit fund, the amounts so withheld in the manner and amount prescribed above shall be applied to or for such fund in the order in which the written notices of nonpayment have been received by the Agency, and if more than one such notice was received on the same day, proportionately based upon the amount of the union and/or fringe benefit fund claims received on such day. Nothing herein contained shall prevent the Agency from commencing an interpleader action to determine entitlement to a disputed payment in accordance with section one thousand six of the civil practice law and rules or any successor provision thereto.

E. Payment to a fringe benefit fund under this provision shall not relieve the General Contractor or Delinquent Contractor from responsibility for the work covered by the payment. Except as otherwise provided, nothing contained herein shall create any obligation on
the part of the Agency to pay any union or fringe benefit fund, nor shall anything provided herein
serve to create any relationship in contract or otherwise, implied or expressed, between the
union/fund and/or fringe benefit and the Agency.

ARTICLE 12- HOURS OF WORK, PREMIUM PAYMENTS,
SHIFTS AND HOLIDAYS

SECTION I. WORK WEEK AND WORK DAY

A. The standard work week shall consist of 40 hours of work at straight time
rates, Monday through Friday, 8 hours per day, plus ½ hour unpaid lunch period.

B. In accordance with Program needs, there shall be flexible start times with
advance notice from Contractor to the Union. The Day Shift shall commence between the hours
of 6:00 a.m. and 9:00 a.m. and shall end between the hours of 2:30 p.m. and 5:30 p.m., for an 8
hour day, and up to 7:30 p.m. for a 10 hour day. The Evening Shift shall commence between
the hours of 3:00 p.m. and 6:00 p.m., unless different times are necessitated by the Agency's
phasing plans on specific projects. The Night Shift shall commence between the hours of 11:00
p.m. and 2:00 a.m., unless different times are necessitated by the Agency's phasing plans on
specific projects. Subject to the foregoing, starting and quitting times shall occur at the Program
Work site designated by the Contractor.

C. Scheduling - Monday through Friday is the standard work week; 8 hours
of work plus ½ hour unpaid lunch. Notwithstanding any other provision of this Agreement, a
contractor may schedule a four day work week, 10 hours per day at straight time rates, plus a ½
hour unpaid lunch, at the commencement of the job.

D. Notice - Contractors shall provide not less than 5 days prior notice to the
Local Union involved as to the work week and work hour schedules to be worked or such lesser
notice as may be mutually agreed upon.
SECTION 2. OVERTIME

Overtime shall be paid for any work over eight (8) hours in a day where 5/8s is scheduled or for work over ten (10) hours in a day where 4/10s is scheduled and over forty (40) hours in a week, at time and one half (1½) Monday through Saturday. All overtime work performed on Sunday and Holidays will be paid pursuant to the applicable Schedule A. There shall be no stacking or pyramiding of overtime pay under any circumstances. There will be no restriction upon the Contractor’s scheduling of overtime or the nondiscriminatory designation of employees who shall be worked, including the use of employees, other than those who have worked the regular or scheduled work week, at straight time rates. The Contractor shall have the right to schedule work so as to minimize overtime or schedule overtime as to some, but not all, of the crafts and whether or not of a continuous nature.

SECTION 3. SHIFTS

A. Flexible Schedules - Scheduling of shift work, including Saturday and Sunday work, shall be within the discretion of the Contractor in order to meet Program Work schedules and existing Program Work conditions including the minimization of interference with the mission of the Agency. It is not necessary to work a day shift in order to schedule a second or third shift, or a second shift in order to schedule a third shift, or to schedule all of the crafts when only certain crafts or employees are needed. Shifts must have prior approval of the Agency or Construction Manager, and must be scheduled with not less than five work days notice to the Local Union or such lesser notice as may be mutually agreed upon.

B. Second and/or Third Shifts/Saturday and/or Sunday Work - - The second shift shall start between 3 p.m. and 6 p.m. and the third shift shall start between 11 p.m. and 2 a.m., subject to different times necessitated by the Agency phasing plans on specific projects. There shall be no reduction in shift hour work. With respect to second and third shift work there
shall be a 5% shift premium. No other premium or other payments for such work shall be required unless such work is in excess of 40 hours in the week. All employees within a classification performing Program Work will be paid at the same wage rate regardless of the shift or work scheduled work, subject only to the foregoing provisions.

C. Flexible Starting Times - Shift starting times will be adjusted by the Contractor as necessary to fulfill Program Work requirements subject to the notice requirements of paragraph A.

SECTION 4. HOLIDAYS

A. Schedule - There shall be 8 recognized holidays on the Project:

- New Years Day
- Labor Day
- Martin Luther King Day
- President's Day
- Memorial Day
- Thanksgiving Day
- Independence Day
- Christmas Day

All said holidays shall be observed on the calendar date except those holidays which occur on Saturday shall be observed on the previous Friday and those that occur on Sunday shall be observed on the following Monday.

B. Payment - Regular holiday pay, if any, for work performed on such a recognized holiday shall be in accordance with the applicable Schedule A.

C. Exclusivity - No holidays other than those listed in Section 4(A) above shall be recognized or observed.

SECTION 5. SATURDAY MAKE-UP DAYS

When severe weather, power failure, fire or natural disaster or other similar circumstances beyond the control of the Contractor prevent work from being performed on a regularly scheduled weekday, the Contractor may schedule a Saturday make-up day and such
time shall be scheduled and paid as if performed on a weekday. Any other Saturday work shall be paid at time and one-half (1½). The Contractor shall notify the Local Union on the missed day or as soon thereafter as practicable if such a make-up day is to be worked.

SECTION 6. REPORTING PAY

A. Employees who report to the work location pursuant to their regular schedule and who are not provided with work shall be paid two hours reporting pay at straight time rates. An employee whose work is terminated early by a Contractor due to severe weather, power failure, fire or natural disaster of for similar circumstances beyond the Contractor's control, shall receive pay only for such time as is actually worked. In other instances in which an employee's work is terminated early (unless provided otherwise elsewhere in this Agreement), the employee shall be paid for his full shift.

B. When an employee, who has completed their scheduled shift and left the Program Work site, is "called out" to perform special work of a casual, incidental or irregular nature, the employee shall receive overtime pay at the rate of time and one-half of the employee's straight time rate for hours actually worked.

C. When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 7 below, they shall be paid only for the actual time worked.

D. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty, high time or other special premium payments or reduction in shift hours of any kind.

E. There shall be no pay for time not actually worked except as specifically set forth in this Article and except where an applicable Schedule A requires a full weeks' pay for forepersons.
SECTION 7. PAYMENT OF WAGES

A. Termination- Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of lay off or discharge.

SECTION 8. EMERGENCY WORK SUSPENSION

A Contractor may, if considered necessary for the protection of life and/or safety of employees or others, suspend all or a portion of Program Work. In such instances, employees will be paid for actual time worked, except that when a Contractor requests that employees remain at the job site available for work, employees will be paid for that time at their hourly rate of pay.

SECTION 9. INJURY/DISABILITY

An employee who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as able to return to duties provided there is still Program Work available for which the employee is qualified and able to perform.

SECTION 10. TIME KEEPING

A Contractor may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

SECTION 11. MEAL PERIOD

A Contractor shall schedule an unpaid period of not more than 1/2 hour duration at the work location between the 3rd and 5th hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts or which provides for staggered lunch periods within a craft or trade. If an employee is
required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule A.

SECTION 12. BREAK PERIODS

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee’s work location. Where 4/10s are being worked there shall be a morning and an afternoon coffee break.

ARTICLE 13 - APPRENTICES

SECTION 1. RATIOS

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices and such other appropriate classifications in the maximum ratio permitted by the New York State Department of Labor or the maximum allowed per trade. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate Schedule A. The parties encourage, as an appropriate source of apprentice recruitment consistent with the rules and operations of the affiliated unions’ apprentice-programs, the use of the Edward J. Malloy Initiative for Construction Skills, Non-Traditional Employment for Women and Helmets to Hardhats.

ARTICLE 14-SAFETY PROTECTION OF PERSON AND PROPERTY

SECTION 1. SAFETY REQUIREMENTS
Each Contractor will ensure that applicable OSHA and safety requirements are at all times maintained on the Program Work site and the employees and Unions agree to cooperate fully with these efforts to the extent consistent with their rights and obligations under the law. Employees will cooperate with employer safety policies and will perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Agency from injury or harm, to the extent consistent with their rights and obligations under the law. Failure to do so will be grounds for discipline, including discharge.

SECTION 2. CONTRACTOR RULES

Employees covered by this Agreement shall at all times be bound by the reasonable safety, security, and visitor rules as established by the Contractors and the Construction Manager for this Program Work. Such rules will be published and posted in conspicuous places throughout the Program Work sites. Any site security and access policies established by the Construction Manager or General Contractor intended for specific application to the construction workforce for Program Work and that are not established pursuant to an Agency directive shall be implemented only after notice to the BCTC and its affiliates and an opportunity for negotiation and resolution by the Labor Management Committee.

SECTION 3. INSPECTIONS

The Contractors and Construction Manager retain the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

ARTICLE 15 - TEMPORARY SERVICES

Temporary services, i.e. all temporary heat, water, power and light, shall only be required upon the specific request of the Agency or Construction Manager, and when so requested shall be assigned to the appropriate trade claiming jurisdiction. Temporary system coverage shall be provided by the appropriate Contractors’ existing employees during working hours in which a
shift is scheduled for employees of this Contractor. The Agency or Construction Manager may
determine the need for temporary system coverage requirements during non-working hours.
There shall be no stacking of trades on temporary services. In the event a temporary system is
claimed by multiple trades, the matter shall be resolved through the New York Plan for
Jurisdictional Disputes.

ARTICLE 16 - NO DISCRIMINATION

SECTION 1. COOPERATIVE EFFORTS

The Contractors and Unions agree that they will not discriminate against any
employee or applicant for employment because of creed, race, color, religion, sex, sexual
orientation, national origin, marital status, citizenship status, disability, age or any other status
provided by law, in any manner prohibited by law or regulation.

SECTION 2. LANGUAGE OF AGREEMENT

The use of the masculine or feminine gender in this Agreement shall be construed
as including both genders.

ARTICLE 17 - GENERAL TERMS

SECTION 1. PROJECT RULES

A. The Construction Manager and the Contractors shall establish such
reasonable Program Work rules that are not inconsistent with this Agreement or rules common in
the industry and are reasonably related to the nature of work. These rules will be explained at
the pre-job conference and posted at the Program Work sites and may be amended thereafter as
necessary. Notice of amendments will be provided to the appropriate Local Union. Failure of an
employee to observe these rules and regulations shall be grounds for discipline, including
discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be
a defense to an employee disciplined or discharged for such misconduct when the action taken is
for cause.

B. The parties adopt and incorporate the BCTC's Standards of Excellence as annexed hereto as Exhibit "B".

SECTION 2. TOOLS OF THE TRADE

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

SECTION 3. SUPERVISION

Employees shall work under the supervision of the craft foreperson or general foreperson.

SECTION 4. TRAVEL ALLOWANCES

There shall be no payments for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

SECTION 5. FULL WORKDAY

Employees shall be at their work area at the starting time established by the Contractor, provided they are provided access to the work area. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

SECTION 6. COOPERATION AND WAIVER

The Construction Manager, Contractors and the Unions will cooperate in seeking any NYS Department of Labor, or any other government, approvals that may be needed for implementation of any terms of this Agreement. In addition, the Council, on their own behalf and
on behalf of its participating affiliated Local Unions and their individual members, intend the provisions of this Agreement to control to the greatest extent permitted by law, notwithstanding contrary provisions of any applicable prevailing wage, or other, law and intend this Agreement to constitute a waiver of any such prevailing wage, or other, law to the greatest extent permissible only for work within the scope of this Agreement, including specifically, but not limited to those provisions relating to shift, night, and similar differentials and premiums. This Agreement does not, however, constitute a waiver or modification of the prevailing wage schedules applicable to work not covered by this Agreement.

ARTICLE 18. SAVINGS AND SEPARABILITY

SECTION 1. THIS AGREEMENT

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or if such application may cause the loss of Program funding or any New York State Labor Law exemption for all or any part of the Program Work, the provision or provisions involved (and/or its application to particular Program Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the remainder of the Agreement shall remain in full force and effect to the extent allowed by law (and to the extent no funding or exemption is lost), unless the part or parts so found to be in violation of law or to cause such loss are wholly inseparable from the remaining portions of the Agreement and/or are material to the purposes of the Agreement. In the event a court of competent jurisdiction finds any portion of the Agreement to trigger the foregoing, the parties will immediately enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the court determination and the intent of the parties hereto for contracts to be let in the future.
SECTION 2. THE BID SPECIFICATIONS

In the event that the Agency's (or Construction Manager's) bid specifications, or other action, requiring that a successful bidder (and subcontractor) become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or may cause the loss of Program funding or any New York State Labor Law exemption for all or any part of the Program Work, such requirement (and/or its application to particular Program Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the Agreement shall remain in full force and effect to the extent allowed by law and to the extent no funding or exemption is lost. In such event, the Agreement shall remain in effect for contracts already bid and awarded or in construction only where the Agency and Contractor voluntarily accepts the Agreement. The parties will enter into negotiations as to modifications to the Agreement to reflect the court or other action taken and the intent of the parties for contracts to be let in the future.

SECTION 3. NON-LIABILITY

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither the Agency, the Construction Manager, any Contractor, nor any Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order or injunction, other determination, or in order to maintain funding or a New York State Labor Law exemption for Program Work. Bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

SECTION 4. NON-WAIVER

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to signatory Contractors and signatory Unions.
ARTICLE 19 - FUTURE CHANGES IN SCHEDULE A AREA CONTRACTS

SECTION 1. CHANGES TO AREA CONTRACTS

A. Schedule A to this Agreement shall continue in full force and effect until the Contractor and/or Union parties to the Area Collective Bargaining Agreements which are the basis for Schedule A notify the Agency and Construction Manager in writing of the hourly rate changes agreed to in that Area Collective Bargaining which are applicable to work covered by this Agreement and their effective dates.

B. It is agreed that any provisions negotiated into Schedule A collective bargaining agreements will not apply to work under this Agreement if such provisions are less favorable to those uniformly required of contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied on Program Work if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.

C. Any disagreement between signatories to this Agreement over the incorporation into Schedule A of provisions agreed upon in the renegotiation of Area Collective Bargaining Agreements shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

SECTION 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the Program Work by any Local Union involved in the renegotiation of Area Local Collective Bargaining Agreements nor shall there be any lock-out on such Program Work affecting a Local Union during the course of such negotiations.

ARTICLE 20 - WORKERS' COMPENSATION ADR

SECTION 1.
An ADR program may be negotiated and participation in the ADR Program will be optional by trade.

**ARTICLE 21 - HELMETS TO HARDHATS**

**Section 1.**

The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

**Section 2.**

The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.
IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective
as of the ___ day of __________, ___

FOR BUILDING AND CONSTRUCTION TRADES COUNCIL
OF GREATER NEW YORK AND VICINITY

BY:  
Gary LaBarbera
President

FOR NEW YORK CITY

BY:  
Michael R. Bloomberg
Mayor

APPROVED AS TO FORM:

ACTING CORPORATION COUNSEL
NEW YORK CITY
IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective as of the ___ day of __________, ______

FOR BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND VICINITY

BY: ________________________________
    Gary LaBarbera
    President

FOR NEW YORK CITY

BY: ________________________________
    Michael R. Bloomberg
    Mayor

APPROVED AS TO FORM:

______________________________
Steu Art Stein Cnsh
ACTING CORPORATION COUNSEL
NEW YORK CITY

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List of Signatory Unions

Blasterers and Drillers Local #29
Bricklayers Local No. 1
Boiler Makers Local No. 5
Carpenters District Council
Cement Masons No. 780
Derrickmen and Riggers Union No. 197
Concrete Workers District Council No. 16, including Cement and Concrete Workers Nos. 6-A, 18-A, and 20
Electrical Local No. 3
Drywall Tapers 1974
Elevator Constructors No. 1
Heat & Frost Insulators Local Union No. 12A
Heat & Frost Insulators Local Union No. 12
Iron Workers No. 40
Iron Workers District Council
Laborers Local No. 78 Asbestos & Lead Abatement
Iron Workers No. 361
Laborers Construction and General Building No. 79
Laborers Local 731
Lathers Metallic Local No. 46
Local Union 8A Glaziers No. 1281
Mason Tenders District Council
Metal Polishers DC 9
Painters District Council No. 9
Painters Structural Steel No. 806
Ornamental Iron Workers No. 580
Plasters Local Union No. 262
Pavers & Road Builders District Council No. 1
Plumbers No. 1
Sheet Metal Workers Local No. 28
Roofers & Waterproofers No. 8
Sheet Metal Workers Local No. 137
Steamfitters Local Union No. 638, including Metal Trades Division
Teamsters Local Union 813
Teamsters Local Union 814
Tile, Marble & Terrazzo B.A.C. Local Union No. 7
PLA Schedule A

The following Collective Bargaining Agreements, as this Schedule may be amended from time to time in accordance with the Agreement, constitute Schedule A:


2) Agreement between Association of Cement and Concrete Contractors of New York, Inc. and Cement and Concrete Workers comprised of Local No. 6A, Local No. 18A, Local No. 20 and the Employer, July 1, 2008 - June 30, 2011.

3) Agreement between the Cement League and the District Council of Cement and Concrete Workers; Comprised of Local No. 6A, Local No. 18A, Local No. 20; July 1, 2008 - June 30, 2011.

4) Agreement between the Cement League and the United Cement Masons' Union Local No. 780, Clarified & Extended from October 23, 1940 to June 30, 2011.


(28) Working Agreement Local Union No. 8 United Union of Roofers, Waterproofers and Allied Workers and Roofing and Waterproofing Contractor’s Association of New York and Vicinity, July 1, 2009-June 30, 2011.


Dear:

The undersigned party confirms that it agrees to be a party to and be bound by the New York Agency, Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Project Labor Agreement, its Schedules, Addenda and Exhibits are hereby incorporated by reference herein.

The undersigned, as a Contractor or Subcontractor (hereinafter Contractor) on the Project known as ___________________________ and located at ___________________________ (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the Project Labor Agreement, a copy of which was received and is acknowledged, hereby:

1. Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all schedules; amendments and supplements now existing or which are later made thereto;

2. Agrees to be bound by the legally established collective bargaining agreements and local trust agreements as set forth in the Project Labor Agreement and this Agreement but only to the extent of Program Work and as required by the PLA.

3. Authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor but only to the extent of Program Work as required by the PLA.

4. Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the Project and shall require labor harmony from every lower tier subcontractor it has engaged or may engage to work on the Project. Labor harmony disputes/issues shall be subject to the Labor Management Committee provisions.

5. Agrees to secure from any Contractor(s) (as defined in said Agreement) which is or becomes a Subcontractor (of any tier), to it, a duly executed Agreement to be Bound in from identical to this document.

Dated: ___________________________

(Name of Contractor or subcontractor)

Authorized Officer & Title

(Address)

(Phone) (Fax)

Contractor's State License # ___________________________

Sworn to before me this ______ day of _____________, 2009

Notary Public

NEW YORK CITY BUILDING AND CONSTRUCTION TRADES COUNCIL
STANDARDS OF EXCELLENCE

The purpose of this Standard of Excellence is to reinforce the pride of every construction worker and the commitment to be the most skilled, most productive and safest workforce available to construction employers and users in the City of New York. It is the commitment of every affiliated local union to use our training and skills to produce the highest quality work and to exercise safe and productive work practices.

The rank and file members represented by the affiliated local unions acknowledge and adopt the following standards:

- Provide full days work for a full days pay;
- Safely work towards the timely completion of the job;
- Arrive to work on time and work until the contractual quitting time;
- Adhere to contractual lunch and break times;
- Promote a drug and alcohol free work site;
- Work in accordance with all applicable safety rules and procedures;
- Allow union representatives to handle job site disputes and grievances without resort to slowdowns, or unlawful job disruptions;
- Respect management directives that are safe, reasonable and legitimate;
- Respect the rights of co-workers;
- Respect the property rights of the owner, management and contractors.

The Unions affiliated with the New York City Building and Construction Trades Council will expect the signatory contractors to safely and efficiently manage their jobs and the unions see this as a corresponding obligation of the contractors under this Standard of Excellence. The affiliated unions will expect the following from its signatory contractors:

- Management adherence to the collective bargaining agreements;
- Communication and cooperation with the trade foremen and stewards;
- Efficient, safe and sanitary management of the job site;
- Efficient job scheduling to mitigate and minimize unproductive time;
- Efficient and adequate staffing by properly trained employees by trade;
- Efficient delivery schedules and availability of equipment and tools to ensure efficient job progress;
- Ensure proper blueprints, specifications and layout instructions and material are available in a timely manner
- Promote job site dispute resolution and leadership skills to mitigate such disputes;
- Treatment of all employees in a respectful and dignified manner acknowledging their contributions to a successful project.

The affiliated unions and their signatory contractors shall ensure that both the rank and file members and the management staff shall be properly trained in the obligations undertaken in the Standard of Excellence.
MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF NEW YORK
AND
THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK
AND VICINITY

WHEREAS, in 2009 and 2010, the City of New York ("City") and the Building and Construction Trades Council of Greater New York ("BCTC") and Vicinity entered into several Project Labor Agreements ("PLAs") for certain construction work, and

WHEREAS, included in the scope of the PLAs is certain "on call repair work", which requires the availability of employees on short notice to make time sensitive repairs pursuant to a contract bid and let by several agencies of the City, with such contracts requiring the contractor to respond within as little as two hours from the time the contractor is contacted by the agency, and

WHEREAS, pursuant to Article 4, Section 1, of the PLA, contractors accepting contracts for work covered by the PLAs agree to recognize the signatory Unions as the exclusive collective bargaining representatives of employees performing work covered by the PLAs, and

WHEREAS, pursuant to Article 4, Section 2, of the PLA, contractors accepting contracts for work covered by the PLAs agree to utilize the job referral systems and hiring halls established by the signatory unions and the unions have 48 hours to fill a request for employees, and

WHEREAS, the Parties recognize that the 48 hour period for referral would make it difficult for contractors to comply with the "on call" contract and the PLA, and

WHEREAS, the Parties have entered into negotiations to modify the New York City Agency Renovation and Rehabilitation and the New York City DEP Renovation and Rehabilitation PLAs to provide a mechanism for compliance with the "on call" contract and the PLA, and

NOW, THEREFORE, the parties agree as follows:

1. The City will include in its bid specifications and contracts for "on call repair" work a requirement that within ten (10) days of being awarded an "on call repair" contract that is covered by the above referenced PLAs, the contractor will notify the appropriate affiliated trade/union that are relevant to their repair contract that they have been awarded such a contract and immediately enter into good faith negotiations with the relevant affiliated trade/union for a procedure to receive time sensitive "on call" referrals from the affiliated unions; and
2. In the event the contractor and the relevant affiliated trade(s) are unable to negotiate a specific procedure for "on call" referral that is mutually agreeable within twenty (20) days of commencement of negotiations, and prior to commencement of performance of the contract, the contractor and the affiliated unions will follow the following procedure:

   A. Upon notification by a contractor that the contractor has been awarded a contract for "on call" call repair work pursuant to paragraph 1 above, each affiliate union shall provide the contractor with the name and twenty four (24) hour contact information for urgent "on call" referrals.

   B. The affiliated unions shall prepare a list of individuals eligible and prepared for referral on an immediate basis to respond to the "on call repair" contractor. That list of "on call" referrals shall be provided to and in the possession of the designated "on call" contact person for the affiliated union and available for immediate reference.

   C. Individuals on the "on call" referral list must be able to comply with a contractor’s response time pursuant to the contractor’s City repair contract requirements.

   D. The affiliate’s "on call" contact person shall respond to a contractor’s request for referrals within a reasonable time of the request so that compliance with the response time in the contract shall be possible.

   E. In the event that the contractor makes a request for "on call referrals that is compliant with this procedure and an affiliated union is not able to respond to the request, that union will be deemed to have waived the forty-eight (48) hour referral rule contained in Article 4, Section 2, and the contractor may employ qualified applicants that can be responsive to the "on call" response time from any other available source for that time sensitive "on call" repair work only; provided, however, that any work related to the repair work that is not of a time sensitive nature under the contract shall comply with Article 4, Section 2. If a union fails to refer a worker timely and the Contractor employs other workers, the Contractor will e-mail the agency within 72 hours and the agency will forward that e-mail to the designated Labor Management Committee contacts.

3. Any questions or disputes between the Parties, as well as between the contractors and the affiliated unions regarding the interpretation, application, compliance and enforcement of this procedure or this Memorandum shall be subject to the Grievance Arbitration provisions provided for in Article 9 of the PLAs.

4. The Building and Construction Trades Council of Greater New York and Vicinity represents that it has the authority to enter into this memorandum on its own behalf and on behalf of its affiliated local unions.

5. This memorandum may be executed in counterparts.
Dated: New York, New York
March 30, 2012

BUILDING AND CONSTRUCTION TRADES COUNCIL
Of Greater New York and Vicinity
BY: GARY LABARBERA, President

City of New York
BY: Cassell F. Holloway

New York City Department of Environmental Protection
BY: Esther H. Strickland Jr.
Modification of the NYC Renovation and Rehabilitation PLAs to facilitate time sensitive “on call” repair work

The New York City Renovation and Rehabilitation PLAs give signatory unions 48 hours to fill vendor requests for trade workers. The City and the BCTC have agreed that the 48 hour period for referral would make it difficult for contractors to comply with time sensitive “on call repair” work that has a response time requirement less than 48 hours. The City and the BCTC have entered into an agreement to modify the Renovation and Rehabilitation PLAs to include a process that makes compliance with time sensitive “on call repair” work feasible.

Within 10 days of award, a contractor awarded an “on call repair” contract under a PLA will notify each appropriate affiliated trade/union that is relevant to their repair contract that they have been awarded such a contract and immediately enter into good faith negotiations with the relevant affiliated trade/union for a procedure to receive time sensitive “on call” referrals from the affiliated unions.

If the contractor and the relevant trade(s) are unable to negotiate a specific procedure for time-sensitive “on call” referrals, the contractor and the affiliated unions will use the following procedure:

A. Upon notification by a contractor that the contractor has been awarded a contract for “on call” repair work, each affiliate union shall provide the contractor with the name and twenty four (24) hour contact information for urgent “on call” referrals. (The affiliated unions will prepare a list of individuals eligible and prepared for referral on an immediate basis to respond to the “on call repair” contractor. That list of “on call” referrals shall be provided to and in the possession of the designated “on call” contact person for the affiliated union and available for immediate reference.)

B. Individuals on the “on call” referral list must be able to comply with a contractor’s response time pursuant to the contractor’s City repair contract requirements.

C. The affiliate’s “on call” contact person shall respond to a contractor’s request for referrals within a reasonable time of the request so that compliance with the response time in the contract shall be possible.

D. If the contractor makes a request for “on call referrals that is compliant with this procedure and an affiliated union is not able to respond to the request, that union will be deemed to have waived the forty-eight (48) hour referral rule, and the contractor may employ qualified applicants that can be responsive to the “on call” response time from any other available source for that time sensitive “on call” repair work only; provided, however, that any work related to the repair work that is not of a time sensitive nature under the contract shall comply with the 48 hour rule. If a union fails to refer a worker timely and the Contractor employs other workers, the Contractor will e-mail the agency within 72 hours and the agency will forward that e-mail to the designated Labor Management Committee contacts.