



PIN: 17AA000200R0X00

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

INVITATION FOR BID (IFB)

AND

AGREEMENT

FOR

**HELICOPTER STORAGE AND MAINTENANCE SERVICES
FOR USE BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DOHMH)
FOR AERIAL PESTICIDE APPLICATION**

DATE OF ISSUE: NOVEMBER 18, 2015

PIN: 17AA000200R0X00

AUTHORIZED AGENCY CONTACT

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

Michael Santangelo, Esq.
Contract Manager
Email: Bids@health.nyc.gov
NYC Department of Health & Mental Hygiene
Gotham Center
42-09 28th Street 17th Floor
Long Island City, NY 11101
Tel: (347) 396-6671

EPIN: 81616B0001

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NOTE TO BIDDERS:

YOU MUST READ THE ENTIRE DOCUMENT.

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

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

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SECTION I: TIMETABLE

1. Release Date of this IFB: November 18, 2015
2. Pre-Bid Conference: None Scheduled
3. **Site Visits:** **May be arranged prior to Bid Submission by contacting DOHMH Authorized Agency Contact as listed above.**
4. Deadline for Questions: December 1, 2015
All questions must be submitted in writing to the Authorized Agency Contact person, preferably by e-mail.
5. Bid Due Date and Time, Public Bid Opening Location

Date: **December 22, 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: Michael Santangelo, Esq.
Email: Bids@health.nyc.gov
Public 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.**

6. Anticipated Contract Start Date: July 01, 2016

SECTION II - SCOPE OF SERVICES

OVERVIEW

The New York City Department of Health and Mental Hygiene (“DOHMH”) is seeking a vendor to provide year-round hanger storage and professional maintenance services for one helicopter and its peripheral equipment. The helicopter, a Bell Jet Ranger Model 206B-3 Jet Ranger III, manufactured in 1989 (“the Helicopter”) has approximately 12,600 flight hours with usage currently estimated at 90-130 flight hours per season and anticipated to increase at least 10% per year. DOHMH uses the Helicopter for mosquito surveillance and control operations. The Helicopter is equipped with peripheral equipment for pesticide application (Isolair 4500-206E Broadcaster – Dry Application System) and a navigational system (AgNav) for such purpose (“Peripheral Equipment”). The Contractor will provide storage and flight facilities for the Helicopter and the Peripheral Equipment, perform routine and preventive maintenance, scheduled inspections, repairs, overhauls, retrofit or convert existing aerial (solid/liquid) pesticide application systems, and provide certain replacement parts. Hanger services are required for winter storage during the months of November to April and flyable (operable) storage during the months of April through November.

PLEASE NOTE: The storage and maintenance facility must be located within a 100 mile radius of the DOHMH staging area for its aerial pesticide applications, which is located in the borough of Staten Island.

EXPERIENCE AND LICENSE REQUIREMENTS

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

- Bidder must employ or be an experienced airframe and power plant mechanic appropriately licensed by the Federal Aviation Administration (FAA). Bidder must provide a copy of his/her Airframe and Powerplant License, or such licenses of Bidder’s employee(s), as applicable, with their bid submission.
- Bidder must demonstrate continuity in employment of its experienced airframe and power plant mechanics who will be assigned to maintain and repair the helicopter.
- Bidder must have at least five (5) years of experience in the storage, repair and maintenance of helicopters and peripheral equipment comparable to the Helicopter and Peripheral Equipment to be maintained and repaired under the Contract that may be let hereunder.
- Bidder must demonstrate that it currently performs comparable work.
- Bidder must either own or lease (under a lease that does not expire prior to June 30, 2019) a storage and flight facility that meets the requirements set forth herein, including the storage area in which the Helicopter will be kept during the non-flight months and the flight months, and the flight-readiness conditions that will apply during the flight-ready months.

- Bidder must demonstrate that the Helispot/Helibase is within a 100 mile radius of the staging area located at 310 West Service Road, Staten Island (Fresh Kills), New York.
- Bidder must provide a minimum of three (3) written references from clients who can attest to the Bidder's quality of services. DOHMH references are not acceptable for this Bid. References must not be related to the Bidder by blood or marriage.

ANTICIPATED TERM OF CONTRACT

DOHMH anticipates that the term of work for this contract will be for THREE (3) YEARS which it is anticipated will be from July 01, 2016 to June 30, 2019. The contract may be renewed for up to two (2) years.

I. Scope of Services

A. Overview

- i. The Helicopter and its Peripheral Equipment shall be maintained and stored by the Contractor in accordance with:
 - the United States Federal Aviation Administration ("FAA") Airworthiness Directives as applicable to the Helicopter and its Peripheral Equipment;
 - the service recommendations and requirements contained in the original Operations and Service Manual published by the manufacturer of the Helicopter (including, the Bell Helicopter Operation and Maintenance Manual which will be supplied by DOHMH upon request) and the Peripheral Equipment, as well as any existing or further updates, supplements and amendments thereto; and
 - all applicable federal, state and local laws, rules and regulations, including, without limitation, applicable fire codes, building codes, and environmental laws.
- ii. The Contractor shall furnish all labor and parts, excepting only the parts supplied by DOHMH, necessary or required to repair and maintain the Helicopter and its Peripheral Equipment in a safe, dependable and airworthy condition, consistent with the requirements set forth herein. The Contractor shall perform preventative maintenance and repair or replace any failed equipment.
- iii. The Contractor shall have adequate facilities and supply of equipment for disassembly, reassembly and proper inspection of the Helicopter and its Peripheral Equipment.
- iv. DOHMH reserves the right to direct Contractor to obtain parts of the engine, airframe, Peripheral Equipment and/or accessories, and, in the alternative, DOHMH may choose to provide such parts and/or accessories (see sub-section F below).

B. Maintenance Test Flights, Additional Maintenance Standards and Specifications

- i. A functional maintenance test flight shall be performed, at the Contractor's expense, following installation, overhaul, major repair, or replacement of the engine, propeller, rotor, primary flight control, or when requested by DOHMH following a repair which, in the reasonable opinion of DOHMH, may affect the airworthiness of the Helicopter. The result of this test flight shall be recorded in the aircraft maintenance record log by the Contractor's maintenance test flight pilot.
- ii. The manufacturer's specifications for the Helicopter can be viewed online through the following link:

http://www.bellhelicopter.com/en_US/Commercial/Commercial.html

- iii. FAA directives may be viewed online at the FAA site through the following link:

http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAD.nsf/MainFrame?OpenFrameSet

- iv. Use of the internet links to obtain maintenance, replacement and repair information shall be at the Contractor's risk of compliance with the requirements set forth in this IFB.

C. Periodic Maintenance Requirements

- i. In order to maintain the Helicopter and its Peripheral Equipment in a reliable, safe and airworthy condition, the Contractor will follow the procedures and obtain the approvals required below for each of the following three (3) classifications of service efforts:

1. Preventive Maintenance

Scheduled, monthly preventive maintenance includes both the maintenance recommended by the manufacturer of the Helicopter and the Peripheral Equipment, and scheduled overhauls of the various components stated herein, as well as preventive maintenance necessary to ensure that the Helicopter and the Peripheral Equipment perform according to the manufacturers' published specifications ("Preventive Maintenance"). Preventive Maintenance includes, but is not limited to, any routine cleaning, servicing or inspection recommended by the manufacturer of the Helicopter and the Peripheral equipment to ensure that both are in proper operating condition. Preventive Maintenance will be performed by the Contractor on a monthly rate basis, excepting only fair and reasonable compensation for materials and parts as specified herein. In the last ten years, approximately 40-50 hours annually have been spent for preventive maintenance of this helicopter.

2. Remedial Maintenance

Remedial Maintenance includes all maintenance required or necessary to repair or replace any defective components that have been determined by the Contractor, or by the Helicopter Pilot, to be malfunctioning, inoperable or unserviceable ("Remedial Maintenance"). Remedial Maintenance will be performed whenever the Contractor detects such need, or is alerted to such a need by the Pilot or DOHMH. All Remedial Maintenance will be performed after a service order has been agreed upon and signed by

DOHMH and the Contractor. The Contractor will present a service order to DOHMH detailing the specifications for the Remedial Maintenance and the cost of the materials and parts required to perform such maintenance. The Contractor shall send the proposed service order via fax or email within 24 hours of a request for Remedial Maintenance by the Pilot or DOHMH; or within 24 hours of detecting the need for Remedial Maintenance, as the case may be. Remedial Maintenance services shall be commenced and diligently performed to completion upon Contractor's receipt of a signed work order from the DOHMH. Remedial Maintenance will be performed by the Contractor at no additional charge, excepting only fair and reasonable compensation for materials and parts as specified herein. It is expected that there will be approximately 50 hours of remedial maintenance per year.

3. Emergency Maintenance

Emergency Maintenance means repairs or replacements where there is an immediate need to ensure the safety or airworthiness of the Helicopter and the Peripheral Equipment for an upcoming scheduled flight and where no flights should be attempted prior to such maintenance. Emergency Maintenance will encompass the same types of repairs and replacements as Remedial Maintenance and will be performed in the same manner and in accordance with the same procedures as Remedial Maintenance, except that Emergency Maintenance may be initiated by Contractor with oral authorization from DOHMH, prior to a written agreement on the specifications and the cost of materials and parts. Contractor shall present written confirmation to DOHMH of DOHMH's oral authorization for Emergency Maintenance within 24 hours of the authorization via fax or email. By following the manufacturer's recommendations for preventive and remedial maintenance, most systems and equipment emergencies can be eliminated. For any unexpected occurrence such as equipment malfunctioning during the field operation, DOHMH anticipates an expense not exceeding 40 hours/year of labor for emergency maintenance

D. Scheduling of Maintenance and Repair Work

- i. The Contractor will schedule for completion as soon as feasible all maintenance and repair work in order to avoid conflicts with scheduled aerial pesticide applications.
- ii. The Contractor shall maintain an inventory of critical spare parts to promptly repair the Helicopter when feasible.
- iii. The Contractor shall provide the following Scheduled Preventive Maintenance services on a periodic scheduled basis:
 1. Inspect, lubricate parts, service and repair the Helicopter and the Peripheral Equipment as required for safe operation in accordance with applicable FAA and manufacturer requirements for routine maintenance.
 2. Ensure all required maintenance services and inspections are performed as scheduled.
 3. Provide the following scheduled inspections:
 - 100, 300, 1,200, and 1,500 flight hours inspections
 - weekly, monthly, semi-annually, annually
 - at 24 month and 36 month intervals
 - any other inspections as required or recommended by manufacturer and/or FAA directives

4. Provide the following component inspections:
 - every 300 flight hours or 6 months
 - every 300 flight hours or 12 months
 - every 600 flight hours or 12 months
 - every 1200 flight hours or 24 months
 - every 1500 flight hours and every 50 hours thereafter
 - every 3000 flight hours of operation
 - any other inspections as recommended by manufacturer and/or FAA directives
5. Perform Overhauls, as required. Overhauls include, but are not limited to:
 - every 1200 flight hours Tail Rotor Hub overhaul
 - every 1200 flight hours Tail Rotor Gear Box overhaul
 - every 2400 flight hours Main Transmission overhaul
 - every 2400 flight hours Tail Rotor Hub overhaul
 - every 2400 flight hours Tail Rotor Gear Box overhaul
 - 3000 flight hours Main Rotor Mast overhaul
 - any other overhauls as required by manufacturer and/or FAA directives
6. Perform engine inspections at 100, 200, and 300 flight hours, and at such additional intervals as required by manufacturer and FAA directives; and
7. Perform all other inspections and maintenance services that may be required in the field or at the base/hanger. These services shall include, but are not limited to those defined in the Operation and Maintenance Manual as special inspections, conditional inspections and scheduled overhauls of minor and major components.

E. Pre-flight Readiness:

- i. The Helicopter and Peripheral Equipment will be readied for flight by the Contractor in accordance with a flight schedule to be supplied by the DOHMH. Unless otherwise advised by DOHMH, the Helicopter and Peripheral Equipment will be readied for flight to a staging area for aerial pesticide application currently maintained by the DOHMH at Fresh Kills in the borough of Staten Island, or at such alternative Staten Island location as the DOHMH may use as a staging area. The Contractor will supply a full tank of fuel for the Helicopter on a pre-flight basis for each flight. All fuel must meet the American Society for Testing and Materials specifications for the Helicopter. The aircraft shall not be refueled while engines are running or while propellers/rotors are turning. The Contractor shall provide DOHMH with a fuel receipt that sets forth the quantity of fuel, date and time of each fueling. The receipt must be signed by the Helicopter pilot, acknowledging the number of gallons of fuel supplied. Such receipts will be submitted to the DOHMH together with the invoice therefor. Reimbursement for fuel shall not exceed the amount indicated as the Fuel Allowance in the attached Bid Sheet (Item 5).
- ii. Pilot the Helicopter to and from the DOHMH Staging Area. The pilot must be duly qualified to pilot the Helicopter and maintain the requisite license(s) to do so. DOHMH shall determine the

maximum reimbursable cost for fuel, as indicated on the bid sheet. Invoices for the Pilot's flight hours shall be billed at an hourly rate, prorated to the nearest 15 minutes, from the time of departure to the time of landing. Reimbursement for Pilot's flight hours shall not exceed the amount as indicated as the Pilot's Flight Time in the attached Bid Sheet (Item 7).

F. Purchase of Materials, Parts and Equipment

If the Contractor requires replacement parts, equipment and/or accessories for the repair of the Helicopter or the Peripheral Equipment, such parts and equipment shall be provided by DOHMH at Contractor's request, unless DOHMH otherwise directs the Contractor to obtain same and request reimbursement from DOHMH. The reimbursement shall not exceed the amount indicated as the Parts and Materials Allowance in the attached Bid Sheet (Item 6). If DOHMH provides the parts, DOHMH will arrange for delivery to the Contractor's facility within a reasonable time of DOHMH's receipt of Contractor's request, which request must detail the specification of items to be purchased. If delivery is not made on or prior to date of scheduled maintenance or repair, Contractor shall notify DOHMH within 24 hours, in writing, that the delivery has not been made.

Prior to commencing any necessary or scheduled service effort for which the parts or equipment will be billable hereunder at a cost to DOHMH exceeding \$10,000, including, without limitation, inspection, lubrication, overhauling, and repair, the Contractor must obtain prior written approval from DOHMH, except in the case of an emergency, in which event, the Contractor may seek oral approval of the scope of its service effort, to be confirmed in writing within 24 hours, but in any event prior to submitting an invoice for such services.

G. Helicopter Storage: Helibase/Helispot

- i. The Contractor shall:
 1. Provide both long term and flyable storage for the Helicopter and the Peripheral Equipment throughout the Contract term. Contractor shall provide long term winter storage from November 1st through March 31st, and flyable (operable) storage shall be provided from April 1st through October 31st.
 2. Prepare the Helicopter and Peripheral Equipment for such storage in accordance with the manufacturers' recommendations (as indicated in the aircraft manual and service bulletins) and applicable FAA directives, if any.
 3. Provide a storage facility for the Helicopter that is located within a 100 mile radius of the DOHMH Staging Area located at 310 West Service Road, Staten Island, New York.
- ii. The Helibase and/or Helispot location must meet the following requirements:
 - a. wind indicator(s) shall be properly placed;
 - b. foreign object damage avoidance and dust control measures shall be in place;
 - c. warning signs shall be posted;
 - d. ramp shall be fenced and appropriate security equipment and procedures shall be in place;

- e. size and layout of facility shall be adequate to service the DOHMH needs (e.g. pad surfacing, vehicle access, etc.);
- f. approach/departure paths shall be appropriate for intended use;
- g. first-aid kit shall be available at the landing area and shall be ready and available during landing;
- h. lighting shall be adequate for night use;
- i. aircraft-type fire extinguishers shall be located at each landing pad;
- j. all electrical equipment shall be properly grounded;
- k. water shall be available at pad(s) for aircraft wash down;
- l. personnel shall be trained in crash-rescue procedures and the use of fire extinguishers;
- m. a local map of known flight hazards, using common symbols and containing a key thereto, shall be posted at the Helispot/Helibase and shall be accessible to both the facility personnel and the pilot, and shall be updated as revisions are published and marked to indicate special-use airspace; and
- n. Helispot/Helibase must be located within a 100 mile radius of the Staging Area located at 310 West Service Road, Staten Island, New York.

iii. Facility:

The storage and maintenance facility shall meet the following requirements:

- a. fuel truck and vehicle parking area shall be available;
- b. fire extinguishers shall be present and inspected;
- c. restrooms shall be available;
- d. safety equipment, including, without limitation, first aid kits, smoke alarms and fire extinguishers shall be available;
- e. employees shall be made aware of flammable or hazardous materials in compliance with OSHA 29 CFR 1910 and 29 CFR 1910.120;
- f. storage of flammable/hazardous materials shall meet applicable standards; (OSHA 29 CFR 1910);
- g. a bulletin board shall be used to display the following:
 - Emergency notification procedures;
 - Facility fire plan, information and orders;
 - No-Smoking policies;
 - Department of Labor required information;

- Material Safety Data Sheet (MSDS) location;
- h. there shall be an established plan for flight dispatch and flight plans;
- i. radio/computer with internet access/fax/telephone equipment shall be available to meet DOHMH access requirements and allow for proper helicopter preflight; and
- j. the facilities shall contain a locker or other secure place for the DOHMH pilot to use for the safe repository of his personal belongings during flights.

H. Record Keeping and Reporting Requirements

The Contactor shall, upon request by DOHMH, make all personnel, equipment, and records to be used throughout the Contract term available for inspection. Inspections shall be performed during usual government working hours (Monday-Friday, 9am-5pm) at the Contractor's facility unless other arrangements have been made, as agreed upon by the DOHMH and the Contractor. DOHMH will deliver the manufacturer's Operation and Maintenance Manual for the Helicopter and the log book(s) for the Helicopter to the Contractor, and the Contractor will return such manual, log book(s) and other maintenance records to DOHMH upon the earlier of: (i) the expiration of the Contract term, or (ii) termination of the Contract. During the term of the Contract, the Contractor will make appropriate entries as required by applicable laws, rules and regulations, including, without limitation, FAA regulations, as well as entries consistent with former record keeping practices as reflected in the log book(s). The Contractor shall obtain any and all service manuals from the manufacturers of the Helicopter and Peripheral Equipment (i.e., pesticide applicator, flight navigation system).

Contractor shall complete and maintain routine and detailed inspection and repair logs and complete and retain maintenance forms as required by Federal, State and City laws, and ensure proper maintenance of service records including but not limited to:

- inspections, overhauls and repairs performed;
- parts inspected, removed or replaced; and
- application of technical bulletin, service bulletin, and airworthiness directives.

I. Insurance

Contractor will secure and maintain at least the minimum coverages for insurance as required in Appendix A (Schedule of Insurance and Bond Requirement).

J. Whistleblower Protection Expansion Act Rider

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read Appendix H, the Whistleblower Protection Expansion Act Rider, carefully.

K. Subcontracting

If, at any time during the term of the Contract, Contractor requires the services of a subcontractor to complete services required under the contract to be let hereunder, Contractor must immediately notify the Department, in writing, of such need and must receive Department's prior, written approval for the proposed subcontractor(s) before subcontract work may begin.

Contractor 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. Contractor will also be required to enter all subcontractor payment information and other related information in such system during the contract term.

Please read Appendix H, the subcontractor compliance notice as it relates to competitive solicitations.

L. Compliance With Iran Divestment Act

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services.

If a proposer appears on that list, the Agency/Department will be able to award a contract to such proposer only in situations where the proposer is taking steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to Appendix G for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to <http://www.ogs.ny.gov/About/regs/ida.asp> for additional information concerning the list of entities.

M. 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 any applicable local requirements.
2. All components shall be in accordance with all applicable New York City and State laws, codes, and rules.
3. The Contractor must provide Material Safety Data Sheets (MSDS) for all products used under this Contract.

N. Invoicing

Contractor will submit invoices on a monthly basis. Contractor must include the following information in each invoice:

- Invoice Number
- Date of Service

- Description and Cost/Amount as set forth in this Scope of Services. Each invoice must be received by the Department no later than the last day of the month following the month to which the invoice pertains. Contractor's invoice must reflect the prices stated in the Bid Sheet of this Contract. The billing period of each invoice shall be a regular calendar month.
2. All requests for payment, and invoices submitted under this Contract, must be submitted by email to: invoiceintake@health.nyc.gov.
 3. Liquidated damages, if levied hereunder, may be offset by deduction by DOHMH from payments otherwise due to Contractor under the contract arising from this IFB. If the amount that is due to the Contractor pursuant to the contract arising from this IFB is less than the amount of liquidated damages due to DOHMH hereunder, then Contractor shall pay the difference to DOHMH.

O. Liquidated Damages

Due to 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 Contractor's failure to complete the work to the satisfaction of the Department in a timely manner in accordance with all applicable laws and standards are impossible to quantify, and therefore, the parties agree that the Department may fix certain charges in lieu thereof, which the Department, in its sole judgment believe to be within the reasonable control of the Contractor, as follows:

1. DOHMH, in its sole discretion, may elect to impose liquidated damages equal to the amount of any fine levied pursuant to a citation or violation(s) of applicable law or regulations that cite the DOHMH Bureau Site and are served on any DOHMH Bureau Site or other facility that pertains to each occurrence arising out of or in connection with services performed by the Contractor pursuant to the contract arising from this IFB as prescribed by the applicable statute or regulation for services not rendered in accordance therewith.
2. If Contractor fails to provide adequate storage or fails to render any service required hereunder within the time frame established under the Contract arising from this IFB, DOHMH, in its sole discretion, may apply liquidated damages if DOHMH finds Contractor responsible for such failure. The amount of liquidated damages will be equal to \$500 per day for each day the Contractor fails to provide adequate storage, or 10% per cost of maintenance to be performed as scheduled, for each day that such service is delayed beyond the date scheduled, up to the full price of the contracted price listed on the accepted Bid Sheet for such storage or service.

P. Compliance with Paid Sick Leave Law

Pursuant to the Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), employers are required to provide paid sick time to employees who annually perform more

than eighty (80) hours of work in New York City. Therefore contractors of the City of New York may be required to provide paid sick time to their employees pursuant to the PSSL. Appendix J, which contains the Paid Sick Leave Law Rider, describes the requirements of the PSSL as well as all exceptions and exemptions to the law. The Rider will be included in any contract(s) resulting from this solicitation and will incorporate the PSSL as a material term of the contract(s). Please read Appendix J carefully.

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SECTION III - BID PROCEDURES AND REQUIREMENTS

1. Status of Information

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

2. Communication with the Agency

- a. Proposers are advised that from the date this IFB is issued until the award of the contract, NO contact with Agency personnel related to this solicitation is permitted, except as shall be authorized by the Authorized Agency Contact, as defined in Section I of this IFB.
- 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. Any bid submitted electronically or via fax will 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 7, 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 5, 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 7, above.
- b. In accordance with Section 3-02(m) of the Procurement Policy Board Rules, if a bidder alleges a mistake in bid after bid opening and before award, the bid may be corrected or withdrawn upon written approval of the Agency Chief Contracting Officer and Agency Counsel if the following conditions are met:
 - (i) **Minor Informalities.** Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City.
 - (ii) **Mistakes Where Intended Correct Bid is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
 - (iii) **Mistakes Where Intended Correct Bid is Not Evident.** Mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw a low bid where a unilateral error or mistake has been discovered in the bid and the Contracting Officer makes the following determination, which shall be approved by the ACCO:
 - (A) the mistake was known or made known to the agency prior to supplier selection or within three days after the opening of the bid, whichever period is shorter;

- (B) the price bid was based on an error of such magnitude that enforcement would be unconscionable;
 - (C) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;
 - (D) the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
 - (E) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.
- (iv) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the City Chief Procurement Officer subject to the approval of Corporation Counsel makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

9. Bid Evaluation and Award

- a. This contract shall be awarded, if at all, to the responsible bidders whose bid meets the requirements and evaluation criteria set forth in the Invitation For Bids, and whose bid price is either the lowest responsive and responsible bid price 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 Invitation for Bid, the award will be made to the responsive and responsible bidder that offers the lowest bid price.
- b. In accordance with Section 3-02 (o)(2) of the Procurement Policy Board Rules, negotiations with the lowest bidder who is also responsive and responsible, shall be allowed to take place in those circumstances in which such negotiations result in terms which are more favorable to the City.
- 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.
- e. 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.
- f. The Agency may reject a bid if the bidder is determined to be not responsible or non-responsive pursuant to the Procurement Policy Board Rules. The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award, pursuant to Sections 2-07, 2-08, and 2-10 respectively, of the Procurement Policy Board Rules.
- g. The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to resolicit bids if in its sole opinion it shall deem it in the best interest of the City to do so. The Agency Head may determine that it is appropriate to cancel the Invitation For Bids after bid opening and before award and to complete the acquisition by negotiation, when permitted by rule.
- h. Unit Price Contracts
- (i) Comparison of Bids: Bids on Unit Price Contracts will be compared on the basis of a total estimated price, arrived at by taking the sum of the estimated quantities of such items multiplied by the corresponding unit prices, and including any lump sum bids on individual items, in accordance with the Estimate of Quantities set forth in the Bid Form.
 - (ii) Variations from Estimates: Bidders are warned that the Estimate of Quantities of the various items of work and materials is approximate only, given solely to be used as a uniform basis for the comparison of bids, and is not being considered a part of this Contract. Work may be less or more than so estimated, and if so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof. If during the progress of the work, the actual quantity of items required to complete the work of any unit item approaches the estimated quantity, and due to errors, site conditions, changes in design or any other reason, it appears that the actual quantity necessary to complete the work will exceed the estimated quantity by 25 percent, the Contractor shall immediately notify the Agency of such anticipated overruns. The Contractor shall not be compensated for work performed in excess of one hundred twenty five (125) percent of the estimated quantities in the bid schedule without written authorization from the Agency.

The Contractor will be paid at the unit price bid for quantities up to one hundred twenty five (125) percent of the estimated quantities listed in the bid schedule. If quantities on any item exceed one hundred twenty five (125) percent of the estimate, the City reserves the right and the Contractor agrees to renegotiate the unit price bid to a new unit price for such quantities. If the City and Contractor cannot agree to a new price then the City, if it requires additional units of the item, shall order the Contractor and the Contractor agrees to perform the additional work on a time and material basis for the actual and reasonable cost as determined by the Agreement but in no event at a cost exceeding the bid price.

10. Bonds

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

- a. Bid Bond.
Not Required.
- b. Performance and Payment Bonds
Not Required.
- c. Failure to Execute Contract
In the event of failure of the successful bidder to execute the contract and furnish any required security and insurances, within ten (10) days after notice of the award of the contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such contract shall be subsequently re-let, including the cost of such re-letting and less the amount of 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) 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 exceed \$100,000, you need only submit a "Less Than 50 Employees Certificate". You will be required to submit the completed Employment report to the Agency within 10 days of notice.
- (ii) Bidders are requested to submit completed Department of Labor Services Employment Report <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 (AADA) and regulations promulgated pursuant thereto which prohibits discrimination against individuals with a disability, as defined in the ADA, by a public entity in providing services, programs or activities to the public.

- 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. Such information must be provided with the Bid Package. See Section IV.

 - (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.

[NO FURTHER TEXT ON THIS PAGE]

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 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 C: Tax Affirmation

Must be completed, signed by Bidder, and notarized.

APPENDIX H: Iran Divestment Rider

Must be completed, signed by Bidder, and notarized.

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

ITEM 5. Audited/Reviewed Financial Statements

Most recent audited or reviewed financial statements signed by a CPA.

ITEM 6. Required Licenses/Documentation

- A copy of the FAA Airframe and Powerplant License, or such licenses of Bidder's employee(s), as applicable
- Deed or Lease (under a lease that does not expire prior to June 30, 2019) to a storage and flight facility that meets the requirements set forth herein, including the storage area in which the Helicopter will be kept during the non-flight months and the flight months, and the flight-readiness conditions that will apply during the flight-ready months
- Documentation demonstrating that the Helispot/Helibase is within a 100 mile radius of the staging area located at 310 West Service Road, Staten Island, New York (if Deed or Lease does not specify).

ITEM 7. References

Bidder must provide three (3) references who can verify the qualifications and ability of the Bidder to perform the scope of work specified herein, and who can accurately assess the quality of Bidder's workmanship. DOHMH references are not acceptable for this bid. References must not be related to the bidder or to the bidder's employees by blood or marriage.

ITEM 8. Insurance Certificate and Worker's Compensation document

See Article 7 of the Agreement for Insurance Requirements for this bid.

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

ITEM 9. VENDEX Questionnaires

Required for bids exceeding \$100,000.

ITEM 10. Employment Report

Required for bids exceeding \$100,000.

- 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.

**New York City
Department of Health and Mental Hygiene
Bid Submission for:**

Helicopter Storage and Maintenance for DOHMH Use In Aerial Pesticide Applications

PIN# 17AA000200R0X00

Cover Sheet / Checklist

Bidder's Legal Name: _____ Date Submitted _____ 2015

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

- | | |
|---|-----|
| ITEM 1. Bidder Representation | [] |
| ITEM 2. Bid Sheet | [] |
| ITEM 3. Acknowledgement of Addenda | [] |
| ITEM 4. Experience and Facilities Questionnaire | [] |
| ITEM 5. Audited/Reviewed Financial Statements | [] |
| ITEM 6. Required Licenses/Documentation: | |
| Copy of a valid Airframe and Powerplant License | [] |
| A copy of Deed or Lease | [] |
| Documentation showing proximity of Helispot/Helibase to staging location | [] |
| ITEM 7: Three Reference Letters | [] |
| ITEM 8: Insurance Certificates | [] |
| Appendix C: Tax Affirmation | [] |
| Appendix H: Iran Divestment Rider | [] |
| Appendix E: No Bid Response (if applicable) | [] |

Item 1: Bidder Representations

Name of Bidder: _____

Place of Business: _____

Telephone No. _____ Tax Identification No: _____

Fax No. _____

Date of Bid: _____

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

A). If Bidder is Individual:

Home Address of Bidder _____

B). If Bidder is Partnership:

Name and Home Address of Partners:

C). If Bidder is Corporation:

Organized under the laws of the State of _____

Name and Home Address of President _____

Name and Home Address of Secretary _____

Name and Home Address of Treasurer _____

The above-named bidder affirms and declares:

1. The several matters stated and information furnished therein are in all aspects true.

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

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

corporation executing this bid).

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

Item 2: Bid Sheet

NOTICE TO ALL BIDDERS: FAILURE TO COMPLETE THIS SECTION IN DETAIL WILL RESULT IN THE 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 such insurance policies as may be required, execute the Agreement set forth in this Invitation for Bid, and will proceed, when directed to do so, with the work required hereunder in strict compliance with the terms and conditions set forth in this Bid AT THE UNIT AND OTHER PRICES SET FORTH BELOW.

The DOHMH shall provide a parts allowance in this contract, to permit the vendor to install these items. This allowance is described on this bid sheet. The Contractor shall submit a copy of the original invoice for the purchase by the Contractor, of any equipment required under this section, when billing the DOHMH for reimbursement of said expense. The bill to the DOHMH shall include the price paid by the Contractor to the supplier for the parts and materials, the Contractor's percent mark up on the parts.

NOTE #1: The Number of Units expressed or implied on the BID 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. 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, necessary insurances, permits, fees and filings, overhead and profit.

NOTE #3: 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: The bid mark-up percentages shall not exceed 10 percent for items 5 and 6 on the Bid Sheet.

ITEM 2: BID PRICE SHEET (Page 1 of 3)

PIN: 17AA000200R0X00, Helicopter Storage and Maintenance for DOHMH Use In Aerial Pesticide Applications

Bidder's Legal Name _____ Bidder's Tax ID# _____

	A	B	C	D	E
Item	Description	12 Month Contract Period	Monthly Storage Rate	Number of Months	Extended Cost (C x D)
1	Monthly Hanger Services (helicopter storage)	7/1/16-6/30/17	\$ _____ Per Month	12	\$ _____
		7/1/17-6/30/18	\$ _____ Per Month	12	\$ _____
		7/1/18-6/30/19	\$ _____ Per Month	12	\$ _____
Subtotal Bid Price for Item 1: Monthly Hanger Services					\$ _____ (1)
Item	Description	12 Month Contract Period	Monthly Rate	Number of Months	Extended Cost (C x D)
2	Monthly Preventive and Periodic Scheduled Maintenance Services	7/1/16-6/30/17	\$ _____ Per Month	12	\$ _____
		7/1/17-6/30/18	\$ _____ Per Month	12	\$ _____
		7/1/18-6/30/19	\$ _____ Per Month	12	\$ _____
Subtotal Bid Price for Item 2: Monthly Preventive and Periodic Scheduled Maintenance Services					\$ _____ (2)
Item	Description	12 Month Contract Period	Hourly Rate	Estimated Number of Hours for Each 12 Month Period	Extended Cost (C x D)
3	Remedial Maintenance Services	7/1/16-6/30/17	\$ _____ Per Hour	50 Hours	\$ _____
		7/1/17-6/30/18	\$ _____ Per Hour	50 Hours	\$ _____
		7/1/18-6/30/19	\$ _____ Per Hour	50 Hours	\$ _____
Subtotal Bid Price for Item 3: Remedial Maintenance Services					\$ _____ (3)

ITEM 2: BID PRICE SHEET (Page 1 of 3)

PIN: 17AA000200R0X00, Helicopter Storage and Maintenance for DOHMH Use In Aerial Pesticide Applications

Bidder's Legal Name _____ Bidder's Tax ID# _____

	A	B	C	D	E
Item	Description	12 Month Contract Period	Hourly Rate	Estimated Number of Hours for Each 12 Month Period	Extended Cost (C x D)
4	Emergency Maintenance	7/1/16-6/30/17	\$ _____ Per Hour	40 Hours	\$ _____
		7/1/17-6/30/18	\$ _____ Per Hour	40 Hours	\$ _____
		7/1/18-6/30/19	\$ _____ Per Hour	40 Hours	\$ _____
Subtotal Bid Price for Item 4: Emergency Maintenance					\$ _____ (4)
Item	Description	12 Month Contract Period	Allowance	Bid Mark-up Percentage (not to exceed 10%)	Extended Cost (C x D)
5	Fuel Allowance (Cost plus percentage Mark Up)	7/1/16-6/30/17	\$10,000.00	_____ %	\$ _____
		7/1/17-6/30/18	\$10,000.00	_____ %	\$ _____
		7/1/18-6/30/19	\$10,000.00	_____ %	\$ _____
Subtotal Bid Price for Item 5: Fuel Allowance					\$ _____ (5)
Item	Description	12 Month Contract Period	Allowance	Bid Mark-up Percentage (not to exceed 10%)	Extended Cost (C x D)
6	Parts and Materials Allowance (Cost plus percentage Mark Up)	7/1/16-6/30/17	\$10,000.00	_____ %	\$ _____
		7/1/17-6/30/18	\$10,000.00	_____ %	\$ _____
		7/1/18-6/30/19	\$10,000.00	_____ %	\$ _____
Subtotal Bid Price for Item 6: Parts and Materials Allowance					\$ _____ (6)
Item	Description	12 Month Contract Period	Hourly Rate	Estimated Quantities for Each 12 Month Period	Extended Cost (C x D)
7	Pre-Flight Readiness (Pilot's Flight Time)	7/1/16-6/30/17	\$ _____ Per Hour	16.67 Hours	\$ _____
		7/1/17-6/30/18	\$ _____ Per Hour	16.67 Hours	\$ _____
		7/1/18-6/30/19	\$ _____ Per Hour	16.66 Hours	\$ _____
Subtotal Bid Price for Item 7: Pre-Flight Readiness					\$ _____ (7)

ITEM 2: BID PRICE SHEET (Page 1 of 3)

PIN: 17AA000200R0X00, Helicopter Storage and Maintenance for DOHMH Use In Aerial Pesticide Applications

Bidder's Legal Name _____ Bidder's Tax ID# _____

TOTAL BID PRICE (Sum of Items 1 – 7 in Column E)	
	\$ _____

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 the calculations were based 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: _____
(Company)

By: _____ (CORPORATE SEAL)
(Signature of Person Authorized To Sign The Bid)

Attest: _____
(Secretary of Corporate Bidder)

TO BE NOTARIZED
Sworn to before me this ____
day of _____, 2015

(Notary Public)

(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

(TO BE NOTARIZED)

B) AFFIDAVIT WHERE BIDDER IS A PARTNERSHIP:

STATE OF _____
COUNTY OF _____ ss:

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

(Signature of Partner who signed the bid)

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

Notary Public

(TO BE NOTARIZED)

C) AFFIDAVIT WHERE BIDDER IS A CORPORATION:

STATE OF _____
COUNTY OF _____ ss:

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

(Signature of Officer who signed the bid)

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

Notary Public

ITEM 3. Acknowledgement of Addenda

Complete Part I or Part II, whichever is applicable:

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

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

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

Dated: _____, 20____

BIDDER FIRM (NAME): _____

PRINCIPAL OF BIDDING FIRM'S (SIGNATURE): _____

ITEM 4. Experience and Facilities Questionnaire

Bidders Name _____

Telephone No: _____ Federal Tax Identification No: _____

Fax No. _____ E-Mail Address: _____

Submitted by Corporation () Partnership () Individual ()

Date: _____ 20 ____

Principal Office: _____

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

1. Indicate the number of years of experience Bidder has in Helicopter maintenance and storage::

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

(b) As a Subcontractor _____ Type of work: _____

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

If so, where and why? _____

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

(If YES, give details) _____

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

(If YES, give details) _____

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

6. Have you ever appeared before the Board of Responsibility of the City of New York? YES () NO ()

(If YES, give details) _____

7. Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a city contract or other governmental contract? YES () NO ()

If YES, state the name of individual, other organization and reason therefor.

8. Has any officer or partner of your organization ever failed to complete a city or other governmental contract handled in his own name? YES () NO ()

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

9. In what other business are you financially interested?

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

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

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

YES () NO ()

If YES, when and to whom do you refer?

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

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Scheduled Completion Date _____ Actual Completion Date: _____

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

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Scheduled Completion Date _____ Actual Completion Date: _____

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

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Scheduled Completion Date _____ Actual Completion Date: _____

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

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

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Contract time: _____ Pct of Contract Time elapsed as of this date: _____

% Work completed as of this date: _____

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

Project Identification and Nature of Project: _____

Name and Address of Owner: _____

Contract Amount: \$ _____ Date Started: _____

Contract time: _____ Pct of Contract Time elapsed as of this date: _____

% Work completed as of this date: _____

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

17. Describe the length of time that you airframe and power plant mechanic(s) have been working for you and his, her or their experience (attach resumes or CVs):

18. What licenses do your mechanics and facilities have that are relevant to the services for which the bid is submitted (attach copies):

19. Describe your facilities at which you have a Helibase/Helispot and your storage facilities:

Address: _____

Description: _____

20. Do the facilities described above in the answer to question 20 fully comply with the requirements set forth in Section II, subsections 2.11 and 2.12?

Yes ()

No ()

21. Are the facilities owned or leased?

Owned () Leased ()

If leased, indicate the lease expiration date and if there is an option to renew:

Dated at _____

This _____ day of _____, 20_____

Name of Organization

By (Name and Title of Person Signing)

STATE OF _____

ss

COUNTY OF _____

_____ being duly sworn deposes and says that s/he is

_____ (title) of the above

_____ (name of organization) and that the answer to the foregoing questions and all statements therein contained are true and correct.

Sworn to before me this _____ day of _____, 2015

Notary Public

My commission expires _____

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

ARTICLE 1: DEFINITIONS

Section 1.01 Definitions

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

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

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

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

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

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

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

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

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

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

J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

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

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

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

ARTICLE 2: REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

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

Section 2.02 Conflicts of Interest

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

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

directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

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

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

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

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

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

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

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

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

Section 2.05 Political Activity

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

Section 2.06 Religious Activity

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

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

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

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3: ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

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

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

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

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

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

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

ARTICLE 4: LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including,

but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage

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

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

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

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

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

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

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

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

Section 4.06 Non-Discrimination: Admin. Code § 6-108

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5: RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the

Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

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

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

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

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

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

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

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

F. Definitions

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

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

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

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

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of

Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

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

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

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

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

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

ARTICLE 6: COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

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

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,”

the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

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

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

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

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

ARTICLE 7: INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence, with a Combined Single Limit for Bodily Injury and Property Damage of Two Million Dollars (\$2,000,000) aggregate. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

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

Section 7.03 Professional Liability Insurance

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

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

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

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

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

Section 7.05 Unemployment Insurance

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

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident, with a Combined Single Limit for Bodily Injury and Property Damage of Two Million Dollars (\$2,000,000) aggregate, arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

Section 7.08 Proof of Insurance

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

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

B. For each policy required under this Agreement, except for Workers’ Compensation Insurance, Disability Benefits Insurance, Employer’s Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the

endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached in Appendix B or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

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

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

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

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner, Department of Health and Mental Hygiene, Office of the ACCO, 42-09 28th Street, 17th Floor-CN 30A, Long Island City, NY 11101 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

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

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

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

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

ARTICLE 8: PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions

of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

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

Section 8.06 Actions By or Against Third Parties

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

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

Section 8.07 Withholding of Payments

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

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

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

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

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

Section 8.08 No Third Party Rights

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

ARTICLE 9: CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10: TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

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

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

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

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

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

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this

Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

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

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

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

Section 10.04 Force Majeure

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

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

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

Section 10.05 Procedures for Termination

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

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

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

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

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

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

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

Section 10.06 Miscellaneous Provisions

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

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

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

ARTICLE 11: PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

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

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

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

ARTICLE 12: CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of

New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

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

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

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

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

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed

by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

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

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

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and

ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

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

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

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

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

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

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

In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

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

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

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

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

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

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

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH’s offices and one to the Contractor. Extensions of

time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

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

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

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

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

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

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

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

Section 12.05 No Claim Against Officers, Agents or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13: APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Americans with Disabilities Act (ADA)

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

by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

Section 13.06 Voter Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8) b. display any political preference or party allegiance;

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

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

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

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

Section 13.07 Participation in an International Boycott

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

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

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

Section 13.08 MacBride Principles

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

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

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

Section 13.09 Access to Public Health Insurance Coverage Information

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

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

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

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

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

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

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

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

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

Section 13.10 Distribution of Personal Identification Materials

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

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

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

ARTICLE 14: MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

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

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

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

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

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

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IN WITNESS WHEREOF, the parties 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: _____
Assistant Commissioner

CONTRACTOR: _____
(Print Full Legal Name of Contractor)

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

(Place Seal Here)

APPROVED AS TO FORM CERTIFIED AS TO LEGAL AUTHORITY

Corporation Counsel

Date: _____

CORPORATION COUNSEL CONTRACT APPROVAL

Agency DOHMH

E-PIN 81616B0001

Contractor

Approved as to form

Certified as to legal authority

Electronically Signed By AMRITA BARTH

Date 11/06/2015 17:51

Acting Corporation Counsel

ACKNOWLEDGMENT BY ASSISTANT COMMISSIONER

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this _____ day of _____, 2015 before me personally
came _____, to me known and known to me to be the
Assistant Commissioner, Finance and Planning of the Department of Health and Mental Hygiene
of the City of New York, the person described in whom, as such Assistant Commissioner,
executed the foregoing agreement, and she duly acknowledged to me that she executed the same
on behalf of the City of New York and the Department of Health for the purpose herein
mentioned.

=====
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY CORPORATION

STATE OF NEW YORK) ss:
COUNTY OF _____)

On this _____ day of _____, 2015 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

ACKNOWLEDGEMENT BY PARTNERSHIP

STATE OF NEW YORK) ss:
COUNTY OF _____)

On this _____ day of _____, 2015 before me personally came _____ to me known and known to me to be a member of _____ the firm described in and which executed the foregoing instrument and (s)he acknowledged to me that (s)he subscribed the name of said firm thereto on behalf of said firm for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY INDIVIDUAL

STATE OF NEW YORK) ss:
COUNTY OF _____)

On this _____ day of _____, 2015 before me personally came _____ to me known and known to me to be the same person described and who executed the foregoing instrument and ne acknowledged to me that he executed the same for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

APPENDIX A:

Schedule of Insurance Requirements

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

Item	Minimum Coverage	Required
Workers Compensation	Statutory Requirements	(XXX)
Employer's Liability	Statutory Requirements	(XXX)
Comprehensive General Liability	\$1,000,000 per occurrence	(XXX)
Combined Single Limit	\$2,000,000 aggregate	
Bodily Injury and		
Property Damage		
Automobile Liability	\$1,000,000 per occurrence	(XXX)
Combined Single Limit	\$2,000,000 aggregate	
Bodily Injury and		
Property Damage		

The following coverage must be provided:

Comprehensive Form	(XXX)
Owned	(XXX)
Hired	(XXX)
Non-Owned	(XXX)

APPENDIX B

CERTIFICATION BY BROKER

Pursuant to Article Seven of the Agreement portion of this IFB, all certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

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

-- OR --

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

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.



Health

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Mary T. Bassett, MD, MPH
Commissioner

APPENDIX D

Charter Section 312(a) Certification

X 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.

Agency Chief Contracting Officer or Designee

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: 81616B0001

Your Name: Dr. Waheed Bajwa, Executive Director, Office of Vector Surveillance and Control

Phone: (646) 632-6602

Email: wbajwa@health.nyc.gov

Please specifically identify the service(s) being procured.

Seeking a vendor to provide year-round hanger storage and professional maintenance services for DOHMH owned Helicopter. The DOHMH uses this helicopter for mosquito surveillance and control operations. The Helicopter is equipped with peripheral equipment for pesticide application (Isolair 4500-206E Broadcaster-Dry Application System) and a navigational system (AgNav) for such purpose (the "Peripheral Equipment"). The Contractor shall provide storage and flight facilities for the Helicopter and shall perform routine and preventive maintenance, scheduled inspections, overhauls, repairs and shall provide certain replacement parts for the Helicopter and its Peripheral Equipment. Hanger services are required for winter storage during the months of November to April and flyable (operable) storage during the months of April through November. The pilot must be an experienced airframe and power plant mechanic appropriately licensed by the Federal Aviation Administration (FAA).

FY16NDHMH06

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.

The Contractor will provide storage and flight facilities for the Helicopter and perform routine and preventive maintenance, scheduled inspections, overhauls, repairs and provide certain replacement parts for the Helicopter and its Peripheral Equipment. Currently, DOHMH do not provide such services.

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

Yes No

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

DOHMH do not have a pilot who is an experienced airframe and power plant mechanic appropriately licensed by the Federal Aviation Administration (FAA).

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

0

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

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

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

Part 2: Certification of Displacement

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

APPENDIX E

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

“NO BID RESPONSE”

HELICOPTER STORAGE AND MAINTENANCE SERVICES

PIN: 17AA000200R0X00

_____ HAS OPTED NOT TO BID ON
(Vendor name)

REASONS FOR NOT SUBMITTING A BID (CHECK APPROPRIATE BOXES)

- 1. Work or service requested not performed by the company. Please indicate your organization's type of work or service performed:

- 2. Bid request received too late. Insufficient time to plan, estimate and submit a bid.
- 3. Too busy to consider bidding on this contract.
- 4. Specifications unclear, or improper and inappropriate.
- 5. Unwilling to accept liability, responsibility, or assessments for liquidated damages.
- 6. Unable to meet insurance requirements.
- 7. Unable to bid on all components (i.e., all locations)
- 8. Previous unfavorable experience with City Contracts/work.

Prepared by: _____
(Preparer's Name and Signature) (Title) (Phone No.)

Date ____/____/____

Please return this form to the DOHMH Authorized Agency Contact no later than the bid opening date.

APPENDIX F

Whistleblowers Protection Expansion Act

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 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.



**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.

APPENDIX G
Iran Contractor Divestment Rider

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR
NEW YORK CITY CONTRACTORS

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

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

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

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

1. The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or
2. The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

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

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

[Please Check One]

BIDDER'S CERTIFICATION

By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____, 20 __

SIGNATURE

PRINTED NAME

TITLE

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

Notary Public

Dated:

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APPENDIX H

Subcontractor Tracking Notice

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 I

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.

ATTACHMENT J

PAID SICK LEAVE LAW CONTRACT RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

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

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any **consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of**

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.;

one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventative medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventative medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next

regular payroll period beginning after the sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSSL does not apply to any of the following:

- **an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;**
- **an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;**
- **an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSSL are expressly waived in such collective bargaining agreement;**
- **an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSSL for such employee;**
- **an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;**
- **an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;**
- **an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or**
- **a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.**

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.