THE CITY OF NEW YORK  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  

INVITATION FOR BID  
AND  
AGREEMENT  
FOR  
BOILERS, HEATERS, REPAIRS AND MAINTENANCE SERVICES  

DATE OF ISSUE: March 1, 2016  
PIN: 15BS008200R0X00  

-------------------------------------------------------------------------------------------------------------------------  

AUTHORIZED AGENCY CONTACT  

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

Michael Santangelo, Esq., Contract Manager  
Email: Bids@health.nyc.gov  
New York City Department of Health and Mental Hygiene  
Office of the Agency Chief Contracting Officer  
42-09 28th Street, 17th Floor, CN-30A  
Long Island City, NY 11101-4132  
P: (347) 396-6671  

======================================================================  

EPIN: 81615B0003  

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor/provider who believes that there has been unfairness, favoritism or impropriety in the proposal process, should contact the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007 (212) 669-3870.
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NOTE TO BIDDERS:
YOU MUST READ THE ENTIRE DOCUMENT. HOWEVER, COMPLETE AND SUBMIT ONLY THE BID PACKAGE (SECTION IV).
RETAIN THE REMAINING PARTS FOR YOUR INFORMATION. CLOSELY READ SECTION IV FOR DETAILED INSTRUCTIONS ON BID SUBMISSION.

SECTION I: TIMETABLE

1. Release Date of this IFB: March 1, 2016

2. Sites Visit: To Be Determined. The date(s) and time(s) for the site visits will be released in a subsequent Addendum.

3. Pre-Bid Conference: March 16, 2016, 10:00 A.M. to 11:30 A.M.
Department of Health and Mental Hygiene, 42-09 28th Street, Rm. 7-36, Long Island City, NY 11101
Attendance by bidders is optional but strongly recommended by DOHMH. To register for the conference, please email the name, title, and affiliation of each attendee to Bids@health.nyc.gov. Please state “ATTENDEE BOILER SERVICES” in the subject line of the email. On the day of the conference, please bring photo ID with you and arrive thirty minutes early to allow for the time that it will take to proceed through security.

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

5. Bid Due Date and Time, Public Bid Opening Location are as follows:
Date: April 7, 2016
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, CN-30A
Attention: Michael Santangelo, Esq., Contract Manager

** NOTE: Any bids received after 11:00 am on the Bid Due Date will be considered late and will not be accepted.

6. Projected Contract Start Date: August 1, 2016
A. GENERAL STATEMENT OF PURPOSE

The New York City Department of Health and Mental Hygiene (“Department” or “DOHMH”) seeks a contractor to provide all labor, materials and equipment that are necessary and required for the provision of repair and maintenance service to gas fired, steam, and hot water boilers, portable boilers, hot water systems, domestic gas fired water heaters, heat exchangers and auxiliary equipment for all DOHMH facilities located throughout the five (5) boroughs of New York City.

B. MINIMUM QUALIFICATIONS

Following are the minimum Bidder qualifications for this Invitation for Bids. Bidder must demonstrate all of the following in its bid at the time of bid submission in order to be considered responsive:

1. Bidder must demonstrate that the bidder has at least three years of experience in the three years preceding its submission of a Bid hereunder in the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment for a commercial/industrial/public sector customer. At a minimum, the bidder must demonstrate its successful completion of 3 projects, all of which have been completed within the last three years immediately preceding the bid opening, and each of which exceeded Three Hundred Thousand dollars ($300,000.00) in value; and

2. Bidder must demonstrate that they have a minimum of THREE(3) years of commercial/industrial/public sector experience in the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment (See Qualifications Questionnaire-Item 4 of submittals); and;

3. Through not less than two of the three recommendations to be submitted in connection with its bid, the bidder shall demonstrate that it is able, at minimum, to provide concurrent services at not less than three (3) different service locations concurrently. See Qualifications Questionnaire (Item 4 of submittals); and

4. The bidder must provide THREE (3) written reference letters from different clients who can attest to the bidder’s experience, work description, and quality of services. Reference letters must be from clients for whom services similar to those required pursuant to the scope of work contained herein, including the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchanger and auxiliary equipment for a commercial/industrial/public sector customer were provided within the last three (3) years. The reference letters must include the information required for each such project as described in the Qualifications Questionnaire submitted with its Bid. See Item 4 of Bid Submission requirements (Qualifications Questionnaire).

5. The bidder must, at the time of the bid, by submittals of copies of relevant certificates and licenses with its bid, demonstrate that it possesses all current and valid certificates and licenses required to complete the Work and as required for compliance with all applicable Federal, State and local Laws, rules and regulations, and all modifications, revisions and
additions thereto (collectively, “Certificates” and “License(s)”), which, for purposes of meeting the qualifications set forth herein include, without limitation, the following:

a. Master Plumbers License, current and valid, as issued by the New York City Department of Buildings;

b. National Board of Boiler and Pressure Vessel Inspectors Certificate of Authorization, current and valid, which enables Bidder to inspect, test and refurbish safety and relief valves in accordance with the National Board of Boiler and Pressure Vessel Inspectors and/or ASME boiler code.

C. ANTICIPATED TERM OF CONTRACT

DOHMH anticipates that the term of the contract will be FIVE (5) years.
SECTION II - SCOPE OF SERVICES

A. GENERAL CONDITIONS

The Contractor shall provide all labor, materials and equipment that are necessary and required by DOHMH for the provision of repair and maintenance service to gas fired, steam, and hot water boilers, portable boilers, hot water systems, domestic gas fired water heaters, heat exchangers and auxiliary equipment for all DOHMH facilities located throughout the five (5) boroughs of New York City in accordance with the following terms and conditions and specifications:

1. The Contractor shall repair and maintain boiler, hot water, and related equipment at DOHMH locations throughout New York City. The Contractor shall provide all labor and materials that are necessary and required to perform repair and maintenance service to steam hot water boilers, domestic gas fired water heaters, heat exchangers and auxiliary equipment. All work will be initiated and defined by DOHMH by the issuance of Work Orders whenever is required by the Department from time to time and shall be performed at a reasonable cost, which if subcontracted shall not exceed the Contractor’s cost plus applicable markup, if any, as documented together with the invoice therefor.

2. The Contractor shall perform Work utilizing its own staff except for the following Work items which Contractor is permitted to subcontract: repairs to boiler safety and relief valves; electrical work; work on proprietary systems including, but not limited to, burner management systems, controllers and/or appurtenances requiring removal in order to facilitate repairs to the boiler proper; welding, if any is specified; and certain Extra Work for which the Contractor does not possess the requisite skills and experience. The Contractor shall use sufficient numbers of workers who are thoroughly trained in and familiar with the specified requirements, methods and products, and who are duly licensed as may be required by local, state, federal and any other authorities having jurisdiction.

3. All of the following steps shall be performed by Contractor while doing any re-tubing Work:
   a. Open both front and rear doors of each of the boiler;
   b. Remove all of the fire tubes/water tubes to be replaced under the re-tubing job from the boiler;
   c. Furnish and install all replacement fire tubes/water tubes into the boiler in the manner recommended by the manufacturer (the list of manufacturers includes, but is not limited to, HB Smith, Smith Boilers, Camus Boilers, AO Smith Hot Water Tanks, Powerflame Burners, Water Tanks, Rheem Hot Water Tanks and Turbopower Hot Water Tanks;
   d. Hydro-test each boiler at 1.5 times MAWP for the boiler, but not to exceed the manufacturer’s recommended maximum pressure for hydro testing the boiler and repair all leaks in compliance with industry standards and manufacturer recommendations;
   e. If there were any leaks in step “d” above, repeat steps “c” and “d” above until
the hydro-test is passed with no leakage; and

f. Close the boiler doors using new front and rear door gaskets.

4. The Contractor shall perform all Work in accordance with the best modern practice, utilizing only current up-to-date methods and, unless otherwise specified in writing by DOHMH, new and unused Materials of first-grade quality and workmanship, and design of the highest quality, to the satisfaction of the Commissioner. All new materials installed under this Contract shall meet the manufacturer’s specifications.

5. The Contractor shall complete all Work in a good, substantial and workmanlike manner, as approved by DOHMH in its sole discretion, and shall furnish, deliver and supply all labor, Materials, supplies, tools and equipment, services, insurance and incidentals including, but not limited to, ladders, personal protective equipment, adequate respiratory protection, Service Tickets, and DOHMH Contractor’s Time Sheet required for the proper performance and completion of the Work, and all items not mentioned, but necessary, to complete the Work.

6. The Contractor shall comply with manufacturers’ specifications and best commercial practices in application of all Materials and performance of all Work. All Work shall be subject to approval by DOHMH, in its sole discretion.

7. If any detail of the Work that is necessary for satisfactory completion of the Work is not fully set forth in this solicitation, it shall be deemed to be included and shall be performed in a manner conforming to the best modern practices, product specifications and recommendations for Work of this character.

8. The use of Materials or equipment inferior in quality to that specified in the Contract package, and any directions received from DOHMH during the course of the Contract, is not permitted under any circumstance.

9. The Contractor shall perform all Work in compliance with all applicable federal, State and local Laws, rules and regulations including, but not limited to, all modifications, revisions and additions thereto, at no additional cost to DOHMH, and irrespective of whether applicable Laws, rules and regulations and the modifications, revisions and additions thereto are specifically referenced in the Contract package. This shall include, without limitation, compliance with the following:

   a. The Occupational Safety and Health Administration (“OSHA”)’s revised Hazard Communication Standard and all other OSHA requirements; and

   b. NYC Environmentally Preferable Purchasing: Minimum Standards for Construction Projects


   c. Local Law No.119 of 2005 – (effective January 2007) energy efficient products shall be EPA Energy Star certified /High Efficiency
d. NYC Mechanical Code


e. The Contractor shall contact the NYC DOB Boiler Division for questions related to Boiler maintenance, repair and/or replacement licenses, permits and regulations.

www.nyc.gov/buildings

BoilersInfo@buildings.nyc.gov

f. NYC Electrical Code

g. National Electrical Code

10. Contractor shall also perform all Work in compliance with the requirements of the following:

a. American National Standards Institute

b. Institute of Electrical and Electronic Engineer’s Standards

c. National Electrical Manufacturer’s Association Standards

d. American Society of Mechanical Engineer’s Standards

11. Wherever practicable, electrical components shall bear labels indicating compliance with Underwriter Laboratories (UL).

12. The Contractor shall not commence Work until duly notified in writing by DOHMH.

13. The scope and magnitude of the Work required in a Work Order shall vary in order to meet the City’s needs, as determined by DOHMH, in its sole discretion. The Contractor shall attend an individual kick-off meeting for each project assigned under a given Work Order, and Project Meetings for each project, as determined by DOHMH in its sole discretion. The cost of these meetings shall be deemed to be included in the bid price.

14. The Contractor shall, upon DOHMH’s request in its sole discretion, provide to DOHMH a written proposal including the estimated cost of Work under a Work Order (or portion thereof). The costs associated with preparation of a proposal shall be deemed included in the bid price.

15. The Contractor shall acquire, maintain and submit all permits, licenses, accreditations and waivers, provide all notices and pay all fees required in connection with the Work under the Contract; submit such to DOHMH prior to commencement of any Work; and obtain any and all
regulatory agency approvals necessary and required to complete the Work. All costs associated with the aforementioned shall be deemed to be included in the Percentage Mark-Up.

16. The Contractor shall submit all necessary affidavits of completion, stamped by a professional engineer or registered architect, certifying compliance with the NYC Building Code. The Contractor shall provide to DOHMH copies of all such filings and proofs of compliance upon completion of Work assigned under a Work Order and upon acceptance of the Work by the NYC Department of Buildings (“DOB”).

17. All required utilities will be provided by DOHMH for the Contractor’s use at the work site(s).

18. All references to “drawings” and “plans” shall include, but not be limited to, any and all drawings, plans, sketches, addenda and Request for Information (“RFI”) clarification drawings given by DOHMH to the Contractor at a project’s inception or any time thereafter.

19. All submittals, if required by DOHMH, shall be deemed subject to the Shop Drawings procedures indicated in the General Conditions.

20. The Contractor shall perform all Work utilizing its own staff except for the following Work items which Contractor is permitted to subcontract: all repairs to boiler safety and relief valves, electrical work, work on proprietary systems including but not limited to burner management systems, controllers and/or appurtenances requiring removal in order to facilitate repairs to the boiler proper.

21. The Contractor shall provide concurrent services at multiple service locations, as specified in Work Orders.

22. The Contractor must obtain all required permits for work performed that requires permits, and perform work in compliance with such permits.

23. The Contractor, or its subcontractor, as applicable, shall, at the time of the performance of the Work, possess all valid Certificates and Licenses required to complete the Work and as required for compliance with all applicable Federal, State and local Laws, rules and regulations, and all modifications, revisions and additions. DOHMH reserves the right at its sole discretion to use its own NYC DOB Licensed Master Plumbers for any repairs needed for gas lines, and the Contractor shall coordinate its work with such DOHMH Licensed Master Plumbers’ work.

B. ADEQUATE WORKERS

The Contractor shall use sufficient numbers of workers who are thoroughly trained in and familiar with the specified requirements, methods and products, and who are duly licensed as may be required by local, state, federal and any other authorities having jurisdiction, all as necessary or required to timely complete the Work.

C. SPECIFICATIONS

This is a contract for services to repair and maintain boiler, hot water, and related equipment at
DOHMH locations throughout New York City. The Contractor shall provide all labor and materials that are necessary and required to perform repair and maintenance service to steam hot water boilers, domestic gas fired water heaters, heat exchangers and auxiliary equipment. All work will be initiated and defined by DOHMH. Whenever required by the Department from time to time and at a reasonable cost, which if subcontracted shall not exceed the Contractor’s cost plus applicable markup, if any, as documented together with the invoice therefor.

1. Preventive Maintenance, Service and Repairs

a. Upon notification of award by the Department, the Contractor shall perform an initial inspection of all equipment listed in Paragraph 4 “PARTS FOR ROUTINE MAINTENANCE” of this sub-section for all DOHMH sites. DOHMH sites are listed in Section B (List of Locations). The contractor shall report in writing to the Supervisor of Building Maintenance (or designee) any conditions such inspection reveals to be in need of repair or replacement. The Contractor shall then submit a written proposal to the Supervisor of Building Maintenance (or designee), PHL Plant Operations, 455 First Ave., New York, NY 11106 outlining the proposed corrections and associated costs necessary to remedy the observed condition(s). No repairs shall be conducted without the prior approval of the Department. Any emergency (non-monthly-maintenance) repair and/or replacement shall be billed to the Department according to Item 3 and Item 4 of the bid sheet.

b. On a schedule agreed to by DOHMH, the Contractor shall perform monthly (once a month) inspections and services for the proper functioning of all boilers, water heaters, heat exchangers and auxiliary equipment, which shall include but not be limited to the following:

i. Dismantle entire gas burner assembly, clean and check all components for wear and reassemble per manufacturer’s specifications upon completion. The Contractor shall, upon the prior approval and direction of the Supervisor of Building Maintenance (or designee), replace any worn parts, when necessary.

ii. Dismantle ignition assembly. Clean and replace ignition electrode and re-set all components to manufacturer’s specifications and reassemble upon completion. The Contractor shall, upon the prior approval and direction of the Supervisor of Building Maintenance (or designee), replace any worn parts, when necessary.

iii. Check and clean all motor electrical contacts, panels and control wiring and reassemble upon completion. The Contractor shall, upon the prior approval and direction of the Supervisor of Building Maintenance, replace any worn parts, when necessary, as per the manufacturer’s recommendations. All replaced parts shall be turned over to DOHMH, after replacement.

iv. Check and tighten all electrical connections.

v. Lubricate all motor bearings and check for wear, as per manufacturer’s specifications.

vi. Adjust all drive belts and check for excessive wear and reassemble upon completion, advising Supervisor of Building maintenance and make log entry with respect to the condition thereof.
vii. Service all compressors. Drain crank case oil and replace with fresh oil. Use proper grade compressor oil as per manufacturer’s specifications.

viii. De-grease and paint burners and components. Upon completion, re-grease all necessary parts.

ix. Check and replace filters and reassemble upon completion. The Contractor shall, upon the prior approval and direction of the Supervisor of Building Maintenance, replace any worn parts, when necessary.

x. Check all boiler controls, automatic water feeds, low water cut-offs, etc.

xi. Check and calibrate weather control and smoke alarm.

xii. Check and adjust all pumps, compressors, pre-heaters, aqua stats and fresh air fans.

xiii. Check and adjust modular control unit linkages, check high and low flame firing rates and modulation sequence for proper combustion during sequencing.

xiv. Check and replace defective gauges and other minor parts.

xv. Replace fiery tubes, firetrap cell or entire flame scanner, if required.

xvi. Set up and adjust pilot for best possible flame ignition signal.

xvii. Check and adjust main burner flame for best fuel air/ratio.

xviii. Check programmer contacts and safety timing.

xix. Chemically clean waterside of boiler as required.

xx. Test and adjust boiler burner for proper combustion (excess air, CO2 & O2 levels) as per Department of Environmental Protection (DEP) regulations. Written test results at various firing rates for best possible efficiency shall be recorded. The exhaust gases, O2, CO2 and the temperature over the entire firing range shall be recorded, together with the previous readings, for comparison. Boiler room temperature readings shall be included as well.

xxi. Inspect fire box for refractory repairs and reassemble upon completion. The Contractor shall, upon the prior approval and direction of the Supervisor of Building Maintenance (or designee), replace any worn parts, when necessary. Reseal all doors and provide new gaskets or roping, upon the prior approval and direction of the Supervisor of Building Maintenance (or designee).

xxii. Check combustion air inlets to boiler room for adequate air supply.

xxiii. A maintenance log book with the records of repairs, service and maintenance shall be
retained for the duration of the contract. Records must include the date of maintenance, the description of maintenance, person performing the maintenance, parts replaced, repaired or cleaned. All entries in the Log Book must be made in pen. A new Log Book must be started at the beginning of each year. A copy of maintenance procedures recommended by the manufacturer must be kept together with the Log Book. Maintenance Log Book must be maintained at each site/location. For all locations, the Contractor must coordinate all record keeping and entries with the Supervisor of Building Maintenance (or designee).

xxiv. Lay-up boilers wet, with necessary chemicals, not intended for summer use. (Fill with water, add chemicals and shut down.) For this purpose, the Contractor will use only certified personnel, and utilize only non-staining and non-toxic chemicals and additives. On a monthly basis, as directed by the Agency Project Manager, the contractor may be required to:

- Apply required treatment compounds to prevent lime and algae formation in lines or on water handling equipment.
- Drain and flush water handling equipment
- Clean water sumps, pumps, and strainers, and cooling tower spray nozzles.
- On alternate months, analyze boiler water to determine the proper and amount of additives, and introduce those additives into the boiler water.

xxv. Clean damper and chimney flue for any soot or debris that may interfere with exhaust

xxvi. Provide steamfitting services to replace, repair, or reroute pipes and appurtenances.

2. Once each year, for the duration of this Agreement, and in the course of a monthly maintenance during the non-heating season (April 1 - October 1), the Contractor shall properly and fully complete the following services on all boilers, water heaters and auxiliary equipment located in DOHMH facilities:

a. Wire brush all firesides of boiler including all sections, tubes, and passes and clean breeching connections from boiler to base of stack, including the base of the stack. Replace all gaskets for hand-hold plates, clean out doors, etc., as needed.

b. Perform annual inspections as required by the N.Y.C. Department of Buildings (DOB). Inspection reports must be filled within forty-five (45) days following the inspection date. The contractor is responsible for providing new or renew existing boiler Operating Certification as required by the Department of Environmental Protection (DEP) to avoid future violations, (see https://www.nycleanheat.org/content/permitting-process). Contractor shall be responsible to rectify all existing and new DOB boiler and DEP violations. If DOHMH determines that the violation was the result of Contractor’s work that did not conform to Building Code or other applicable requirements, the Contractor must correct such violation and prepare all paperwork for removal thereof and provide same to DOHMH so it can be removed of record, and such corrective actions shall be performed at the sole expense of the Contractor.

c. The Contractor shall obtain/renew Certificates of Inspection after completing his work and
submit them to the Supervisor of Building Maintenance (or designee). Written proposals for repair must be submitted to PHL Plant Operations (see A. 1 above). The Contractor shall bear all costs necessary for satisfactorily obtaining said Certificate and take temperature readings of exhaust gases before and after the annual inspections.

d. For the removal, disconnection or non-existing boiler, the contractor is responsible for completing the O49-Self Certification form, which must be filed within thirty (30) days following boiler disconnection or removal.

[NO FURTHER TEXT ON THIS PAGE]
3.  a. All routine maintenance services pertain to, but are not limited to, boiler, water heater and auxiliary equipment parts listed below. For replacement of and reimbursement for any parts not listed below, the vendor shall refer to the instructions for repair and replacement identified above in Section II, A.1, Preventive Maintenance, Service and Repair.

<table>
<thead>
<tr>
<th>PARTS FOR ROUTINE MAINTENANCE (Including but not limited to)</th>
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<tbody>
<tr>
<td>1. Gas Booster Pumps</td>
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<td>2. Smoke alarm (excludes total replacement of system)</td>
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<td>3. Metering device</td>
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<td>4. Pressure controls</td>
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<td>5. Air flow switches</td>
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<td>6. Draft controls</td>
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<td>7. Flame safeguard control</td>
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<td>8. Ignition gas pressure regulator</td>
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<tr>
<td>9. Magnetic motor starters</td>
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<tr>
<td>10. Air compressors</td>
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<tr>
<td>11. Ignition assembly</td>
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<tr>
<td>12. Nozzle assembly</td>
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<tr>
<td>13. Lead lag control thermostats</td>
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<tr>
<td>14. Flume safeguard control</td>
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</tbody>
</table>

b. All replacement parts shall be new, fit for the stated purposes, and shall be fully warranted by manufacturer at catalog costs. In the event that a new part is not available, the Contractor shall notify the Supervisor of Building Maintenance (or designee) of such fact, at which time the Department may authorize the use of a used or remanufactured part. No used or remanufactured part parts may be utilized without the prior approval of the Supervisor of Building Maintenance (or designee).

c. Whenever equipment, parts, supplies or like items for services are sought by the Department, indicated in the specifications by a trademark or trade name, or by the name of any particular patent, manufacturer or dealer, such description shall mean the items indicated or equal to such items in all essential respects as shall be determined by the Supervisor of Building Maintenance (or designee), except when items are purchased according to an Acceptable Brands List furnished to the Contractor or otherwise approved by the Supervisor of Building Maintenance (or designee) or are indicated as brand specific only, in which case no equal will be accepted.

d. The parts for routine maintenance listed above shall be furnished and installed by the Contractor as part of maintenance without additional cost to the Department. The cost thereof is deemed to be included in the amounts bid for maintenance.
D. LIST OF LOCATIONS CONTAINING BOILERS & DOMESTIC HOT WATER HEATERS

The Department of Health and Mental Hygiene reserves the right to increase or decrease the number of sites covered under this agreement. Rates paid for additions shall be comparable to bid rates for sites with similar equipment. DOHMH shall not pay for any inspections at locations that are removed from the site list by DOHMH.

<table>
<thead>
<tr>
<th>FACILITY NAME</th>
<th>FACILITY ADDRESS</th>
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<tbody>
<tr>
<td><strong>MANHATTAN LOCATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>1. East Harlem District Health Center</td>
<td>158 East 115th Street New York, NY 10029</td>
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<tr>
<td>2. Central Harlem District Health Center</td>
<td>2238 Fifth Avenue New York, NY 10035</td>
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<tr>
<td>3. Chelsea District Health Center</td>
<td>303 9th Avenue New York, NY 10001</td>
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<tr>
<td>4. Riverside District Health Center</td>
<td>160 West 100th Street New York, NY 10027</td>
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<tr>
<td>5. Washington Heights District Health Center</td>
<td>600 West 168th Street New York, NY 10032</td>
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<tr>
<td>6. Public Health Lab</td>
<td>455 First Avenue New York, NY 10016</td>
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<tr>
<td>7. Manhattan Animal Care &amp; Control</td>
<td>326 East 110th Street New York, NY 10029</td>
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<tr>
<td>8. Manhattanville District Health Center</td>
<td>21 Old Broadway New York, NY 10309</td>
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<tr>
<td><strong>BROOKLYN LOCATIONS</strong></td>
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<tr>
<td>9. Bedford District Health Center</td>
<td>485 Throop Avenue Brooklyn NY 11221</td>
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<tr>
<td>10. Brownsville District Health Center</td>
<td>259 Bristol Street Brooklyn NY 11212</td>
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<tr>
<td>11. Bushwick District Health Center</td>
<td>335 Central Avenue Brooklyn NY 11221</td>
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<tr>
<td>12. Crown Heights District Health Center</td>
<td>1218 Prospect Place Brooklyn NY 11213</td>
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<tr>
<td>13. Fort Greene District Health Center</td>
<td>295 Flatbush Avenue Extension Brooklyn NY 11201</td>
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<tr>
<td>14. Homecrest District Health Center</td>
<td>1601 Avenue S, Brooklyn NY 11229</td>
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<tr>
<td>15. Williamsburg District Health Center</td>
<td>151 Maujer Street Brooklyn NY 11206</td>
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<tr>
<td>16. Brooklyn Animal Care &amp; Control</td>
<td>2336 Linden Blvd Brooklyn, NY 11208</td>
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<tr>
<td>17. Pest Control</td>
<td>130 Nostrand Ave., Brooklyn, NY 11206</td>
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<tr>
<td><strong>QUEENS LOCATIONS</strong></td>
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<tr>
<td>18. Astoria District Health Center</td>
<td>12-26 31st Avenue LIC, NY 11106</td>
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<tr>
<td>19. Corona District Health Center</td>
<td>34-33-Junction Blvd Jackson Heights, NY 11372</td>
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<tr>
<td>20. Jamaica District Health Center (Main)</td>
<td>90-37 Parsons Blvd Jamaica, NY 11432</td>
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<tr>
<td>20. Jamaica District Health Center (Annex)</td>
<td>90-27 Parsons Blvd Jamaica NY 11432</td>
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<tr>
<td><strong>BRONX LOCATIONS</strong></td>
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<tr>
<td>21. Morrisania District Health Center</td>
<td>1309 Fulton Avenue Bronx, NY 10456</td>
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<td>22. Tremont District Health Center</td>
<td>1826 Arthur Avenue Bronx, NY 10457</td>
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<tr>
<td>23. Westchester/Pelham District Health Center</td>
<td>2527 Glebe Avenue Bronx NY 10461</td>
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<tr>
<td><strong>STATEN ISLAND LOCATIONS</strong></td>
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<tr>
<td>24. Richmond District Health Center</td>
<td>51 Stuyvesant Place Staten Island, NY 10301</td>
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<tr>
<td>25. Staten Island Animal Care &amp; Control</td>
<td>3139 Veterans Road West Staten Island, NY 10309</td>
</tr>
</tbody>
</table>

E.  EMERGENCY SERVICE

The Contractor shall provide 24-hour services, including emergency services, 365 days per year. **Contractor shall respond to emergency calls by appearing at the site of the emergency, within 3 hours of telephone notification by the Department.** For non-emergency calls, the Contractor must be at site within 24 hours of telephone request, and commence assistance and repair. The Contractor must make any boiler undergoing emergency and/or non-emergency repair be fully operational by 9:00 am of the day after the repair work is
commenced, except where the Department has determined that the necessary repair cannot be completed within that timeframe. Contractor will be reimbursed for labor and parts according to Item 3 and Item 4 of the bid sheet.

The Contractor shall provide portable boilers, hot water systems, and HVAC systems, as required from time to time by the Department. Excepting only the labor and parts for routine maintenance which are included in the maintenance prices bid, this is a time and materials contract based on prevailing wages and Contractor’s bid markup rate applicable to emergency parts and materials, as listed on the bid sheet.

At the discretion of DOHMH, and at any time during this contract, the contractor may be asked to furnish temporary Boiler, Hot water, and HVAC systems to facilities as a result of a planned outage or unforeseen emergency. Contractor will provide:

- Units appropriately sized to the size and scope of the facility, and acceptable to all relevant codes.
- Connections to utilities (e.g. Gas, Water, and electrical)
- Permits
- Safety devices
- Ongoing maintenance and service
- Shutdown, removal, and removal of rental units.

F. LIQUIDATED DAMAGES

1. Failure by the Contractor to respond to all calls, emergency and non-emergency, within the times required above, may, if the Department determines in its sole discretion that such failure was due to delay on the part of the Contractor for reasons within the Contractor’s control, result in the assessment of liquidated damages at $100.00 for each hour or hourly part prior to Contractor’s response that Contractor fails to respond.

2. If the Department, in its sole determination, determines that a delay in completion of repairs hereunder by the Contractor by 9:00 A.M. of the day following the Department’s request for emergency work, was caused by the Contractor’s failure to diligently prosecute the work, or the Contractor fails to complete the Work within the time fixed for such completion in the relevant Work Order, as it may have been extended, the Department may assess liquidated damages at $1,000 per day, or part thereof, for failure by Contractor to insure that boilers are fully operational by 9:00 A.M. of the day after repair work commenced.

3. In view of the difficulty of accurately ascertaining the loss or damages, which the Department will suffer by reason of delay in completion of the work hereunder, the aforesaid sums are hereby fixed and agreed upon as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

4. Upon the Contractor’s receipt of notice of the imposition of liquidated damages pursuant to this Article, the Contractor must, upon demand, pay to the City the sum fixed in this section by check made payable to “NYC Department of Health and Mental Hygiene”, or such amount may be, at the option of the Department, offset by the Department against monies otherwise due to the Contractor.
5. Liquidated Damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City’s right to indemnification under this contract or the Contractor’s obligation to indemnify the City, or to any other remedy provided for by contract or by law.

G. WORK ORDER ADMINISTRATION REQUIREMENTS

1. After the Contract has been registered by the Office of the Comptroller and prior to commencement of work, the Contractor shall establish and maintain an administrative office staffed with at least one (1) employee who must be able to answer calls and receive messages, with a twenty four hour/seven days a week, holidays included, emergency dispatching service outside of normal business hours of 7:00 am to 5:00 pm weekdays.

2. In addition to the qualifications stated in Section III below, the Contractor shall have the organization, facilities, experience, and financial capability required to properly, promptly, efficiently, and successfully cope with any emergency or contingency that might arise in the course of services to be provided during the term of this Contract.

H. SAFETY

1. The Contractor shall ensure that its employees observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds, which might be done or caused by work performed under this Contract.

2. The Contractor shall immediately report any condition that may endanger life, health, or property while performing the services specified herein.

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

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

5. The Contractor shall comply with all applicable laws, rules and regulations, including, without limitation, OSHA and other relevant regulations.
I. GENERAL CONDITIONS

1. The Contractor shall supply, maintain, and install all labor, material, transportation, equipment, apparatus, tools and ladders, necessary for the proper completion of the work and shall remove all equipment, refuse, and other materials from the work site after the work is completed, at no additional cost to the Department.

2. The Contractor shall begin work within ten (10) days after the Contract is registered with the Comptroller of the City of New York and notification is given to the Contractor by the Department to begin work. No work is to be performed prior to such official written notification by the DOHMH and no work shall commence without the approval of the DOHMH Supervisor of Building Maintenance (or designee).

3. Twenty-four hours before starting work and after receiving the approval of the Supervisor of Building Maintenance (or designee), the Contractor must contact the Health Services Managers of the locations to be serviced to arrange a work schedule and make site arrangements regarding delivery and storage of materials and disposal of debris. This is essential as some DOHMH locations are closed on certain days.

4. In gaining access to the equipment, the Contractor shall move and replace any furniture and material, to its original position. At no additional cost to the Department, the Contractor shall be responsible for the removal of all debris, refuse and materials, and shall broom clean the area where work is performed as necessary. After material delivery, sidewalk and interior areas (if required) shall be broom cleaned. After the completion of work, the entire area shall be broom cleaned.

5. The Contractor shall perform all work in such a manner as not to interfere with the operation or activities of the location. All shut-downs or interruptions of service shall be called for in advance and arranged with the Supervisor of Building Maintenance (or designee) and shall take the minimum period of time to complete.

6. The Contractor shall insure that the requirements set forth in Appendix A: General Conditions Schedule of Insurance and Bond Requirements are met as a material condition to the Agreement.

7. In case any work or materials that shall be required to be done or furnished, in or for the more perfect performance of the work herein contemplated, which are not specifically mentioned, specified or indicated in the specifications contained hereunder in Section A: Scope of Work and elsewhere in the Agreement, but which in the opinion of the Department is necessary and essential for the proper performance of the Contractor, then the same shall be included within the requirements of this Agreement and its specifications. The Contractor hereby specifically promises, covenants and agrees to do and perform any and all such work and to supply any and all such material, as if the same is herein specifically enumerated.

8. The Contractor shall comply with all relevant and necessary Federal, State and Local Statutes, Rules and Regulations, and obtain and possess any approvals or licenses necessary and required for the proper performance of its obligations.
9. At the discretion of DOHMH and as Extra Work ordered hereunder, the Contractor shall furnish temporary boiler, hot water and/or HVAC systems to facilities, if a Work Order for such temporary services is issued by DOHMH, all as deemed required or necessary by DOHMH pursuant to an applicable Work Order. Depending on the capabilities of the Contractor, such temporary services may be approved for subcontracting, subject to the approval of the subcontract by DOHMH.

J. SUPERVISION BY CONTRACTOR

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

K. SUFFICIENCY OF PERSONNEL

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

L. INVOICING AND PAYMENT

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

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

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

The contractor shall submit a Payroll Report with each invoice.

The Contractor must submit a Payroll Report with each Invoice submitted hereunder that covers labor costs.
2. The wages paid for a legal day’s work to any employee, for work performed pursuant to this contract, shall not be less than the applicable “PREVAILING RATE OF WAGE” as defined in Sections 230 and 220 of the New York State Labor Law, and as promulgated by the Comptroller of the City of New York in the attached excerpt from a Schedule of Wage Rates and in such updated Schedules as may be promulgated by the Comptroller during the course of the performance of this contract. Prevailing wage rates and supplemental benefits shall be paid for all labor categories under this Contract for which there are title classifications covered in the applicable Prevailing Rate Schedules promulgated by the Comptroller of the City of New York. The prevailing wage rates and supplemental benefits to be paid are those in effect as the work is being performed.

The Contractor shall provide the City with time sheets, with a bill of lading and with a notarized copy of the New York City Comptroller’s payroll report, supplying the name, address and social security number of each employee. These records are subject to a monthly audit. Employees canceled checks will be part of the audit.

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

4. Request for payment shall be submitted electronically to invoiceintake@health.nyc.gov.

   Please note that the DOHMH may, at its option, withhold for the purposes of set-off any monies otherwise due to the Contractor under this Agreement, or may cause the Contractor to repay to DOHMH up to the amount of any disallowances or questioned billing resulting from any audits of the Contractor or the amount of any overpayment to the Contractor with regard to this Agreement or any other Agreement between the parties hereto, including any Agreement for term commencing prior to the commencement date of this Agreement.

M. PERMITS, NOTIFICATIONS AND INSURANCE REQUIREMENTS

1. The Contractor shall test and maintain all covered equipment in safe operating condition as required by applicable statutes and regulations. All services, including inspections, testing and repair work, shall be performed in compliance with Local, State Building and Electrical Codes.
The Contractor shall give all notices, obtain all permits necessary for the Work, pay all costs and fees for applications, permits, tests, and inspections, and obtain all certificates of tests and inspections and approvals for the Work and promptly deliver the same to the Supervisor or Building Maintenance. Maintenance and repair services of the steam hot water boilers, domestic gas fired water heaters, heat exchangers and auxiliary equipment as specified, including all covered equipment, shall, at a minimum, be performed to the extent required by the equipment manufacturers’ maintenance requirements and as directed by DOHMH.

2. The Contractor shall promptly pay all incidental charges, and meet all the incidental expenses necessary for the most rapid and satisfactory progress of the work under this contract. Nothing under these specifications is to be construed as not to conform to codes and regulations. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, the contractor shall bear all costs arising from them.

3. Upon receipt of notification to proceed with the work as specified, from the Supervisor of Building Maintenance (or designee), the Contractor shall expedite the work with minimal interruption to daily operation of the facility and the execution of this contract. The Contractor shall consider other notifications as specified, and shall be governed by decisions of the Supervisor of Building Maintenance, or designee, with respect to the scheduling of the work.

4. Employer’s Liability and other insurance as required in the General Conditions, Appendix A to this document.

5. Only the Department of Health and Mental Hygiene (DOHMH) shall give direction to the Contractor to provide services and attend meetings. The Contractor shall provide estimates as necessary to enable a work order to issue from DOHMH.

**N. PROTECTION OF WORK AND OF PERSONS AND PROPERTY**

1. During the performance of the work under this contract, the Contractor shall take all reasonable precautions to protect the persons and property of the City and of others from damage, loss or injury resulting from the Contractor’s operations under this Contract. The Contractor shall be liable for loss, damage or destruction resulting from his operation or negligence. The Contractor shall report any condition, arising out of any act or omission of the Contractor, subcontractors, its agents or its employees, which may endanger life or property. At the Contractors own expense, it shall immediately repair any and all damages to the building structure, contents and property, including broken padlocks and glass, caused by the Contractor, its agents or employees during the performance of the prescribed work.

2. The Contractor shall immediately notify the City of any property damage or personal injury, or any accidents in the course of the services. Within twenty-four (24) hours after notice, of any such loss or damage to property or injury to workers, the Contractor shall provide a full and complete report thereof in writing to the DOHMH.

3. Such damages to property shall be repaired and/or property shall be replaced by approved methods so as to restore the damaged area(s) to their original condition at the expense of the Contractor.
O. GUARANTEE

The Contractor shall guarantee all work and materials of this contract for a period of one (1) year. The Contractor must promptly repair, replace or restore any work in which defective materials or workmanship may appear; or any equipment to which damage has occurred because of such defects. The Contractor’s guarantee shall survive this contract by a maximum of 12 months. Additionally, the contractor is responsible for guaranteeing their work for a maximum of one year (12 months) after the contract end date.

P SUBCONTRACTING COMPLIANCE NOTICE

The selected vendor will be required to utilize the City’s web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment I, the subcontractor compliance notice as it relates to competitive solicitations.

Q. SUB-CONTRACTING

If, at any time during the term of the Contract resulting from this solicitation, Contractor requires the services of a subcontractor to complete any of the permitted subcontract work stated in Section II (A)(2) above, 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 any subcontract work may begin.

Contractor must 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 the City’s web-based system during the contract term.

Contractors must read and comply with Appendix I, the Subcontractor Compliance Notice, as it relates to competitive solicitations. Please also see Article 17 of the Agreement and General Conditions, Appendix A.

R. Minority-Owned and Women-Owned Business Enterprise

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B (Part of Appendix J) entitled the "Subcontractor Utilization Plan", and are detailed in a separate Notice to Prospective Contractors included with this bid package as Appendix J. If such requirements are included with this Contract, the City strongly advises Contractors to read those provisions carefully. 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.
S. **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.

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

T. **WORK AND ITS PERFORMANCE**

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

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

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

U. **NOTIFICATION TO BEGIN WORK**

1. The Contractor shall commence services under this Contract upon its receipt of a written Notice to Proceed from DOHMH.
2. The Contractor shall notify the DOHMH Supervisor of Building Maintenance (or designee) as to when and how he will proceed. The contractor shall make arrangements with the DOHMH Supervisor of Building Maintenance (or designee) regarding the scheduling of any repair or replacement work.

3. All Contractor personnel shall carry color photo identification cards bearing the name of the employee and the name and contact information for the company for which he/she works. These identification cards may not contain any official City, State or Federal logo nor imply that the bearer of the card is a government worker.

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

V. IRREVOCABILITY OF BID

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

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

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

W. BID ITEMS AND METHOD OF BIDDING

The Bid Sheet contained herein sets forth the Bid Items, Method, and Instructions, which are as stated therein.

X. Compliance with HireNYC and Reporting Requirements

The Hiring and Employment Rider shall apply to contracts valued at $1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the Hire NYC process and obligations, including reporting requirements throughout the life of the contract. The Hire NYC process requires contractors to enroll with the Hire NYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level
job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC. Please see Attachment K for the Rider.

Y. **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 80 hours of work in New York City during any consecutive 12-month period. Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL. The Paid Sick Leave Law Rider describes the requirements of the PSLL as well as 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 to the contract(s). Please see Attachment L for the Rider.

[NO FURTHER TEXT ON THIS PAGE]
SECTION III - BID PROCEDURES AND REQUIREMENTS

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

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

3. Pre-Bid Conference
   A pre-bid conference will be held on the date and at the time and place specified above in the Timetable contained in Section I to these Bid Documents.

4. Sites Visit
   A Sites Visit will be held as specified above in the Timetable contained in Section I to these Bid Documents.

5. 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 confirm receipt of all addenda. The bidder must verify with the designated Agency contact person prior to submitting a bid that all addenda have been received. Bidders shall acknowledge the number of addenda received as part of their proposals (See Section IV).
6. **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 General Conditions, Appendix A) must be submitted with the Bid, but in a separate sealed envelope, also identified as above.

   c. The Bid must be typewritten or written legibly in ink. The Bid must be signed in ink. Erasures or alterations must be initialed by the signer in ink.

   d. A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

   e. Telegraphic or mailgram bids shall not be accepted.

   f. Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the contract or contract documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this contract.

   g. The prices set forth in the bid cannot be revoked and shall be effective until the award of the contract, unless the bid is withdrawn, as provided for in Section 8, below.

7. **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.
8. **Modification or Withdrawal of Bids, Late Bids**

   a. Bids may be modified or withdrawn by written notice received in the office designated in Section I, paragraph 4, before the time and date set for the bid opening.

   b. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

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

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

   e. If within sixty (60) days after the Registration of the contract by the Comptroller, the Commissioner fails to fix the date for commencement of work by written notice to the bidder, the bidder, at their option, may ask to be relieved of their obligation to perform the work called for by written notice to the Commissioner. If such notice is given, the bidder waives all claims in connection with this contract.

9. **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 by Section 3-02(j) of the Procurement Policy Board Rules. In accord with such Section 3-02, to withdraw and/or modify its bid, the Bidder must give written notice to the Agency Contact listed on the first page of this IFB, and such written notice must be received on or before the time and date set for bid opening.

   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.

   c. Mistakes Discovered After Vendor Selection. Mistakes shall not be corrected after vendor selection except where the Agency Chief Contracting Officer, subject to the approval of City Chief Procurement Officer, makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

10. **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 the subject bid, a contract shall be awarded to the bidder offering the lowest responsive and responsible bid price.

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

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

d. In accordance with Section 3-02(p) of the Procurement Policy Board Rules, 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) Select a certified New York City minority-owned or woman-owned or emerging business entity bidder;

   (ii) Select a New York City bidder;

   (iii) Select a certified New York State small, minority or woman-owned business bidder;

   (iv) Select a New York State bidder;

   (v) Conduct a drawing. Tie bidders shall be invited to witness the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

e. The Agency may reject a bid if the bidder is determined to be not responsive or not responsible pursuant to the Procurement Policy Board Rules. The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award, pursuant to Sections 5-01 and 7-03 respectively, of the Procurement Policy Board Rules.

f. In accordance with Section 3-02 (u) and (v), the Agency Chief Contracting Officer may reject all bids and may elect to resolicit by bid or by other method authorized by the Procurement Policy Board rules.

g. Unit Price Contracts

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

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

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

11. Bonds and Failure to Execute Contract

IF AND ONLY IF REQUIRED in the Schedule of Bonds and Liability Insurance, as detailed in General Conditions Appendix A, then:

a. Bid Bond
   Not Required.

b. Performance and Payment Bonds
   Not Required.

c. Failure to Execute Contract

If the successful bidder fails to execute the contract and furnish any required security and insurances, within ten (10) days after notice of the award of the contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such contract shall be subsequently re-let, including the cost of such re-letting and less the amount such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.

Further, if the bidder’s failure to comply with this Section causes 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.

12. Vendor Requirements

a. Financial Qualifications
   (i) In addition to the Qualifications Questionnaire (Item 4) 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.

   (ii) 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.

   (iii) 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.

   (ii) The selected vendor shall submit the completed Vendex questionnaire (www.nyc.gov/Vendex) within 10 days of notice.

   (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 employs 50 or more people. If your company or any of its facilities performing on the contract has fewer than 50 employees, although the contract value exceeds $100,000, you need only submit a "Less Than 50 Employees Certificate". The selected vendor will be required to submit the completed Employment report or “Less Than 50 Employees Certificate”, as applicable, to the Agency within 10 days of notice.

(ii) The same requirements apply to all subcontractors.

d. Participation By Minority –Owned And Women-Owned Business Enterprises In City Procurement

If the contract resulting from this Invitation for Bids will be subject to M/WBE participation requirements under Section 6-129 of the Administrative Code of the City of New York, as indicated by the inclusion of Schedule B – M/WBE Utilization Plan (Appendix J) and the Participation Goals indicated in Part I thereof, bidders must complete the Schedule B – M/WBE Utilization Plan and submit it with their bid. Please refer to the Schedule B – M/WBE Utilization Plan and the Notice to All Prospective Contractors (Appendix J) for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms. If the bidder intends to seek a full or partial waiver of the Participation Goals on the grounds described in Section 10 of the Notice to All Prospective Contractors, including but not limited to, bidder’s intention to use its own forces to perform any or all of the required contract work would result in a failure to attain the Participation Goals, the bidder must request and obtain from the Agency a full or partial waiver of the Participation Goals (M/WBE Utilization Plan, Part III) in advance of bid submission and submit the waiver determination with the bid. Please note that if a partial waiver is obtained, the bidder is required to submit a completed Schedule B-M/WBE Utilization Plan based on the revised Participation Goals in order to be found responsive.

e. Americans with Disability Act

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

f. 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.

g. 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.
h. 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.

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

(iv) The Contractor must comply with the additional requirements pertaining to subcontractors set forth in Appendix I.

13. 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.

14. 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.

15. 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 Price Sheet
This form must be completed and signed by a principal of the bidding firm, 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. Qualifications 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 and signed by Bidder.

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

ITEM 6. Audited/Reviewed Financial Statements
Most recent audited or reviewed financial statements signed by the CPA.
ITEM 7. **Required License/Certification and Resumes**
- A valid and Current Master Plumber’s License issued by the NYC Department of Buildings (“DOB”);
- A valid and current National Board of Boiler and Pressure Vessel Inspectors Certificate of Authorization;
- Current resumes for each of the individuals who hold the above-mentioned certifications and/or who will be performing services hereunder.

ITEM 8. **References**
Bidder must provide three (3) written reference letters from different clients who can attest to the bidder’s experience and quality of services, including, without limitation, in at least two of such references, references who or which can verify the past experience in performing boiler repairs and maintenance work concurrently at not less than three (3) multiple locations in accordance with the requirements set forth above in the Minimum Experience/Qualifications section of the Timetable (Section I) of this IFB. Reference letters must be from clients for whom services were provided within the last three (3) years. DOHMH references are not acceptable for this Bid. References must not be related to the bidder by blood or marriage.

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

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

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

ITEM 11. **Insurance Certificate and Worker’s Compensation document**
See Article 22 of the Agreement for Insurance Requirements for this bid.

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

E. **Upon award of this contract, DOHMH will send the entire Bid/Agreement to the winning Bidder for execution. It will contain this entire Bid Package as part of the contract.**
THE CITY OF NEW YORK
Department of Health and Mental Hygiene
Bid Submission for:

BOILERS, HEATERS, REPAIRS AND MAINTENANCE SERVICES
PIN: 15BS008200R0X00

COVER SHEET/ CHECKLIST

Name of Bidder: _____________________________   Bidder’s Tax ID #: __________________

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

Item 1:   Bidder Representations   [  ]
Item 2:   Bid Sheet   [  ]
Item 3:   Acknowledgement of Addenda   [  ]
Item 4:   Qualifications Questionnaire   [  ]
Item 5:   Safety Documents (EMR and OSHA cards)   [  ]
Item 6:   Audited/Reviewed Financial Statements   [  ]
Item 7:   Copies of Master Plumbers License(s)   [  ]
         NBBI Certificate of Authorization   [  ]
         Resumes   [  ]
Item 8:   Reference Letters (3)   [  ]
Appendix C:   Tax Affirmation   [  ]
Appendix H:   Iran Contractor Divestment Rider   [  ]
ITEM 1 - Bidder Representations

Name of Bidding Firm: ___________________________________________________________

Does the bidding firm legally go by any other names or D/B/A? YES _____ NO _______
If Yes, indicate D/B/A/ and attach Certificate of Doing Business Under an Assumed Name (D/B/A) form __________________________________________________________________________

Principal Place of Business: _________________________________________________________

Telephone #: ____________________________ Fax #: _____________________________

E-mail address: ______________________________ EIN #: _______________________

Date of Bid Submission: ______________________________

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

A). If Bidder is Individual:

   Home Address of Bidder_______________________________________________________

B). If Bidder is Partnership:

   Name and Home Address of Partners:
   _______________________________________________________________________

C). If Bidder is Corporation:

   Organized under the laws of the State of______________________________

   Name and home address of President: _________________________________________
   _______________________________________________________________________

   Name and home address of Secretary: _________________________________________

   _______________________________________________________________________


Name and home address of Treasurer: _______________________________________

The above-named Bidder affirms and declares:

1. The several matters stated and information furnished herein is in all aspects true.

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

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

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

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

______________________________________________________________________________

______________________________________________________________________________

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

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

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

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

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

[NO FURTHER TEXT ON THIS PAGE]
ITEM 2: BID SHEET

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

The undersigned agrees, if this bid is accepted, that it will, within 10 days of receipt of notice of award, submit executed copies of insurance policies as may be required, execute the Agreement set forth in this Invitation for Bid, and will proceed, when directed to do so, with the work required hereunder in strict compliance with the terms and conditions set forth in this Bid AT THE UNIT AND OTHER PRICES SET FORTH BELOW.

NOTE #1: As specified in Section L of the Scope of Services, payment of prevailing wages is required for titles covered under this solicitation. The quantities for parts and labor 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. Although the prevailing wage and supplemental benefits rates may change in accordance with New York State Labor Law, the bid mark-up percentage shall remain firm for the duration of this agreement. Services are to be provided only at the request of DOHMH.

NOTE #2: The Labor allowance is based upon an estimated 100 hours of labor for each contract year. The “Labor Markup Rate” in Item 3 of the Bid Sheet shall include all costs for labor, statutory payroll taxes, fringe benefits, travel, trucking, tools, equipment, necessary insurances, overhead, and profit.

NOTE #3: The bid mark-up rate in Item #4 and Item #5 of the Bid Sheet shall include, but not be limited to, all costs for materials, labor, tools, equipment, traveling, trucking, necessary insurances, overhead and profit. The Percentage Markup must not be greater than 10%.

NOTE #4: Reimbursable Expenses in Item #6 of the Bid Sheet shall include permit fees, only if a waiver of fees otherwise applicable to the work, but for which the City has an exemption, is not available, and other DOHMH approved fees related to the work. The Contractor shall be entitled to recover DOHMH approved expenses at cost. Contractor must provide documentation verifying the amount and necessity of the expenses. No Markup is permitted on this category.

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

NOTE #6: DOHMH reserves the right to add or remove locations at any time during the period of this Contract, and if it adds locations, the prices to be paid shall be comparable to
equivalent work at other sites as bid hereunder.

**NOTE #7:** Overtime by the Contractors’ employees must be preapproved by DOHMH, and will be paid in accordance with Sections 220 and 230 of the New York State Labor Law. However, Contractors shall not schedule staff to work overtime hours; overtime will only be approved for unforeseen and necessary circumstances.

**NOTE #8:** If the prevailing wage and/or benefit amount promulgated by the Comptroller in accordance with Section 220 of the New York State Labor Law shall be increased for any of the classifications of employees to be utilized in the performance of the Work hereunder during the term of this contract, the hourly rates bid by the contractor shall be deemed increased by like amount and the obligations to pay such compensation and afford such benefits to the persons performing the Work, either as employees of the contractor or of any approved subcontractor, will likewise be deemed to have increased in commensurate amounts.

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

The appropriate job title(s) as defined in Labor Law Section 220, Prevailing Wage Schedule, shall be used throughout the terms of this contract. Certified payroll reports shall be provided with each partial payment request to verify that the appropriate job title(s) are being used and that the provisions of the labor Law, as to the hours of employment, rates, and supplemental benefits are being observed. The job title required user this contract includes, but is not limited to: (Boilermaker, Steamfitter I, and Steamfitter II)

**ESCALATION CLAUSE:**
After award, prices may be subject to change, either as an increase or decrease. These price increases or decreases are predicated solely upon demonstrated changes in the Prevailing Wage rates pursuant to Sections 220 and 230 of the New York State Labor Law, as applicable to the classifications of workers. Adjustments shall not be made for any materials cost associated with this agreement.
## Item 1: Monthly Service and Maintenance of Boilers and Burners

<table>
<thead>
<tr>
<th>Description</th>
<th>12 Month Contract Period</th>
<th>Monthly Service Charge (For all Boilers and Burners)</th>
<th>Extended Cost (C x 12 months)</th>
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<td>Monthly Service and Maintenance of Boilers and Burners</td>
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Subtotal Item 1 (Sum of Column D): $________ (1)

## Item 2: Monthly Service and Maintenance of Domestic Water Heaters

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### Item 3: Labor for Emergency Repairs

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Subtotal Item 3 (Sum of Column E): $______ (3)

### Item 4: Emergency Parts and Materials

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Subtotal Item 4 (Sum of Column E): $______ (4)

### Item 5: Extra Work Parts and Materials

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<td>Year 2</td>
<td>$10,000.00</td>
<td>______ %</td>
<td>$______</td>
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<td></td>
<td>Year 3</td>
<td>$10,000.00</td>
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<td>Year 4</td>
<td>$10,000.00</td>
<td>______ %</td>
<td>$______</td>
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<tr>
<td></td>
<td>Year 5</td>
<td>$10,000.00</td>
<td>______ %</td>
<td>$______</td>
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</tbody>
</table>

Subtotal Item 5 (Sum of Column E): $______ (4)
ITEM 2: BID PRICE SHEET (Page 3 of 3)

PIN: 15BS008200R0X00, DOHMH Boilers, Heaters Repairs and Maintenance Services

Bidder’s Legal Name ________________________________  Bidder’s Tax ID# __________________

<table>
<thead>
<tr>
<th>Description</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 Month Contract Period</td>
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<td>Allowance for Reimbursable Expenses (See Note #4 )</td>
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<tr>
<td>Reimbursable Expenses (See Note #4 )</td>
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<td></td>
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<tr>
<td>Year 1</td>
<td></td>
<td>$ 2,500</td>
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<tr>
<td>Year 2</td>
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</tr>
<tr>
<td>Year 5</td>
<td></td>
<td>$ 2,500</td>
</tr>
<tr>
<td>Subtotal Item 6 (Sum of Column C):</td>
<td>$12,500</td>
<td></td>
</tr>
</tbody>
</table>

Total Bid Price Calculation:

| Subtotal Item #1:                                 | $ ___________________ |
| Subtotal Item #2:                                 | $ ___________________ |
| Subtotal Item #3:                                 | $ ___________________ |
| Subtotal Item #4                                  | $ ___________________ |
| Subtotal Item #5                                  | $ ___________________ |
| Subtotal Item #6:                                 | $ 12,500             |

Total Bid Price (Sum of Subtotals above): $ ___________________

Total bid price in words:

_____________________________________________________________________________

_____________________________________________________________________________

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

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

Bidder: ________________________________________________  
(Insert Full Legal Name of Company)

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

Attest: _________________________________________________  
(Secretary of Corporate Bidder)

TO BE NOTARIZED:

(CORPORATE SEAL)  
Sworn to before me this ____day of ____________, 2016

________________________________  
(Notary Public or Commissioner of Deeds)
(TO BE NOTARIZED)

A) AFFIDAVIT WHERE BIDDER IS AN INDIVIDUAL:

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

______________________________________
(Signature of the person who signed the Bid)

Subscribed and sworn to before me this___________________day of_____________ , 20____

________________________________________
Notary Public
(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: ACKNOWLEDGMENT OF ADDENDA

Complete Part I or Part II, whichever is applicable, and sign your name in Part III:

PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS IFB:

ADDENDUM # 1, DATED______________________________ , 20__
ADDENDUM # 2, DATED______________________________ , 20__
ADDENDUM # 3, DATED______________________________ , 20__
ADDENDUM # 4, DATED______________________________ , 20__
ADDENDUM # 5, DATED______________________________ , 20__
ADDENDUM # 6, DATED______________________________ , 20__

PART II: _____ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS INVITATION FOR BIDS.

PART III:

PROPOSER (NAME)________________________________________ DATE__/__/__

PROPOSER (SIGNATURE)________________________________________________
ITEM 4: QUALIFICATIONS QUESTIONNAIRE

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

Bidding Firm Name ______________________________________________________________

Bidding Firm Federal Tax Identification No: ____________________________________________

Principal Owner(s) name: ______________________________________________________

Telephone No: __(____)_________________

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

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

Date: __________________, 20___

Address of Principal Business Office: __________________________________________________

1. Indicate the number of years’ experience the bidding firm has in the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment: ____________

2. Do you intend to use subcontractors to perform the services requested? _____YES _______NO

If so, describe the Work that you anticipate will be subcontracted (Please refer to Section II(Q) for permissible subcontract work):

___________________________________________________________________________________
___________________________________________________________________________________

3. How many individuals does the bidding firm have on staff who are duly licensed by the NYC Department of Buildings as Master Plumbers? ____________ (please list name and title on the chart below)
4. Please indicate the highest ranking person responsible for safety and their title. Provide a current resume for this individual.

_________________,    _____________
Name    Title

5. During the past three (3) years has the bidding firm completed the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment for any City or State agency? _____YES _____NO

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

__________________________________________________________________________
__________________________________________________________________________

6. During the past three (3) years has the bidding firm ever performed the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment for the U.S. Government? _____Yes _____No

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

__________________________________________________________________________
__________________________________________________________________________

7. During the past three (3) years has the bidding firm ever failed to complete a city/state/government contract? _____YES _____NO

If YES, please indicate the agency/company, Month/Year and give the reason:

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

8. During the past three (3) years, has the bidding firm ever been debarred from entering into any city/state/government contracts? _____YES _____NO
9. Is the bidding firm controlled by any other entity? _____YES _______NO
   If YES please indicate the name of the controlling entity ______________________________

10. During the past three (3) years has a principal of the bidding firm ever been affiliated or connected
    with any other entity other than the bidding firm as a member, partner, director or officer?
    _____YES _______NO
    If YES, Indicate From and To dates of affiliation or current status:_______________________
    ______________________________________________________________________________
    ______________________________________________________________________________

11. **If YES to above**, during the past three (3) years has the affiliate entity ever been declared in default
    by any City, State or Federal Agency? _____YES _______NO
    If YES, give details and dates. Attach additional pages if needed) __________________________
    ______________________________________________________________________________
    ______________________________________________________________________________

12. During the past three (3) years, has any principal of the bidding firm been called to a Grand Jury to
    testify, refused to sign a Waiver of Immunity to answer any relevant questions or have been indicted
    for any reason whatsoever? _____YES _______NO
    If YES, give details and dates. Attach additional pages if needed:_______________________
    ______________________________________________________________________________

13. Below provide three projects that the bidding firm has **completed** within the past THREE (3) years
    performing the same type of work specified in the Bid Documents, including the repair and
    maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers
    and auxiliary equipment for a commercial/industrial/public sector customer, and for which the
    bidding firm billed not less than $300,000 for each project:

    1. Project Description and Location: _________________________________________________
       ____________________________________________________________________________
       Name and Address of Owner: _________________________________________________
Phone Number of Owner: ______________________________________________
Contract Amount: $ _______________________ Date Started: ________________
Completion Date________________

2. Project Description and Location: ________________________________________
____________________________________________________________________
Name and Address of Owner: ____________________________________________
Phone Number of Owner: _______________________________________________
Contract Amount: $ _______________________ Date Started: _________________
Completion Date________________

3. Project Description and Location: ________________________________________
____________________________________________________________________
Name and Address of Owner: ____________________________________________
Phone Number of Owner: _______________________________________________
Contract Amount: $ _______________________ Date Started: _________________
Completion Date________________

4. Project Description and Location: ________________________________________
____________________________________________________________________
Name and Address of Owner: ____________________________________________
Phone Number of Owner: _______________________________________________
Contract Amount: $ _______________________ Date Started: _________________
Completion Date________________

14. Indicate the number of projects that the bidding firm currently has under contract performing the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment on projects that are similar to the Work required under this IFB? ________

15. Below provide one project that the bidding firm currently has under contract performing the same type of work specified in the IFB of which this Qualifications Questionnaire is a part, including the repair and maintenance of steam and hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment for a commercial/industrial/public sector customer:
Project Description: __________________________________________________________

Name and Address of Owner: _________________________________________________

Phone Number of Owner: ____________________________________________________

Contract Amount: $ _________________ Date Started: _________________
Contract duration: ___________ % of Contract Time elapsed as of this date: ____________
% Work completed as of this date: ___________
If Percent of elapsed time excess of work completed, give reasons therefor: ___________

15. List utility companies that your company has worked with to obtain relevant work permits, shutdowns/restorations from National Grid, Con Edison Steam Operations and other relevant agencies:

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
ITEM 5: Safety

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

2. The contractor must indicate the firm’s Experience Modification Rating (EMR) for 2015. This number must be specified on your Workers Compensation document or by requesting a letter from your broker or insurance carrier that indicates the firm’s EMR.

   Experience Modification Rating (EMR) 2015______________________.
Dated at ________________________________

This ____________________ day of __________________, 20_______

______________________________________________
(Full Legal Name of Organization)

By: __________________________________________
(Name and Title of Person Signing)

STATE OF ____________________ )
) ss:_______________________________________
) ss:_______________________________________
COUNTY OF ____________________ )

______________________________________________
(Print Name of Above Signatory)
being duly sworn deposes and says that he/she is _________________________________

of the above __________________________________________
(Full Legal Name of Bidder)

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

Sworn to before me this ____________________ day of __________________, 20_______

______________________________________________
Notary Public or Commissioner of Deeds

My commission expires _________________________________
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THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
(DOHMH) AGREEMENT

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

______________________________________________________________________________,

having offices at:

______________________________________________________________________________ (“Contractor”).

WITNESSETH:

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

CHAPTER I
THE CONTRACT AND DEFINITIONS

ARTICLE 1. THE CONTRACT

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

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

1.1.2 The Contract Drawings and Specifications;

1.1.3 The General Conditions and Special Conditions, if any;

1.1.4 The Contract and Appendices A through N inclusive;

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

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

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

ARTICLE 2.
DEFINITIONS

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

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

2.1.2 "Agency" shall mean DOHMH.

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

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

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

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

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

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

2.1.9 "Contract" or "Contract Documents" shall mean each of the various parts of the contract referred to in Article 1 hereof, both as a whole and severally, and any Work Orders issued hereunder.
2.1.10 "Contract Drawings" shall mean those drawings furnished by the Commissioner in any Work Order.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1.24 "Law" or "Laws" shall mean the Constitution of the State of New York, the New York City Charter, the New York City Administrative Code, a statute of the United States or of the State of New York, a local law of the City of New York, any ordinance, rule or regulation having the force of law, or common law.

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

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

2.1.27 "Means and Methods of Construction" shall mean the labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Contract.
2.1.28 **“Notice to Proceed” or “Order to Work”** shall mean the written notice issued by the Commissioner specifying the time for commencement of the Work under a Work Order.

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

2.1.30 **“Occupants”** shall mean employees, visitors or invitees at NYC owned or managed buildings.

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

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

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

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

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

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

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

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

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

2.1.40 "**Site**" shall mean the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by the Engineer.

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

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

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

2.1.44 "**Substantial Completion**" shall mean the written determination by the Engineer that the Work required under this **Contract** or a particular **Work Order** is substantially, but not entirely, complete and the approval of the **Final Approved Punch List**.

2.1.45 “**Supplemental Work Order**” shall mean any and all written amendments, modifications or changes to a **Work Order** deemed necessary by DOHMH, in its sole discretion, in the best interests of the City. Unless required by **Law**, **Supplemental Work Orders** need not be registered with the Comptroller and shall not be deemed **Extra Work**.

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

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

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

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

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

CHAPTER II
THE WORK AND ITS PERFORMANCE

ARTICLE 3. CHARACTER OF THE WORK

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

ARTICLE 4. MEANS AND METHODS OF CONSTRUCTION

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

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

4.1.2 Will not produce finished Work in accordance with the terms of the Contract; or
4.1.3 Will be detrimental to the overall progress of the Project.

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

ARTICLE 5. COMPLIANCE WITH LAWS

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

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

5.3 Noise Control Code provisions.

5.3.1 In accordance with the provisions of Section 24-216(b) of the Administrative Code of the City ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the City Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the City Department of Environmental Protection.

5.3.2 The Contractor agrees to comply with Section 24-219 of the Administrative Code and implementing rules codified at 15 Rules of the City of New York ("RCNY") Section 28-100 et seq. In accordance with such provisions, the Contractor, if the Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan at each Site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the City Department of Environmental Protection. In addition, the Contractor's certified Construction Noise Mitigation Plan is subject inspection by the City Department of Environmental Protection in accordance with Section 28-101 of Title 15 of RCNY. No Contract Work may take place at a Site unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

5.4 Ultra Low Sulfur Diesel Fuel: In accordance with the provisions of Section 24-163.3 of the Administrative Code, the Contractor specifically agrees as follows:
5.4.1 Definitions. For purposes of this Article 5.4, the following definitions apply:

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

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

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

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

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

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

5.4.2 Ultra Low Sulfur Diesel Fuel

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

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

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

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

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

5.4.3 Best Available Technology

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

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

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

5.4.3(d) The Contractor shall not be required to comply with this Article 5.4.3 with respect to a diesel-powered Nonroad Vehicle under the following circumstances:
5.4.3(d)(i) Where the City Agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by this Article 5.4.3 is unavailable for such vehicle, the Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.

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

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

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

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

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

5.4.5 Compliance

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

5.4.5(b) Any Contractor who violates any provision of Article 5.4, except as provided in Article 5.4.5(c) below, shall be liable for a civil penalty between the amounts of one thousand ($1,000) and ten thousand ($10,000) dollars, in addition to twice the amount of money saved by such Contractor for failure to comply with Article 5.4.
5.4.5(c) No Contractor shall make a false claim with respect to the provisions of Article 5.4 to a City Agency. Where a Contractor has been found to have done so, such Contractor shall be liable for a civil penalty of twenty thousand ($20,000) dollars, in addition to twice the amount of money saved by such Contractor in association with having made such false claim.

5.4.6 Reporting

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

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

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

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

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

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

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

5.4.6(b) The Contractor shall submit the information required by Article 5.4.6(a) at the completion of Work under the Public Works Contract and on a yearly basis no later than August 1 throughout the term of the Public Works Contract. The yearly report shall cover Work performed during the preceding fiscal year (July 1 - June 30).

5.5 Ultra Low Sulfur Diesel Fuel. In accordance with the Coordinated Construction Act for Lower Manhattan, as amended:

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

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

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

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

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

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

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

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

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

ARTICLE 6.
INSPECTION

6.1 During the progress of the Work and up to the date of Final Acceptance, the Contractor shall at all times afford the representatives of the City every reasonable, safe, and proper facility for inspecting all Work done or being done at the Site and also for inspecting the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

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

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

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

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

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

7.2 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall take all reasonable precautions to protect all persons and the property of the City and
of others from damage, loss or injury resulting from the Contractor's, and/or its Subcontractors' operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, place or replace, and adequately maintain at or about the Site suitable and sufficient protection such as lights, barricades, and enclosures.

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

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

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

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

7.3.2(b) If the Contractor fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Contractor shall indemnify the City for all losses, judgments, settlements, and expenses, including reasonable attorneys’ fees, arising from an insurer’s disclaimer of coverage citing late notice by or on behalf of the City.

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

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

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

CHAPTER III
TIME PROVISIONS

ARTICLE 8. COMMENCEMENT AND PROSECUTION OF THE WORK

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

8.2 Continuation of the Contract:

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

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

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

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

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

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

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

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

ARTICLE 9. PROGRESS SCHEDULES

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

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

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

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

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

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

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

9.5 The Contractor will not receive any payments until the proposed progress schedule is submitted.

ARTICLE 10. REQUESTS FOR INFORMATION OR APPROVAL

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

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

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

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

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

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

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

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

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

11.4 Compensable Delays

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

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

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

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

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

11.4.1.5 Differing site conditions that were neither known nor reasonably ascertainable on a pre-bid inspection of the Site or review of the bid documents or other publicly available sources, and that are not ordinarily encountered in the Project’s geographical area or neighborhood or in the type of Work to be performed.
11.4.1.6 Delays caused by the City’s bad faith or its willful, malicious, or grossly negligent conduct;

11.4.1.7 Delays not contemplated by the parties;

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

11.4.1.9 Delays resulting from the City’s breach of a fundamental obligation of the Contract.

11.4.2 No claim may be made for any alleged delay in Substantial Completion of the Work by a date earlier than the date of Substantial Completion provided for in General Conditions, Appendix A unless there is a provision in the Contract providing for additional compensation for early completion. No claim may be made for any alleged delay in Substantial Completion of the Work if the work is substantially completed by the date of Substantial Completion provided for in General Conditions, Appendix A unless acceleration has been directed by the Commissioner to meet the date of Substantial Completion set forth in General Conditions, Appendix A.

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

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

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

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

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

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

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

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

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

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

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

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

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

11.5.8.4 Any additional information requested by the Commissioner.

11.6 Recoverable Costs

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

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

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

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

11.6.1.4 Insurance and bond costs;
11.6.1.5 Extended field office costs;
11.6.1.6 Extended Site overhead; and
11.6.1.7 Extended home office overhead.

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

11.6.3 Non-Recoverable Costs. The parties agree that the City will have no liability for the following items and the Contractor agrees it shall make no claim for the following items:

11.6.3.1 Profit, or loss of anticipated or unanticipated profit;
11.6.3.2 Consequential damages, including but not limited to interest on monies in dispute, including interest which is paid on such monies, loss of bonding capacity, bidding opportunities, or interest in investment, or any resulting insolvency;
11.6.3.3 Indirect costs or expenses of any nature;
11.6.3.4 Direct or indirect costs attributable to performance of Work where the Contractor, because of situations or conditions within its control, has not progressed the Work in a satisfactory manner; and
11.6.3.5 Attorneys’ fees and dispute and claims preparation expenses.

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

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

ARTICLE 12. COORDINATION WITH OTHER CONTRACTORS

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

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

12.3 The Contractor shall notify the Engineer in writing if any Other Contractor on this Project is failing to coordinate its work with the Work of this Contract. If the Engineer finds such charges to be true, the Engineer shall promptly issue such directions to the Other Contractor with respect thereto as the situation may require. The City shall not, however, be liable for any damages suffered by any Other Contractor's failure to coordinate its work with the Work of this Contract or by reason of the Other Contractor's failure to promptly comply with the directions so issued by the Engineer, or by reason of any Other Contractor's default in performance, it being understood that the City does not guarantee the responsibility or continued efficiency of any contractor. The Contractor agrees to make no claim against the City for any damages relating to or arising out of any directions issued by the Engineer pursuant to this Article 12 (including but not limited to the failure of any Other Contractor to comply or promptly comply with such directions), or the failure of the Engineer to issue any directions, or the failure of any Other Contractor to coordinate its work, or the default in performance of any Other Contractor.

12.4 The Contractor shall indemnify and hold the City harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the Engineer's directions promptly; and the Comptroller shall have the right to exercise the powers reserved in Article 23 with respect to any claims which may be made for damages due to the Contractor's failure to comply with the Engineer's directions promptly. Insofar as the facts and Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent provided by Law.

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

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

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

ARTICLE 13. EXTENSION OF TIME FOR PERFORMANCE FOR THE CONTRACT

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

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

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

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

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

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

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

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

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

13.6 The ACCO or the Board acting entirely within their discretion may grant an application for an extension of time for causes of delay other than those herein referred.
13.7 Permitting the Contractor to continue with the Work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the City of any of its rights under this Contract.

13.8 Application for Extension of Time:

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

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

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

13.8.1(c) Original total bid price;

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

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

13.8.1(f) The extension of time requested.

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

13.8.2(a) The nature of each alleged cause of delay in completing the Work;

13.8.2(b) The date upon which each such cause of delay began and ended and the number of Days attributable to each such cause;

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

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

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

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

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

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

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

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

13.9.3 Approval Mechanism for Time Extensions for Substantial Completion or Final Completion Payments: An extension shall be granted only with the approval of the Board which is comprised of the ACCO of the Agency, the City Corporation Counsel, and the Comptroller, or their authorized representatives.

13.9.4 Neither the granting of any application for an extension of time to the Contractor or any Other Contractor on this Project nor the papers, records or reports related to any application for or grant of an extension of time or determination related thereto shall be referred to or offered in evidence by the Contractor or its attorneys in any action or proceeding.

13.10 No Damage for Delay: The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, except as provided for in Article 11.
ARTICLE 13A. EXTENSION OF TIME FOR PERFORMANCE OF A WORK ORDER

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

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

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

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

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

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

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

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

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

a) liquidated damage assessment rate, if applicable;

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

c) any previous time extensions granted (number and duration);
d) the number of days for which an extension of time is requested along with a new construction schedule showing the requested completion date;

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

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

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

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

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

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

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

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

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

ARTICLE 14. COMPLETION AND FINAL ACCEPTANCE OF THE WORK

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

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

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

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

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

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

14.5 Request for Inspection: Inspection of the Work by the Engineer for the purpose of Substantial Completion or Final Acceptance shall be made within ten (10) Days after receipt of the Contractor’s written request therefor.

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

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

ARTICLE 15. LIQUIDATED DAMAGES

15.1 In the event the Contractor fails to substantially complete the Work within the time fixed for such Substantial Completion in a Work Order, plus authorized time extensions, or if the Contractor, in the sole determination of the Commissioner, has abandoned the Work, the Contractor shall pay to the City the sum fixed in Appendix A of the General Conditions, for each and every Day that the time consumed in substantially completing the Work exceeds the time allowed therefor; which said sum, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the Substantial Completion of the Work hereunder, is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty. This Article 15 shall also apply to the Contractor whether or not the Contractor is defaulted pursuant to Chapter X of this Contract. Neither the failure to assess liquidated damages nor the granting of any time extension shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

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

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

ARTICLE 16. OCCUPATION OR USE PRIOR TO COMPLETION

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

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

16.1.2 the Contractor shall be relieved of its absolute obligation to protect such part of
the unfinished Work in accordance with Article 7;

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

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

CHAPTER IV
SUBCONTRACTS AND
ASSIGNMENTS

ARTICLE 17. SUBCONTRACTS

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

17.2 Before making any subcontracts, the Contractor shall submit a written statement to the Commissioner giving the name and address of the proposed Subcontractor; the portion of the Work and materials which it is to perform and furnish; the cost of the subcontract; the VENDEX questionnaire if required; the proposed subcontract if requested by the Commissioner; and any other information tending to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience, and financial resources to perform the Work in accordance with the terms and conditions of this Contract.

17.3 In addition to the requirements in Article 17.2, Contractor is required to list the Subcontractor in the web based Subcontractor Reporting System through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip.¹ For each Subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of Subcontractor's Work, start and end date of the subcontract and identification of the Subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each Subcontractor within 30 days of making the payment. If any of the required information changes throughout the Term of the Contract, Contractor will be required to revise the information in the system.

¹ In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at www.nyc.gov/pip. Additional assistance with PIP may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.
17.4 Failure of the **Contractor** to list a **Subcontractor** and/or to report **Subcontractor** payments in a timely fashion may result in the **Commissioner** declaring the **Contractor** in default of the **Contract** and will subject **Contractor** to liquidated damages in the amount of $100 per day for each day that the **Contractor** fails to identify a **Subcontractor** along with the required information about the **Subcontractor** and/or fails to report payments to a **Subcontractor**, beyond the time frames set forth herein or in the notice from the **City**. Article 15 shall govern the issue of liquidated damages.

17.5 If an approved **Subcontractor** elects to subcontract any portion of its subcontract, the proposed sub-subcontract shall be submitted in the same manner as directed above.

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

17.7 Before entering into any subcontract hereunder, the **Contractor** shall provide the proposed **Subcontractor** with a complete copy of this document and inform the proposed **Subcontractor** fully and completely of all provisions and requirements of this **Contract** relating either directly or indirectly to the **Work** to be performed and the materials to be furnished under such subcontract, and every such **Subcontractor** shall expressly stipulate that all labor performed and materials furnished by the **Subcontractor** shall strictly comply with the requirements of this **Contract**.

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

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

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

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

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

17.12.1 Payment to **Subcontractors**: The agreement between the **Contractor** and its
Subcontractor shall contain the same terms and conditions as to method of payment for Work, labor, and materials, and as to retained percentages, as are contained in this Contract.

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

17.12.3 Section 6-123 of the Administrative Code: Pursuant to the requirements of Section 6-123 of the Administrative Code, every agreement between the Contractor and a Subcontractor in excess of fifty thousand ($50,000) dollars shall include a provision that the Subcontractor shall not engage in any unlawful discriminatory practice as defined in Title VIII of the Administrative Code (Section 8-101 et seq.)

17.12.4 All requirements required pursuant to federal and/or state grant agreement(s), if applicable to the Work.

17.13 The Commissioner may deduct from the amounts certified under this Contract to be due to the Contractor, the sum or sums due and owing from the Contractor to the Subcontractors according to the terms of the said subcontracts, and in case of dispute between the Contractor and its Subcontractor, or Subcontractors, as to the amount due and owing, the Commissioner may deduct and withhold from the amounts certified under this Contract to be due to the Contractor such sum or sums as may be claimed by such Subcontractor, or Subcontractors, in a sworn affidavit, to be due and owing until such time as such claim or claims shall have been finally resolved.

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

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

ARTICLE 18
ASSIGNMENTS

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

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

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

18.5 This Contract may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

CHAPTER V
CONTRACTOR'S SECURITY AND GUARANTEE

ARTICLE 19.
SECURITY DEPOSIT

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

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

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

19.3.1 To compensate the City for any expense, loss or damage suffered or incurred by reason of or resulting from such default, including the cost of re-letting and liquidated damages; or

19.3.2 To indemnify the City against any and all claims.
GUARANTEE

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

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

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

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

20.3 The provisions of Article 20.2 are subject to the following limitations and conditions:

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

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

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

20.3.4 Every person who has furnished labor or material, to the Contractor or to a Subcontractor of the Contractor, in the prosecution of the Work and who has not been paid in full therefor before the expiration of a period of ninety (90) Days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he /she shall have given written notice to the Contractor within one hundred twenty (120) Days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by
20.3.5 Except as provided in Labor Law Section 220-g, no action on this payment guarantee shall be commenced after the expiration of the one-year limitations period set forth in Section 137(4)(b) of the State Finance Law.

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

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

20.3.8 The City shall make payment only if, after considering all defenses presented by the Contractor, it determines that the payment is due and owing to the beneficiary making the demand.

20.3.9 No beneficiary shall be entitled to interest from the City, or to any other costs, including, but not limited to, attorneys’ fees, except to the extent required by State Finance Law Section 137.

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

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

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

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

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

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

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

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

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

ARTICLE 21. RETAINED PERCENTAGE

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

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

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

ARTICLE 22. INSURANCE

22.1 Types of Insurance: The Contractor shall procure and maintain the following types of insurance if, and as indicated in Article 22 of the Agreement and General Conditions, Appendix A, (with the minimum limits and special conditions specified in such Appendix A). Such insurance shall be maintained from the date the Contractor is required to provide Proof of Insurance pursuant to Article 22.1.2 through the date of completion of all required Work (including punch list work as certified in writing by the Resident Engineer), except for insurance required pursuant to Article 22.1.4, which may terminate upon Substantial Completion of the Contract. All insurance shall meet the requirements set forth in this Article 22. Wherever this Article requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

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

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

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

22.1.1(c) If the Work requires a permit from the Department of Buildings pursuant to 1 RCNY Section 101-08, at:

http://www.nyc.gov/html/dob/downloads/rules/1_RCNY_101-08.pdf,
the Contractor shall provide Commercial General Liability Insurance with limits of at least those required by 1 RCNY section 101-08 or greater limits provided by the Agency in Schedule A. If the Work does not require such a permit, the minimum limits shall be those provided for in General Conditions, Appendix A.

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

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

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

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

22.1.4(a) Policies of such insurance shall specify that, in the event a loss occurs at an occupied facility, occupancy of such facility is permitted without the consent of the issuing insurance company.

22.1.4(b) Such insurance may be provided through an Installation Floater, at the Contractor’s option, if it otherwise conforms with the requirements of this Article 22.1.4.

22.1.5 Commercial Automobile Liability Insurance: The Contractor shall provide Commercial Automobile Liability Insurance for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this
**Contract.** Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

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

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

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

22.1.7 Marine Insurance:

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

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

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

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

22.2 General Requirements for Insurance Coverage and Policies:

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

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

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

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

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

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

22.3 Proof of Insurance:

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

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

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

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

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

22.4 Operations of the Contractor:

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

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

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

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

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

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

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

22.7 Apart from damages or losses covered by insurance provided pursuant to Articles 22.1.2, 22.1.3, or 22.1.5, the Contractor waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article 22 (whether or not such insurance is
22.8 In the event the Contractor utilizes a self-insurance program to satisfy any of the requirements of this Article 22, the Contractor shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article 22, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

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

ARTICLE 23. MONEY RETAINED AGAINST CLAIMS

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

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

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

(c) Damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract, the amount of such claim, or so much thereof as the Comptroller may deem necessary, may be withheld by the Comptroller, as security against such claim, from any money due hereunder. The Comptroller, in his/her discretion, may permit the Contractor to substitute other satisfactory security in lieu of the monies so withheld.

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

ARTICLE 24. MAINTENANCE AND GUARANTY

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

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

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

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

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

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

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

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

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

ARTICLE 25. CHANGES/SUPPLEMENTAL WORK ORDERS

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

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

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

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

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

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

25.4.1 agreement of a fixed price; and/or

25.4.2 In any other manner approved by the CCPO.

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

ARTICLE 26. METHODS OF PAYMENT FOR OVERRUNS AND EXTRA WORK

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26.3 Where the Extra Work is performed in whole or in part by other than the Contractor's own forces pursuant to Article 26.2, the Contractor shall be paid, subject to pre-audit by the Engineering Audit Officer, the cost of such Work computed in accordance with Article 26.2 above, plus an additional allowance of five (5%) percent to cover the Contractor's overhead and profit.

26.4 Where a change is ordered, involving both Extra Work and omitted or reduced Contract Work, the Contract price shall be adjusted, subject to pre-audit by the EAO, in an amount based on the difference between the cost of such Extra Work and of the omitted or reduced Work.

26.5 Where the Contractor and the Commissioner can agree upon a fixed price for Extra Work in accordance with Article 25.3.2 or another method of payment for Extra Work in accordance with Article 25.3.4, or for Extra Work ordered in connection with omitted Work, such method, subject to pre-audit by the EAO, may, at the option of the Commissioner, be substituted for the cost plus a percentage method provided in Article 26.2; provided, however, that if the Extra Work is performed by a Subcontractor, the Contractor shall not be entitled to

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receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such Subcontractor's Work as computed in accordance with Article 26.2.

ARTICLE 27. RESOLUTION OF DISPUTES

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

27.1.1 This Article 27 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules, or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.

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

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

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

27.4 Presentation of Disputes to Commissioner.

Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing (“Notice of Dispute”) to the Commissioner within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the detailed written submission comprising the complete Notice of Dispute, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner shall submit to the Commissioner all materials he or she deems pertinent to the dispute. Following initial submissions to the Commissioner, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

27.4.1 Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her
discretion, convene an informal conference with the **Contractor**, the **ACCO**, and the **Engineer, Resident Engineer, Engineering Audit Officer**, or other designee of the **Commissioner** to resolve the issue by mutual consent prior to reaching a determination. The **Commissioner** may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The **Commissioner’s** ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the **Commissioner** participated therein. The **Commissioner** may or, at the request of any party to the dispute, shall compel the participation of any **Other Contractor** with a contract related to the **Work** of this **Contract**, and that **Contractor** shall be bound by the decision of the **Commissioner**. Any **Other Contractor** thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Article 27 as the **Contractor** initiating the dispute.

### 27.4.2 Commissioner Determination

Within thirty (30) **Days** after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the **Commissioner** shall make his or her determination and shall deliver or send a copy of such determination to the **Contractor**, the **ACCO**, and **Engineer, Resident Engineer, Engineering Audit Officer**, or other designee of the **Commissioner**, as applicable, together with a statement concerning how the decision may be appealed.

### 27.4.3 Finality of Commissioner’s Decision

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

### 27.5 Presentation of Dispute to the Comptroller

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

#### 27.5.1 Time, Form, and Content of Notice

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

#### 27.5.2 Agency Response

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

#### 27.5.3 Comptroller Investigation

The **Comptroller** may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Sections 7-201 and 7-203 of the Administrative Code. In addition, the **Comptroller** may demand of either party, and such party shall provide, whatever additional material the **Comptroller** deems pertinent to the claim, including original business records of the **Contractor**. Willful failure of the **Contractor** to produce 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**.
27.5.4 Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Article 27.5.3 to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all materials. The Contractor may not present its petition to the Contract Dispute Resolution Board until the period for investigation and compromise delineated in this Article 27.5.4 has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.

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

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

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

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

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

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

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

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

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

27.7.5 Notification of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the City Corporation Counsel, the CCPO, and the PPB. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) Days after the date the parties are formally notified of the Contract Dispute Resolution Board’s decision.

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

27.8 Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this Article 27 shall not affect or impair the ability of the Commissioner or Contract Dispute Resolution Board to make a binding and final decision pursuant to this Article 27.
ARTICLE 28. RECORD KEEPING FOR EXTRA OR DISPUTED WORK OR WORK ON A TIME & MATERIALS BASIS

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

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

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

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

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

28.4 In connection with the examination provided for herein, the Commissioner, upon demand therefor, will produce for inspection by the Contractor such records as the Agency may have with respect to such Extra Work or disputed Work performed under protest pursuant to order of the Commissioner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor’s claim.

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

ARTICLE 29. OMITTED WORK

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

29.2 If the whole of a lump sum item or units of any other item is so omitted by the Commissioner in a Unit Price, lump sum, or percentage-bid Contract, then no payment will be made therefor except as provided in Article 29.4.
29.3 For units that have been ordered but are only partially completed, the Unit Price shall be reduced by a pro rata portion of the Unit Price bid based upon the percentage of Work omitted subject to Article 29.4.

29.4 In the event the Contractor, with respect to any omitted Work, has purchased any non-cancelable material and/or equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract, but not yet incorporated into the Work, the Contractor shall be paid for such material and/or equipment in accordance with Article 64.2.1(b); provided, however, such payment is contingent upon the Contractor's delivery of such material and/or equipment in acceptable condition to a location designated by the City.

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

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

30.1 If the Contractor shall claim to be sustaining damages by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request. On failure of the Contractor to strictly comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action or dispute resolution procedure arising under or by reason of this Contract shall not be different from or in excess of the statements and documentation made pursuant to this Article 30.

30.2 In addition to the foregoing statements, the Contractor shall, upon notice from the Commissioner, produce for examination at the Contractor's office, by the Engineer, Architect or Project Manager, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, and cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract, and submit itself and persons in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

30.3 In addition to the statements required under Article 28 and this Article 30, the Contractor and/or its Subcontractor shall, within thirty (30) Days upon notice from the Commissioner or Comptroller, produce for examination at the Contractor's and/or Subcontractor's office, by a representative of either the Commissioner or Comptroller, all of its books of account, bid documents, financial statements, accountant workpapers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, and cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract. Further, the Contractor and/or its Subcontractor shall submit any person in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.
30.4 Unless the information and examination required under Article 30.3 is provided by the Contractor and/or its Subcontractor upon thirty (30) Days’ notice from the Commissioner or Comptroller, or upon the Commissioner’s or Comptroller’s written authorization to extend the time to comply, the City shall be released from all claims arising under, relating to or by reason of this Contract, except for sums certified by the Commissioner to be due under the provisions of this Contract. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the City to recover any sum in excess of the sums certified by the Commissioner to be due under or by reason of this Contract, the Contractor must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article 30.

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

CHAPTER VII
POWERS OF THE RESIDENT ENGINEER,
THE ENGINEER OR ARCHITECT AND THE COMMISSIONER

ARTICLE 31. THE RESIDENT ENGINEER

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

ARTICLE 32. THE ENGINEER OR ARCHITECT OR PROJECT MANAGER

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

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

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

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

32.1.4 To make minor changes in the Work as he/she deems necessary, provided such changes do not result in a net change in the cost to the City or to the Contractor of the Work to be done under the Contract; and
32.1.5 To amplify the Contract Drawings, add explanatory information and furnish additional Specifications and drawings, consistent with this Contract.

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

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

ARTICLE 33. THE COMMISSIONER

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

33.1.1 To review and make determinations on any and all questions in relation to this Contract and its performance; and

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

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

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

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

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

ARTICLE 34. NO ESTOPPEL

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

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

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

ARTICLE 35. EMPLOYEES

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

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

35.1.2 Any labor, materials or means whose employment, or utilization during the course of this Contract, may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or its Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Contract, or by Other Contractors or their Subcontractors pursuant to other contracts, or on any other building or premises owned or operated by the City, its Agencies, departments, boards or authorities. Any violation by the Contractor of this requirement may, upon certification of the Commissioner, be considered as proper and sufficient cause for declaring the Contractor to be in default, and for the City to take action against it as set forth in Chapter X of this Contract, or such other article of this Contract as the Commissioner may deem proper; or

35.1.3 In accordance with Section 220.3-e of the Labor Law of the State of New York (hereinafter "Labor Law"), the Contractor and its Subcontractors shall not employ on the Work any apprentice, unless he/she is a registered individual, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journey-level workers in any craft classification shall not be greater than the ratio permitted to the Contractor as to its work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Comptroller of the City for the classification of Work actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of its program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Contract Work.

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

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

35.3.1 The Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of
interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (a) the Commissioner of the Department of Investigation, (b) a member of the New York City Council, the Public Advocate, or the Comptroller, or (c) the CCPO, ACCO, Agency head, or Commissioner.

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

35.3.3 The Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

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

35.3.3(b) the rights and remedies afforded to its employees under Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

35.3.4 For the purposes of this Article 35.3, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

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

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

ARTICLE 36. NO DISCRIMINATION

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

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

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

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

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

36.1.5 This Article 36 covers all construction, alteration and repair of any public building or public work occurring in the State of New York and the manufacture, sale, and distribution of materials, equipment, and supplies to the extent that such operations are performed within the State of New York pursuant to this Contract.

36.2 The Contractor specifically agrees, as required by Section 6-108 of the Administrative Code, as amended, that:

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

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

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

36.2.4 Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Article 36.2 shall, upon conviction thereof, be punished by a fine of not more than one hundred ($100.00) dollars or by imprisonment for not more than thirty (30) Days, or both.

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

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

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

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

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

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

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

36.4.1 Disapproval of the Contractor; and/or

36.4.2 Suspension or termination of the Contract; and/or

36.4.3 Declaring the Contractor in default; and/or

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

In addition to any actions taken under this Contract, failure to comply with E.O. 50 and the rules and regulations promulgated thereunder, in one or more instances, may result in a City Agency declaring the Contractor to be nonresponsible in future procurements. The Contractor further agrees that it will refrain from entering into any Contract or Contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a Subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

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

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

36.5.2 Any failure to comply with this Article 36.5 may subject the Contractor to the remedies set forth in Section 6-123 of the Administrative Code, including, where appropriate, sanctions such as withholding of payment, imposition of an employment program, finding the Contractor to be in default,
ARTICLE 37. LABOR LAW REQUIREMENTS

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

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

37.2.1 Hours of Work: No laborer, worker, or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Contract shall be permitted or required to work more than eight (8) hours in any one (1) Day, or more than five (5) Days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

37.2.2 In situations in which there are not sufficient laborers, workers, and mechanics who may be employed to carry on expeditiously the Work contemplated by this Contract as a result of such restrictions upon the number of hours and Days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) Day; or five (5) Days in any one (1) week; provided, however, that upon application of any Contractor, the Commissioner shall have first certified to the Commissioner of Labor of the State of New York (hereinafter "Commissioner of Labor") that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

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

37.2.4 Prevailing Rate of Wages: The wages to be paid for a legal day's Work to laborers, workers, or mechanics employed upon the Work contemplated by this Contract or upon any materials to be used thereon shall not be less than the "prevailing rate of wage" (including the wage and benefit rate) set by law for each trade or occupation for employees of contractors performing public works projects and building service work for government agencies pursuant to Labor Law Section 220, and as fixed by the Comptroller Wage Schedule of Wage Rates established by the Comptroller of the City of New York pursuant to §220 of the Labor Law and in updated schedules thereto. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed. See more at: http://comptroller.nyc.gov/general-information/prevailing-wage/

37.2.5 Requests for interpretation or correction in the Information for Bidders includes all requests for clarification of the classification of trades to be employed in the performance of the Work under this Contract. In the event that a trade not listed in the Contract is in fact employed during the performance of this Contract, the Contractor shall be required to obtain from the Agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Contract at the price at which the Contract was awarded.

37.2.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, all persons employed by the Contractor and any Subcontractor in the manufacture or
furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by Law, not less than the sum mandated by Law.

37.3 Working Conditions: No part of the Work, labor or services shall be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. Compliance with the safety, sanitary, and factory inspection Laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this Article 37.3.

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

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

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

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

37.4.2 For any breach or violation of either working conditions (Article 37.3) or minimum wages (Article 37.2.6) provisions, the party responsible therefor shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any contracts with the City of such party responsible, or may be recovered in actions brought by the City Corporation Counsel in the name of the City, in addition to damages for any other breach of this Contract, for a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition, the Commissioner shall have the right to cancel contracts and enter into other contracts for the completion of the original contract, with or without public letting, and the original Contractor shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Comptroller, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within two (2) years from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

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

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

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

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

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

37.5 The Contractor and its Subcontractors shall within ten (10) Days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of the Contractor and its Subcontractors engaged in the performance of this Contract are employed, notices furnished by the City, in relation to prevailing wages and supplements, minimum wages, and other stipulations contained in Sections 220 and 220-h of the Labor Law, and the Contractor and its Subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services required to be furnished or rendered under this Contract.

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

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

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

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

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

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

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

37.6.7 The Contractor and Subcontractor(s) shall pay employees by check or direct deposit. If this Contract is for an amount greater than one million ($1,000,000) dollars, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency). For any subcontract for an amount greater than seven hundred fifty thousand ($750,000) dollars, checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may
37.6.8 The failure of the Contractor or Subcontractor(s) to comply with the provisions of Articles 37.6.1 through 37.6.7 may result in the Commissioner declaring the Contractor in default and/or the withholding of payments otherwise due under the Contract.

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

37.8 At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to the Commissioner a written payroll certification, in the form provided by this Contract, of compliance with the prevailing wage, minimum wage, and other provisions and stipulations required by Labor Law Section 220 and of compliance with the training requirements of Labor Law Section 220-h set forth in Article 35.2. This certification of compliance shall be a condition precedent to payment and no payment shall be made to the Contractor unless and until each such certification shall have been submitted to and received by the Commissioner.

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

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

ARTICLE 38. PAYROLL REPORTS

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

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

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

38.3.1 Such original payrolls or transcripts thereof subscribed and affirmed by it as true and the statements signed by each worker pursuant to this Chapter VIII; and/or
38.3.2 Attendance sheets for each Day on which any employee of the Contractor and/or any of the Subcontractor(s) performed Work on the Site, which attendance sheet shall be in a form acceptable to the Agency and shall provide information acceptable to the Agency to identify each such employee; and/or

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

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

ARTICLE 39. DUST HAZARDS

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

CHAPTER IX
PARTIAL AND FINAL PAYMENTS

ARTICLE 40. CONTRACT PRICE

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

ARTICLE 41. BID BREAKDOWN

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

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

41.3 The Contractor shall also submit such other information relating to the cost breakdown as directed by the Resident Engineer. Thereafter, the breakdown may be used only for checking the Contractor's applications for partial payments hereunder, but shall not be binding upon the City, the Commissioner, or the Engineer for any purpose whatsoever.
ARTICLE 42. PARTIAL PAYMENTS

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

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

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

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

ARTICLE 43. PROMPT PAYMENT

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

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

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

43.4 If the Contractor is paid interest, the proportionate share(s) of that interest shall be forwarded by the Contractor to its Subcontractor(s).

43.5 The Contractor shall pay each Subcontractor or Materialman not later than seven (7) Days after receipt of payment out of amounts paid to the Contractor by the City for Work performed by the Subcontractor or Materialman under this Contract.

43.5.1 If Contractor fails to make any payment to any Subcontractor or Materialman within seven (7) Days after receipt of payment by the City pursuant to this Article 43.5, then the Contractor shall pay interest on amounts due to such Subcontractor or Materialman at the rate of interest in effect on the date such payment is made by the Contractor computed in accordance with Section 756-b (1)(b) of the New York General Business Law. Accrual of interest shall commence on the Day immediately following the expiration of the seventh Day following receipt of payment by the Contractor from the City and shall end on the date on which payment is made.
43.6 The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors or Materialmen for Work performed under this Contract in the same manner and within the same time period set forth above.

ARTICLE 44. SUBSTANTIAL COMPLETION PAYMENT

44.1 When the Work required by a particular Work Order, in the opinion of the Commissioner, has been substantially but not entirely completed, he/she shall issue a certificate of Substantial Completion with respect to such Work Order.

44.2 The Contractor shall submit with the Substantial Completion requisition for a Work Order:

44.2.1 A final verified statement of any pending Article 27 disputes in accordance with the PPB Rules and this Contract and any and all alleged claims against the City, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 11, 27, 28, and 30) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof was delayed, and an itemized statement and breakdown of the amount claimed for each such delay.

44.2.1(a) With respect to each such claim, the Commissioner, the Comptroller and, in the event of litigation, the City Corporation Counsel shall have the same right to inspect, and to make extracts or copies of, the Contractor's books, vouchers, records, etc., as is referred to in Articles 11, 27, 28, and 30. Nothing contained in this Article 44.2.1(a) is intended to or shall relieve the Contractor from the obligation of complying strictly with Articles 11, 27, 28, and 30. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor upon acceptance of the Substantial Completion payment pursuant to this Article 44, will have waived any such claims.

44.2.2 A Final Commissioner approved Punch List.

44.2.3 Where required, a request for an extension of time to achieve Substantial Completion or final extension of time.

44.3 The Commissioner shall issue a voucher calling for payment of any part or all of the balance due for Work performed under the Work Order, including monies retained under Article 21, less any and all deductions authorized to be made by the Commissioner, under this Contract or by Law, and less twice the amount the Commissioner considers necessary to ensure the completion of the balance of the Work by the Contractor. Such a payment shall be considered a partial and not a final payment. No Substantial Completion payment shall be made under this Article 44 where the Contractor failed to complete the Work within the time fixed for such completion in the Work Order, or within the time to which completion may have been extended by Supplemental Work Order, until an extension or extensions of time for the completion of Work have been acted upon pursuant to Article 13.

44.4 No further partial payments shall be made to the Contractor after the Commissioner issues a Certificate of Substantial Completion for a Work Order, except the Substantial Completion payment and payment pursuant to any Contractor's requisition that were properly filed with the Commissioner prior to the date of Substantial Completion; however, the Commissioner may grant a waiver for further partial payments after the date
of Substantial Completion to permit payments for change order Work and/or release of retainage and deposits pursuant to Articles 21 and 24. Such waiver shall be in writing.

44.5 The Contractor acknowledges that nothing contained in this Article 44 is intended to, or shall, in any way, diminish the force and effect of Article 13.

ARTICLE 45. FINAL PAYMENT

45.1 After completion and Final Acceptance of the Work for a Work Order, the Contractor shall submit all required certificates and documents, together with a requisition for the balance claimed to be due under the Contract, less the amount authorized to be retained for maintenance under Article 24. Such submission shall be within 90 days of the date of the Commissioner’s written determination of Final Acceptance, or within such additional time as may be granted by the Commissioner in writing. If the Contractor fails to submit all required certificates and documents within the time allowed, no payment of the balance claimed shall be made to the Contractor and the Contractor shall be deemed to have forfeited its right to payment of any balance claimed. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Commissioner.

45.2 Amended Verified Statement of Claims: The Contractor shall also submit with the final requisition any amendments to the final verified statement of any pending dispute resolution procedures in accordance with the PPB Rules and this Contract and any and all alleged claims against the City, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 11, 27, 28, and 30) that have occurred subsequent to Substantial Completion, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Commissioner, the Comptroller and, in the event of litigation, the City Corporation Counsel shall have the same right to inspect, and to make extracts or copies of, the Contractor’s books, vouchers, records, etc., as is referred to in Articles 11, 27, 28, and 30. Nothing contained in this Article 45.2, is intended to or shall relieve the Contractor from the obligation of complying strictly with Articles 11, 27, 28, and 30. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor, upon acceptance of the Final Payment pursuant to Article 46, will have waived any such claims.

45.3 Preparation of Final Voucher: Upon determining the balance due hereunder other than on account of claims, the Engineer will prepare and certify, for the Commissioner’s approval, a voucher for final payment in that amount less any and all deductions authorized to be made by the Commissioner under this Contract or by Law for such Work Order. In the case of a lump sum Contract, the Commissioner shall certify the voucher for final payment within thirty (30) Days from the date of completion and acceptance of the Work, provided all requests for extensions of time have been acted upon.

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

45.3.2 Payment pursuant to such final voucher, less any deductions authorized to be made by the
Commissioner under this Contract or by Law, shall constitute the final payment, and shall be made by the Comptroller within thirty (30) Days after the filing of such voucher in his/her office.

45.4 The Contractor acknowledges that nothing contained in this Article 45 is intended to, or shall, in any way diminish the force and effect of Article 13.

ARTICLE 46. ACCEPTANCE OF FINAL PAYMENT

46.1 The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor for anything heretofore done or furnished for the Contractor relating to or arising out of this Contract and the Work done hereunder, and for any prior act, neglect or default on the part of the City or any of its officials, agents or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Contract or by Law, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures which are contained in the verified statement filed with the Contractor's substantial and final requisitions pursuant to Articles 44 and 45.

46.2 The Contractor is warned that the execution by it of a release, in connection with the acceptance of the final payment, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article 46, or those for amounts deducted by the Commissioner from the final requisition or from the final payment as certified by the Engineer and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any official, agent or employee of the City to the contrary notwithstanding.

46.3 If the Contractor refuses to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.

46.4 The Contractor, however, shall not be barred by this Article 46 from commencing an action for breach of Contract to the extent permitted by Law and by the terms of the Contract for any claims that are contained in the verified statement filed with the Contractor's substantial and final requisitions pursuant to Articles 44 and 45 or that arose after submission of the final payment requisition, provided that a detailed and verified statement of claim is served upon the contracting Agency and Comptroller not later than forty (40) Days after the making of such final payment by electronic funds transfer (EFT) or the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

ARTICLE 47. APPROVAL BY PUBLIC DESIGN COMMISSION

47.1 All works of art, including paintings, mural decorations, stained glass, statues, bas-reliefs, and other sculptures, monuments, fountains, arches, and other structures of a permanent character intended for ornament or commemoration, and every design of the same to be used in the performance of this Contract, and the design of all bridges, approaches, buildings, gates, fences, lamps, or structures to be erected, pursuant to the terms of this Contract, shall be submitted to the Art Commission, d/b/a the Public Design Commission of the City of New York, and shall be approved by the Public Design Commission prior to the erection or placing in position of the same. The final payment shall not become due or payable under this Contract unless and until the Public Design Commission shall certify that the design for the Work herein contracted for has been approved by the said Public Design Commission, and that the same has been executed in substantial accordance with the design so approved, pursuant to the provisions of Chapter 37, Section 854 of the City Charter, as amended.
CHAPTER X CONTRACTOR’S DEFAULT

ARTICLE 48. COMMISSIONER’S RIGHT TO DECLARE CONTRACTOR IN DEFAULT

48.1 In addition to those instances specifically referred to in other Articles herein, the Commissioner shall have the right to declare the Contractor in default of this Contract or any Work Order issued hereunder if:

48.1.1 The Contractor fails to commence Work when notified to do so by the Commissioner; or if

48.1.2 The Contractor shall abandon the Work; or if

48.1.3 The Contractor shall refuse to proceed with the Work when and as directed by the Commissioner; or if

48.1.4 The Contractor shall, without just cause, reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the Commissioner, to complete the Work in accordance with the progress schedule; or if

48.1.5 The Contractor shall fail or refuse to increase sufficiently such working force when ordered to do so by the Commissioner; or if

48.1.6 The Contractor shall sublet, assign, transfer, convert or otherwise dispose of this Contract other than as herein specified; or sell or assign a majority interest in the Contractor; or if

48.1.7 The Contractor fails to secure and maintain all required insurance; or if

48.1.8 A receiver or receivers are appointed to take charge of the Contractor’s property or affairs; or if

48.1.9 The Commissioner shall be of the opinion that the Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if

48.1.10 The Commissioner shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if

48.1.11 The Commissioner shall be of the opinion that the Work cannot be completed within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Commissioner’s opinion, attributable to conditions within the Contractor’s control; or if

48.1.12 The Work is not completed within the time herein provided therefor or within the time to which the Contractor may be entitled to have such completion extended; or if

48.1.13 Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Work, the Project, or the Contract (or for purposes of securing
the Contract) was untrue or incorrect when made; or if

48.1.14 The Contractor or any of its officers, directors, partners, five (5%) percent shareholders, principals, or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the PPB Rules.

48.2 Before the Commissioner shall exercise his/her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard, upon not less than two (2) Days’ notice.

ARTICLE 49. EXERCISE OF THE RIGHT TO DECLARE DEFAULT

The right to declare the Contractor in default for any of the grounds specified or referred to in Article 48 shall be exercised by sending the Contractor a notice, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (hereinafter referred to as a "Notice of Default").

The Commissioner's determination that the Contractor is in default shall be conclusive, final, and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the determination of the Commissioner, the Contractor may commence an action in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

ARTICLE 50. QUITTING THE SITE

50.1 Upon receipt of such notice the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit the Site, leaving untouched all plant, materials, equipment, tools, and supplies then on the Site.

ARTICLE 51. COMPLETION OF THE WORK

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

51.2 After such completion, the Commissioner shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages (at the rate provided for in the Contract) from the date when the Work was required to have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the Work. Such certificate shall be binding and conclusive upon the Contractor, its sureties, and any person claiming under the Contractor, as to the amount thereof.

51.3 The expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, shall be charged against and deducted out of monies which are earned by the Contractor prior to the date of default. If the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be paid by the Contractor.

ARTICLE 52. PARTIAL DEFAULT

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

The provisions of this Chapter relating to declaring the Contractor in default as to the entire Work shall be equally applicable to a declaration of partial default, except that the Commissioner shall be entitled to utilize for completion of the part of the Work as to which the Contractor was declared in default only such plant, materials, equipment, tools, and supplies as had been previously used by the Contractor on such part.

ARTICLE 53. PERFORMANCE OF UNCOMPLETED WORK

53.1 In completing the whole or any part of the Work under the provisions of this Chapter X, the Commissioner shall have the power to depart from or change or vary the terms and provisions of this Contract, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Commissioner's certificate of the cost of completion referred to in Article 51, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.

ARTICLE 54. OTHER REMEDIES

In addition to the right to declare the Contractor in default pursuant to this Chapter X, the Commissioner shall have the absolute right, in his/her sole discretion and without a hearing, to complete or cause to be completed in the same manner as described in Articles 51 and 53, any or all unsatisfactory or uncompleted punch list Work that remains after the completion date specified in the Final Approved Punch List. A written notice of the exercise of this right shall be sent to the Contractor who shall immediately quit the Site in accordance with the provisions of Article 50.

The expense of completion permitted under Article 54.1, including any and all related and incidental costs, as so certified by the Commissioner, shall be charged against and deducted out of monies which have been earned by the Contractor prior to the date of the exercise of the right set forth in Article 54.1; the balance of such monies, if any, subject to the other provisions of this Contract, to be paid to the Contractor without interest after such completion. If the expense of such completion, as certified by the Commissioner, exceeds the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be paid by the Contractor to the Department upon demand.

The previous provisions of this Chapter X shall be in addition to any and all other remedies available under Law or in equity.

The exercise by the City of any remedy set forth herein shall not be deemed a waiver by the City of any other legal or equitable remedy contained in this Contract or provided under Law.

CHAPTER XI
MISCELLANEOUS PROVISIONS

ARTICLE 55. CONTRACTOR'S WARRANTIES

In consideration of, and to induce, the award of this Contract to the Contractor, the Contractor represents and warrants:
That it is financially solvent, sufficiently experienced and competent to perform the Work; and
That the facts stated in its bid and the information given by it pursuant to the Information for Bidders is true and correct in all respects; and

That it has read and complied with all requirements set forth in the Contract.

**ARTICLE 56. CLAIMS AND ACTIONS THEREON**

56.1 Any claim, that is not subject to dispute resolution under the PPB Rules or this Contract, against the City for damages for breach of Contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as herein before provided.

56.2 Nor shall any action be instituted or maintained on any such claims unless such action is commenced within six (6) months after the date the Commissioner issues a Certificate of Substantial Completion pursuant to Article 44; except that:

56.3 Any claims arising out of events occurring after the date the Commissioner issues a Certificate of Substantial Completion and before Final Acceptance of the Work for a particular Work Order shall be asserted within six (6) months of Final Acceptance of the Work for a particular Work Order;

56.4 Any claims for monies deducted, retained or withheld under the provisions of this Contract shall be asserted within six (6) months after the date when such monies otherwise become due and payable hereunder; and

56.5 If the Commissioner exercises his/her right to terminate the Contract pursuant to Article 64, any such action shall be commenced within six (6) months of the date the Commissioner exercises said right.

**ARTICLE 57. INFRINGEMENT**

57.1 The Contractor shall be solely responsible for and shall defend, indemnify, and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) and judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its Subcontractors in the performance or completion of the Work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**ARTICLE 58. NO CLAIM AGAINST OFFICIALS, AGENTS OR EMPLOYEES**

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

**ARTICLE 59. SERVICE OF NOTICES**

59.1 The Contractor hereby designates the business address, fax number, and email address specified in
its bid, as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

59.2 Contractor’s notice address, email address, or fax number may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor, and delivered to the Commissioner.

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

ARTICLE 60. UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

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

ARTICLE 61. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

ARTICLE 62. TAX EXEMPTION

62.1 The City is exempt from payment of Federal, State, and local taxes, including sales and compensating use taxes of the State of New York and its cities and counties on all tangible personal property sold to the City pursuant to the provisions of this Contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Contractor, Subcontractor or Materialman or to tangible personal property which, even though it is consumed, is not incorporated into the completed Work (consumable supplies) and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work. The Contractor and its Subcontractors and Materialmen shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property and upon all such consumable supplies and tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work.

62.2 The Contractor agrees to sell and the City agrees to purchase all tangible personal property, other than consumable supplies and other tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work, that is required, necessary or proper for or incidental to the construction of the Project covered by this Contract. The sum paid under this Contract for such tangible personal property shall be in full payment and consideration for the sale of such tangible personal property.
62.2.1 The *Contractor* agrees to construct the *Project* and to perform all *Work*, labor and services rendered, necessary, proper or incidental thereto for the sum shown in the bid for the performance of such *Work*, labor, and services, and the sum so paid pursuant to this *Contract* for such *Work*, labor, and services, shall be in full consideration for the performance by the *Contractor* of all its duties and obligations under this *Contract* in connection with said *Work*, labor, and services.

62.3 20 NYCRR Section 541.3(d) provides that a *Contractor*’s purchases of tangible personal property that is either incorporated into real property owned by a governmental entity or purchased for and sold to a governmental entity are exempt from sales and use tax. The *City* shall not pay sales tax for any such tangible personal property that it purchases from the *Contractor* pursuant to the *Contract*. With respect to such tangible personal property, the *Contractor*, at the request of the *City*, shall furnish to the *City* such bills of sale and other instruments as may be required by the *City*, properly executed, acknowledged and delivered assuring to the *City* title to such tangible personal property, free of liens and/or encumbrances, and the *Contractor* shall mark or otherwise identify all such tangible personal property as the property of the *City*.

62.4 Title to all tangible personal property to be sold by the *Contractor* to the *City* pursuant to the provisions of the *Contract* shall immediately vest in and become the sole property of the *City* upon delivery of such tangible personal property to the *Site*. Notwithstanding such transfer of title, the *Contractor* shall have the full and continuing responsibility to install such tangible personal property in accordance with the provisions of this *Contract*, protect it, maintain it in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional tangible personal property in place of any that may be lost, stolen or rendered unusable, without cost to the *City*, until such time as the *Work* covered by the *Contract* is fully accepted by the *City*. Such transfer of title shall in no way affect any of the *Contractor*’s obligations hereunder. In the event that, after title has passed to the *City*, any of the tangible personal property is rejected as being defective or otherwise unsatisfactory, title to all such tangible personal property shall be deemed to have been transferred back to the *Contractor*.

62.5 The purchase by *Subcontractors* or *Materialmen* of tangible personal property to be sold hereunder shall be a purchase or procurement for resale to the *Contractor* (either directly or through other *Subcontractors*) and therefore not subject to the aforesaid sales and compensating use taxes, provided that the subcontracts and purchase agreements provide for the resale of such tangible personal property and that such subcontracts and purchase agreements are in a form similar to this *Contract* with respect to the separation of the sale of consumable supplies and tangible personal property that the *Contractor* is required to remove from the *Site* during or upon completion of the *Work* from the *Work* and labor, services, and any other matters to be provided, and provided further that the subcontracts and purchase agreements provide separate prices for tangible personal property and all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for tangible personal property from the payments for other *Work* and labor and other things to be provided.

62.6 The *Contractor* and its *Subcontractors* and *Materialmen* shall furnish a *Contractor* Exempt Purchase Certificate to all persons, firms or corporations from which they purchase tangible personal property for the performance of the *Work* covered by this *Contract*.

62.7 In the event any of the provisions of this Article 62 shall be deemed to be in conflict with any other provisions of this *Contract* or create any ambiguity, then the provisions of this Article 62 shall control.

**ARTICLE 63. INVESTIGATION(S) CLAUSE**

63.1 The parties to this *Contract* agree to cooperate fully and faithfully with any investigation, audit or
inquiry conducted by a United States, a State of New York (State) or a City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

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

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

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

63.5 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license, pending the final determination pursuant to Article 63.7 without the City incurring any penalty or damages for delay or otherwise.

63.6 The penalties which may attach after a final determination by the Commissioner may include but shall not exceed:

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

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

63.7 The Commissioner shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in Articles 63.7.1 and 63.7.2. The Commissioner may also consider, if relevant and appropriate, the criteria established in Articles 63.7.3 and 63.7.4, in addition to any other information which
may be relevant and appropriate:

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

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

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

63.7.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Article 63.6, provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in Article 63.4, gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

63.7.8 Definitions:

63.8.1 The term "license" or "permit" as used in this Article 63 shall be defined as a license, permit, franchise or concession not granted as a matter of right.

63.8.2 The term "person" as used in this Article 63 shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

63.8.3 The term "entity" as used in this Article 63 shall be defined as any firm, partnership, corporation, association, joint venture, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

63.8.4 The term "member" as used in this Article 63 shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

63.9 In addition to and notwithstanding any other provision of this Contract, the Commissioner may in his/her sole discretion terminate this Contract upon not less than three (3) Days’ written notice in the event the Contractor fails to promptly report in writing to the Commissioner of the Department of Investigations ("DOI") of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation, or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

ARTICLE 64. TERMINATION BY THE CITY

64.1 In addition to termination pursuant to any other article of this Contract, the Commissioner may, at any time, terminate this Contract by written notice to the Contractor. In the event of termination, the
**Contractor** shall, upon receipt of such notice, unless otherwise directed by the **Commissioner**:

64.1.1 Stop **Work** on the date specified in the notice;

64.1.2 Take such action as may be necessary for the protection and preservation of the **City's** materials and property;

64.1.3 Cancel all cancelable orders for material and equipment;

64.1.4 Assign to the **City** and deliver to the **Site** or another location designated by the **Commissioner**, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this **Contract** and has been specifically fabricated for the sole purpose of this **Contract** and not incorporated in the **Work**;

64.1.5 Take no action which will increase the amounts payable by the **City** under this **Contract**.

64.2 In the event of termination by the **City** pursuant to this Article 64, payment to the **Contractor** shall be in accordance with Articles 64.2.1, 64.2.2 or 64.2.3, to the extent that each respective article applies.

64.2.1 Lump Sum Contracts or Items: On all lump sum **Contracts**, or on lump sum items in a **Contract**, the **City** will pay the **Contractor** the sum of the amounts described in Articles 64.2.1(a) and 64.2.1(b), less all payments previously made pursuant to this **Contract**. On lump sum **Contracts** only, the **City** will also pay the **Contractor** an additional sum as provided in Article 64.2.1(c).

64.2.1(a) For **Work** completed prior to the notice of termination, the **Contractor** shall be paid a pro rata portion of the lump sum bid amount, plus approved change orders, based upon the percent completion of the **Work**, as determined by the **Commissioner**. For the purpose of determining the pro rata portion of the lump sum bid amount to which the **Contractor** is entitled, the bid breakdown submitted in accordance with Article 41 shall be considered, but shall not be dispositive. The **Commissioner's** determination hereunder shall be final, binding, and conclusive.

64.2.1(b) For non-cancelable material and equipment that is not capable of use except in the performance of this **Contract** and has been specifically fabricated for the sole purpose of this **Contract**, but not yet incorporated in the **Work**, the **Contractor** shall be paid the lesser of the following, less salvage value:

64.2.1(b)(i) The Direct Cost, as defined in Article 64.2.4; or

64.2.1(b)(ii) The fair and reasonable value, if less than Direct Cost, of such material and equipment, plus necessary and reasonable delivery costs.

64.2.1(b)(iii) In addition, the **Contractor** shall be paid five (5%) percent of the amount described in Article 64.2.1(b)(i) or Article 64.2.1(b)(ii), whichever applies.

64.2.1(c) Except as otherwise provided in Article 64.2.1(d), on all lump sum **Contracts**, the **Contractor** shall be paid the percentage indicated below applied to the difference between the total lump sum bid amount and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to Articles 64.2.1(a) and 64.2.1(b):

64.2.1(c)(i) Five (5%) percent of the first five million ($5,000,000) dollars; and
64.2.1(c)(ii) Three (3%) percent of any amount between five million ($5,000,000) dollars and fifteen million ($15,000,000) dollars; plus

64.2.1(c)(iii) One (1%) percent of any amount over fifteen million ($15,000,000) dollars.

64.2.1(d) In the event the City terminates a lump sum Contract pursuant to this Article 64 within ninety (90) Days after registration of the Contract with the Comptroller, the Contractor shall be paid one (1%) percent of the difference between the lump sum bid amount and the total of all payments made pursuant to this Article 64.2.

64.2.2 Unit Price Contracts or Items: On all Unit Price Contracts, or on Unit Price items in a Contract, the City will pay the Contractor the sum of the amounts described in Articles 64.2.2(a) and 64.2.2(b), less all payments previously made pursuant to this Contract:

64.2.2(a) For all completed units, the Unit Price stated in the Contract, and

64.2.2(b) For units that have been ordered but are only partially completed, the Contractor will be paid:

64.2.2(b)(i) A pro rata portion of the Unit Price stated in the Contract based upon the percent completion of the unit and

64.2.2(b)(ii) For non-cancelable material and equipment, payment will be made pursuant to Article 64.2.1(b).

64.2.3 Time and Materials Contracts or Items Based on Time and Material Records: On all Contracts or items in a Contract where payment for the Work is based on time and material records, the Contractor shall be paid in accordance with Article 26, less all payments previously made pursuant to this Contract.

64.2.4 Direct Costs: Direct Costs as used in this Article 64.2 shall mean:

64.2.4(a) The actual purchase price of material and equipment, plus necessary and reasonable delivery costs, and

64.2.4(b) The actual cost of labor involved in construction and installation at the Site, and

64.2.4(c) The actual cost of necessary bonds and insurance purchased pursuant to requirements of this Contract less any amounts that have been or should be refunded by the Contractor's sureties or insurance carriers.

64.2.4(d) Direct Costs shall not include overhead.

64.3 In no event shall any payments under this Article 64 exceed the Contract price for such items.

64.4 All payments pursuant to Article 64 shall be in the nature of liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the City.

64.5 The City may deduct or set off against any sums due and payable pursuant to this Article 64, any deductions authorized by this Contract or by Law (including, but not limited to, liquidated damages) and any claims it may have against the Contractor. The City's exercise of the right to terminate the Contract pursuant to this
Article 64 shall not impair or otherwise effect the City’s right to assert any claims it may have against the Contractor in a plenary action.

64.6 Where the Work covered by the Contract has been substantially completed, as determined in writing by the Commissioner, termination of the Work shall be handled as an omission of Work pursuant to Articles 29 and 33, in which case a change order will be issued to reflect an appropriate reduction in the Contract sum, or if the amount is determined after final payment, such amount shall be paid by the Contractor.

ARTICLE 65. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

65.1 This Contract shall be deemed to be executed in the City regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York and the Laws of the United States, where applicable.

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

65.2.1 If the City initiates any action against the Contractor in Federal court or in a New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and

65.2.2 With respect to any action between the City and the Contractor in a New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have:

65.2.2(a) To move to dismiss on grounds of forum non conveniens;

65.2.2(b) To remove to Federal Court; and

65.2.2(c) To move for a change of venue to a New York State Court outside New York County.

65.2.3 With respect to any action brought by the City against the Contractor in a Federal Court located in the City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

65.2.4 If the Contractor commences any action against the City in a court located other than in the City and County of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a New York State Court of competent jurisdiction located in the City and County of New York or, if the Court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstate the action in a New York State Court of competent jurisdiction in New York County.

65.3 If any provision(s) of this Article 65 is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 66. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

66.1 The Contractor agrees that neither the Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Federal Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce (Commerce Department) promulgated thereunder.

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

66.3 The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code and the rules and regulations issued by the Comptroller thereunder.

ARTICLE 67. LOCALLY BASED ENTERPRISE PROGRAM

67.1 This Contract is subject to the requirements of Section 6-108.1 of the Administrative Code and regulations promulgated thereunder. No construction contract shall be awarded unless and until these requirements have been complied with in their entirety; however, compliance with this Article 67 is not required if the Agency sets Subcontractor Participation Goals for Minority- and Women-Owned Business Enterprises (M/WBEs).

67.2 Unless specifically waived by the Commissioner with the approval of the Division of Economic and Financial Opportunity of the City Department of Business Services, if any portion of the Contract is subcontracted, not less than ten (10%) percent of the total dollar amount of the Contract shall be awarded to locally based enterprises (LBEs); except that where less than ten (10%) percent of the total dollar amount of the Contract is subcontracted, such lesser percentage shall be so awarded.

67.3 The Contractor shall not require performance and payment bonds from LBE Subcontractors.

67.4 If the Contractor has indicated prior to award that no Work will be subcontracted, no Work shall be subcontracted without the prior approval of the Commissioner, which shall be granted only if the Contractor makes a good faith effort beginning at least six (6) weeks before the Work is to be performed to obtain LBE Subcontractors to perform the Work.

67.5 If the Contractor has not identified sufficient LBE Subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Section 6-108.1 of the Administrative Code, recognizes that achieving the LBE requirement is a condition of its Contract, and shall submit documentation demonstrating its good faith efforts to obtain LBEs. After award, the Contractor shall begin to solicit LBE's to perform subcontracted Work at least six (6) weeks before the date such Work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBEs on each subcontract until it meets the required percentage.

67.6 Failure of the Contractor to comply with the requirements of Section 6-108.1 of the Administrative Code and the regulations promulgated thereunder shall constitute a material breach of this Contract. Remedy for such breach may include the imposition of any or all of the following sanctions:

67.6.1 Reducing the Contractor's compensation by an amount equal to the dollar value of the percentage of the LBE subcontracting requirement not complied with;

67.6.2 Declaring the Contractor in default;

67.6.3 If the Contractor is an LBE, de-certifying and declaring the Contractor ineligible to participate in the LBE program for a period of up to three (3) years.

ARTICLE 68. ANTITRUST

68.1 The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust Laws of New York State or of the United States relating to the particular goods or services purchased or procured by the City under this Contract.
ARTICLE 69. MacBRIDE PRINCIPLES PROVISIONS

69.1 Notice To All Prospective Contractors:

69.1.1 Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 of the Administrative Code. The local Law provides for certain restrictions on City Contracts to express the opposition of the people of the City to employment discrimination practices in Northern Ireland to promote freedom of work-place opportunity.

69.1.2 Pursuant to Section 6-115.1, prospective Contractors for Contracts to provide goods or services involving an expenditure of an amount greater than ten thousand ($10,000.) dollars, or for construction involving an amount greater than fifteen thousand ($15,000.) dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their Contract, that any business operations in Northern Ireland conducted by the Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

69.1.3 Prospective Contractors are not required to agree to these conditions. However, in the case of Contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a Contract to supply goods, services or contract of comparable quality, the Agency shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable Law, that it is in the best interest of the City that the Contract be awarded to other than the lowest responsible pursuant to Section 313(b)(2) of the City Charter.

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

69.2 In accordance with Section 6-115.1 of the Administrative Code, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor either:

69.2.1 Have no business operations in Northern Ireland, or

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

69.3 For purposes of this Article, the following terms shall have the following meanings:

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

69.3.1(a) increase the representation of individuals from under-represented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;
69.3.1(b) take steps to promote adequate security for the protection of employees from under-represented religious groups both at the work-place and while traveling to and from Work;

69.3.1(c) ban provocative religious or political emblems from the workplace;

69.3.1(d) publicly advertise all job openings and make special recruitment efforts to attract applicants from under-represented religious groups;

69.3.1(e) establish layoff, recall, and termination procedures which do not in practice favor a particular religious group;

69.3.1(f) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

69.3.1(g) develop training programs that will prepare substantial numbers of current employees from under-represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of workers from under-represented religious groups;

69.3.1(h) establish procedures to assess, identify, and actively recruit employees from under-represented religious groups with potential for further advancement; and

69.3.1(i) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

69.4 The Contractor agrees that the covenants and representations in Article 69.2 are material conditions to this Contract. In the event the Agency receives information that the Contractor who made the stipulation required by this Article 69 is in violation thereof, the Agency shall review such information and give the Contractor an opportunity to respond. If the Agency finds that a violation has occurred, the Agency shall have the right to declare the Contractor in default in default and/or terminate this Contract for cause and procure supplies, services or Work from another source in the manner the Agency deems proper. In the event of such termination, the Contractor shall pay to the Agency, or the Agency in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and the cost to the Agency of completing performance of this Contract either itself or by engaging another Contractor or Contractors. In the case of a requirement Contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the Agency for the uncompleted term of Contractor's Contract. In the case of a construction Contract, the Agency shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the Agency hereunder shall be in addition to, and not in lieu of, any rights and remedies the Agency has pursuant to this Contract or by operation of Law.

ARTICLE 70. ELECTRONIC FILING/NYC DEVELOPMENT HUB

70.1 The Contractor shall electronically file all alteration type-2 and alteration type-3 applications via the New York City Development Hub Web site, except applications for the following types of minor alterations: enlargements, curb cuts, legalizations, fire alarms, builders pavement plans, and jobs filed on Landmark Preservation Commission calendared properties. All such filings must be professionally certified. Information about electronic filing via the New York City Development Hub is available on the City Department of Buildings Web site at www.nyc.gov/buildings.

ARTICLE 71. PROHIBITION OF TROPICAL HARDWOODS

71.1 Tropical hardwoods, as defined in Section 165 of the New York State Finance Law (Finance Law), shall not be utilized in the performance of this Contract except as expressly permitted by Section 165 of the Finance Law.
ARTICLE 72. CONFLICTS OF INTEREST

72.1 Section 2604 of the City Charter and other related provisions of the City Charter, the Administrative Code, and the Penal Law are applicable under the terms of this Contract in relation to conflicts of interest and shall be extended to Subcontractors authorized to perform Work, labor and services pursuant to this Contract and further, it shall be the duty and responsibility of the Contractor to so inform its respective Subcontractors. Notice is hereby given that, under certain circumstances, penalties may be invoked against the donor as well as the recipient of any form of valuable gift.

ARTICLE 73. MERGER CLAUSE

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

ARTICLE 74. STATEMENT OF WORK

74.1 The Contractor shall furnish all labor and materials and perform all Work in strict accordance with the Specifications and Addenda thereto, numbered as shown in Appendix A of the General Conditions.

ARTICLE 75. COMPENSATION TO BE PAID TO CONTRACTOR

75.1 The City will pay and the Contractor will accept in full consideration for the performance of the Contract, subject to additions and deductions as provided herein, the total sum shown in General Conditions, Appendix, this said sum being the amount at which the Contract was awarded to the Contractor at a public letting thereof, based upon the Contractor's bid for the Contract.

ARTICLE 76. ELECTRONIC FUNDS TRANSFER

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

76.2 The Commissioner may waive the application of the requirements of this Article 76 to payments on contracts entered into pursuant to Section 315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Article 76 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

ARTICLE 77. RECORDS RETENTION

77.1 The Contractor agrees to retain all books, records, and other documents relevant to this Contract for
six years after the final payment or termination of this Contract, whichever is later. City, state, and federal auditors and any other persons duly authorized by the City shall have full access to and the right to examine any such books, records, and other documents during the retention period.
IN WITNESS WHEREOF, an authorized representative of the Department of Health and Mental Hygiene, on behalf of the City of New York, and an authorized representative on behalf of the Contractor, have executed this agreement in triplicate.

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

By: ______________________________________________________
    ASSUNTA ROZZA
    Deputy Commissioner for Finance

___________________________________________________
(Print full legal name of Contractor)

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

(Place Seal Here)

APPROVED AS TO FORM/CERTIFIED AS TO LEGAL AUTHORITY:

___________________________________________________
Acting Corporation Counsel

Date: __________________________
CORPORATION COUNSEL CONTRACT APPROVAL

Agency  DOHMH
E-PIN  81615B0003

Contractor

Approved as to form
Certified as to legal authority

Electronically Signed By HOWARD FRIEDMAN  Date 07/02/2015 13:19

Acting Corporation Counsel
On this __________ day of ____________________, 20____ before me personally came ASSUNTA ROZZA, to me known and known to me to be the Deputy Commissioner for Finance of the Department of Health and Mental Hygiene of the City of New York, the person described in whom, as such Commissioner, executed the foregoing agreement, and he duly acknowledged to me that he executed the same on behalf of the City of New York and the Department of Health and Mental Hygiene for the purpose herein mentioned.

=================================
Notary Public or Commissioner of Deeds
ACKNOWLEDGMENT BY CORPORATION

STATE OF NEW YORK )
 )
 ) ss:
COUNTY OF NEW YORK )

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

================================================

Notary Public or Commissioner of Deeds
# SCHEDULE A

## GENERAL CONDITIONS TO CONSTRUCTION CONTRACT
*(INCLUDING GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)*

## PART I. REQUIRED INFORMATION

<table>
<thead>
<tr>
<th>INFORMATION FOR BIDDERS</th>
<th>BID BOND</th>
<th>$-0- NO BID BOND REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Contractor shall obtain a bid bond in the amount indicated to the right.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INFORMATION FOR BIDDERS</th>
<th>PERFORMANCE AND PAYMENT BONDS</th>
<th>$-0- NO PERFORMANCE AND PAYMENT BONDS REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Contractor shall obtain performance and payment bonds in the amount indicated to the right.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTRACT ARTICLE 14.</th>
<th>DATE FOR SUBSTANTIAL COMPLETION</th>
<th>1825 consecutive calendar days</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Contractor shall substantially complete the Work in the number of calendar days indicated to the right.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| CONTRACT ARTICLE 15. | LIQUIDATED DAMAGES | 1. Failure by the Contractor to respond to all calls, emergency and non-emergency, within the times provided above, shall result in the assessment of liquidated damages at $100.00 for each hour or hourly part that Contractor fails to respond. |
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the loss, which the Department will suffer by reason of delay in completion of the work hereunder, is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

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

<table>
<thead>
<tr>
<th>CONTRACT ARTICLE 17. SUB-CONTRACTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Contractor shall not make subcontracts totaling an amount more than the percentage of the total Contract price indicated to the right.</td>
</tr>
<tr>
<td>Not to exceed 25% of the Contract price</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTRACT ARTICLE 21. RETAINAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Commissioner shall deduct and retain until the substantial completion of the Work the percent value of the Work indicated to the right.</td>
</tr>
<tr>
<td>5% of the value of the Work</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTRACT ARTICLE 22. (Per Directions Below)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As security for the faithful performance of its obligations, the Contractor, upon filing its requisition for payment on Substantial Completion, shall deposit with the Commissioner a sum equal to the percentage of the Contract price indicated to the right.</td>
</tr>
<tr>
<td>1% of Contract price</td>
</tr>
</tbody>
</table>
**CONTRACT ARTICLE 24. PERIOD OF GUARANTEE**

Periods of maintenance and guarantee other than the period set forth in Article 24.1 are indicated to the right.

| Periods of maintenance and guarantee other than the period set forth in Article 24.1 are indicated to the right. | 1 year after substantial completion |

**CONTRACT ARTICLE 74. STATEMENT OF WORK**

The Contractor shall furnish all labor and materials and perform all Work in strict accordance with the Contract Drawings, Specifications, and all Addenda thereto, numbered as shown in the column to the right.

| Insert the Required Information Below. |

**CONTRACT ARTICLE 75. COMPENSATION TO BE PAID TO CONTRACTOR**

The City shall pay and the Contractor shall accept in full consideration for the performance of the Contract, subject to additions and deductions as provided herein, the total sum shown in the column to the right, this said sum being the amount at which the Contract was awarded to the Contractor at a public letting thereof, based upon the Contractor's bid for the Contract.

| Amount for which the Contract was awarded: |

| Not to Exceed$ ______________________ |

[Agency: If the Bid Price, or any portion thereof, is based on unit prices, insert the words “Not to Exceed” before the amount.]
(GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)

PART II. TYPES OF INSURANCE, MINIMUM LIMITS AND SPECIAL CONDITIONS

Note: All certificate(s) of insurance submitted pursuant to Contract Article 22.3 must be accompanied by a Certification by Broker or Agent consistent with Appendix B, which follows this Appendix A and include the following information:
- For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;
- Policy limits consistent with the requirements listed below;
- Additional insureds or loss payees consistent with the requirements listed below; and
- The number assigned to the Contract by the City (in the “Description of Operations” field).

Insurance indicated by a blackened box (■) or by X in a □ to left will be required under this contract

<table>
<thead>
<tr>
<th>Types of Insurance (per Article 22 in its entirety, including listed paragraph)</th>
<th>Minimum Limits and Special Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>■ Commercial General Liability Art. 22.1.1</td>
<td>The minimum limits shall be $1,000,000 per occurrence and $2,000,000 per project aggregate applicable to this Contract unless the Work requires a permit from the Department of Buildings and greater limits of Commercial General Liability Insurance are required pursuant to 1 RCNY section 101-08. Additional Insureds: 1. City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10 and CG 20 37, and 2. All person(s) or organization(s), if any, that Article 22.1.1(b) of the Contract requires to be named as Additional Insured(s), with coverage at least as broad as ISO Form CG 20 26. The Additional Insured endorsement shall either specify the entity's name, if known, or the entity's title (e.g., Project Manager). 3. [Agency: If appropriate, insert names of other entities to be covered as Additional Insureds.] NONE</td>
</tr>
<tr>
<td>■ Workers’ Compensation Art. 22.1.2</td>
<td>Workers’ Compensation, Employers’ Liability, and Disability Benefits Insurance: Statutory per New York State law without regard to jurisdiction.</td>
</tr>
<tr>
<td>■ Disability Benefits Insurance Art. 22.1.2</td>
<td></td>
</tr>
</tbody>
</table>

161
<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Art. 22.1.x</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers’ Liability</td>
<td>22.1.2</td>
</tr>
<tr>
<td>Jones Act</td>
<td>22.1.3</td>
</tr>
<tr>
<td>U.S. Longshoremen’s and Harbor Workers Compensation Act</td>
<td>22.1.3</td>
</tr>
</tbody>
</table>

**Note:** The following forms are acceptable: (1) New York State Workers’ Compensation Board Form No. C-105.2, (2) State Insurance Fund Form No. U-26.3, (3) New York State Workers’ Compensation Board Form No. DB-120.1 and (3) Request for WC/DB Exemption Form No. CE-200. The City will not accept an ACORD form as proof of Workers’ Compensation or Disability Insurance.

Jones Act and U.S. Longshoremen’s and Harbor Workers’ Compensation Act: Statutory per U.S. law.

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Art. 22.1.x</th>
</tr>
</thead>
<tbody>
<tr>
<td>Builders Risk</td>
<td>22.1.4</td>
</tr>
</tbody>
</table>

100% of total value of **Work**

*Contractor* the Named Insured; the *City* both an Additional Insured and one of the loss payees as its interests may appear.

If the **Work** does not involve construction of a new building or gut renovation work, the *Contractor* may provide an installation floater in lieu of Builders Risk insurance.

**Note:** Builders Risk Insurance may terminate upon **Substantial Completion** of the **Work** in its entirety.

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Art. 22.1.x</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Auto Liability</td>
<td>22.1.5</td>
</tr>
</tbody>
</table>

$1,000,000 per accident combined single limit

If vehicles are used for transporting hazardous materials, the *Contractor* shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90

---

**Standard Construction Contract Schedule A**  
**June 2015**

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Art. 22.1.x</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractors Pollution Liability</td>
<td>22.1.6</td>
</tr>
</tbody>
</table>

$\text{___________} per occurrence

$\text{___________} aggregate
<table>
<thead>
<tr>
<th>Additional Insureds:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. City of New York, including its officials and employees, and</td>
<td></td>
</tr>
<tr>
<td>2. ___________________________</td>
<td></td>
</tr>
<tr>
<td>3. ___________________________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>□ Marine Protection and Indemnity</th>
<th>Art. 22.1.7(a)</th>
<th>$__________ per occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$__________ aggregate</td>
</tr>
<tr>
<td>Additional Insureds:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. City of New York, including its officials and employees, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. ___________________________</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. ___________________________</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>□ Hull and Machinery Insurance</th>
<th>Art. 22.1.7(b)</th>
<th>$__________ per occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$__________ aggregate</td>
</tr>
<tr>
<td>Additional Insureds:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. City of New York, including its officials and employees, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. ___________________________</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. ___________________________</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>□ Marine Pollution Liability</th>
<th>Art. 22.1.7(c)</th>
<th>$__________ each occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Insureds:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. City of New York, including its officials and employees, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. ___________________________</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. ___________________________</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Standard Construction Contract Schedule A
June 2015*
| Art. 22.1.8 | [If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s). Note that if Railroad Protective Liability Insurance is required, the appropriate Named Insured is the owner of the railroad and there are no additional insureds.] |
| NONE | [See directly above.] |
ADDRESS OF COMMISSIONER

Wherever reference is made in Article 7 or Article 22 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth below or, in the absence of such address, to the Commissioner’s address as provided elsewhere in this Contract.

Agency Chief Operating Officer
Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, WS 17-100
Queens, New York 11101-4132
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.
CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

_____________________________________________________
[Name of broker or agent (typewritten)]

_____________________________________________________
[Address of broker or agent (typewritten)]

_____________________________________________________
[Email address of broker or agent (typewritten)]

_____________________________________________________
[Phone number/Fax number of broker or agent (typewritten)]

_____________________________________________________
[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of ………………….  )
) ss.:
County of ………………….  )

Sworn to before me this _____ day of ___________ 20___

_______________________________________________________
NOTARY PUBLIC FOR THE STATE OF _____________
APPENDIX C
Tax Affirmation

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

Full name of proposer or bidder: __________________________________________________
Address: ______________________________________________________________________
City _______________________________ State_____ Zip_____________________

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

( ) A Individual or Sole Proprietorship SS# _____________________________
( ) B Partnership, Joint Venture or EIN# ______________________________ other unincorporated organization
( ) C Corporation EIN# _______________________________

By: _____________________________________  ______________________________
    Signature                                      Title

If a corporation, place seal here:     ______________________________

Date_____________

Must be signed by an officer or duly authorized representative.

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

Charter Section 312(a) Certification

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

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

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

________________________________________________   ___________________
Agency Chief Contracting Officer or Designee                                 Date
APPENDIX D

Charter Section 312(a) Certification

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

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

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

[Signature]
Agency Chief Contracting Officer or Designee

2/25/16
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: 81615B0003

Your Name: Jeannette Soto-Pacheco

Phone: 347-396-6639

Email: jsoto@health.nyc.gov

Please specifically identify the service(s) being procured.

The NYC Department of Health and Mental Hygiene requires an experienced contractor to repair and maintain steam hot water boilers, domestic gas fired water heaters, heat exchangers and auxiliary equipment for all DOHMH facilities located throughout the five (5) boroughs. The department is responsible and accountable to disseminate vital health services from these locations. Any shut-down or interruption of services may endanger life or property.

☐ 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.

Repairs on the hot water boilers, domestic gas fired hot water heaters, heat exchangers and auxiliary equipment shall be performed by mechanics and helpers qualified by experience and training, per industry standards, in boiler troubleshooting, maintenance, inspection, and repair and shall be under the direct supervision and in the employ of the Contractor.

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.

The DOHMH lacks such capacity, because the DOHMH does not have staff that can perform services to accommodate the various sites located throughout the five boroughs.

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.

Stationary Engineer - 5
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).
Message from the New York City Vendor Enrollment Center

Get on mailing lists for New York City contract opportunities!
Submit a NYC-FMS Vendor Application - Call 212/857-1680

Message from New York City’s Department of Small Business Services

The Department of Small Business Services (SBS) offers One-on-One Technical Assistance to businesses that are interested in bidding on City contracts for the following goods and services: construction, construction related, standardized and architectural and engineering. If you plan on bidding on this or any other City contract, contact SBS to schedule an appointment. The Department of Small Business Services will meet with you to review your particular proposal or submission, and provide feedback and guidance to help you submit the best proposal possible.

To schedule One-on-One Technical Assistance, email techassist@sbs.nyc.gov and an SBS representative will contact you.
APPENDIX E

LABOR LAW §220 PREVAILING WAGE SCHEDULES
(Wage Rate Schedule Excerpts are Separately Attached)
LABOR LAW §220 PREVAILING WAGE SCHEDULE

Workers, Laborers and Mechanics employed on a public work project must receive not less than the prevailing rate of wage and benefits for the classification of work performed by each upon such public work. Pursuant to Labor Law §220 the Comptroller of the City of New York has promulgated this schedule solely for Workers, Laborers and Mechanics engaged by private contractors on New York City public work contracts.

This schedule is a compilation of separate determinations of the prevailing rate of wage and supplements made by the Comptroller for each trade classification listed herein pursuant to New York State Labor Law section 220 (5). The source of the wage and supplement rates, whether a collective bargaining agreement, survey data or other, is listed at the end of each classification.

Agency Chief Contracting Officers should contact the Bureau of Labor Law’s Classification Unit with any questions concerning trade classifications, prevailing rates or prevailing practices with respect to procurement on New York City public works contracts. Contractors are advised to review the Comptroller’s Prevailing Wage Schedule before bidding on public works contracts. Contractors with questions concerning trade classifications, prevailing rates or prevailing practices with respect to public works contracts in the procurement stage must contact the contracting agency responsible for the procurement.

Any error as to compensation under the prevailing wage law or other information as to trade classification, made by the contracting agency in the contract documents or in any other communication, will not preclude a finding against the contractor of prevailing wage violation.

Any questions concerning trade classifications, prevailing rates or prevailing practices on New York City public works contracts that have already been awarded may be directed to the Bureau of Labor Law’s Classification Unit by calling (212) 669-7974. All callers must have the agency name and contract registration number available when calling with questions on public works contracts. Please direct all other compliance issues to: Bureau of Labor Law, Attn: Wasyl Kinach, P.E., Office of the Comptroller, 1 Centre Street, Room 1122, New York, N.Y. 10007; Fax (212) 669-4002.

The appropriate schedule of prevailing wages and benefits must be posted at all public work sites pursuant to Labor Law §220 (3-a) (a).

This schedule is applicable to work performed during the effective period, unless otherwise noted. Changes to this schedule are published on our website www.comptroller.nyc.gov. Contractors must pay the wages and supplements in effect when the worker, laborer, mechanic performs the work. Preliminary schedules for future one-year periods appear in the City Record on or about June 1 each succeeding year. Final schedules appear on or about July 1 in the City Record and on our website www.comptroller.nyc.gov.

The Comptroller’s Office has attempted to include all overtime, shift and night differential, Holiday, Saturday, Sunday or other premium time work. However, this schedule does not set forth every prevailing practice with respect to such rates with which employers must comply. All such practices are nevertheless part of the employer’s prevailing wage obligation and contained in the collective bargaining agreements of the prevailing wage unions. These collective bargaining agreements are available for inspection by appointment. Requests for appointments may be made by calling (212) 669-4443, Monday through Friday between the hours of 9 a.m. and 5 p.m.
Prevailing rates and ratios for apprentices are attached to this schedule in the Appendix. Pursuant to Labor Law §220 (3-e), only apprentices who are individually registered in a bona fide program to which the employer contractor is a participant, registered with the New York State Department of Labor, may be employed on a public work project. Workers who are not journey persons or not registered apprentices pursuant to Labor Law §220 (3-e) may not be substituted for apprentices and must be paid as journey persons.

Public Work construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement contracts awarded pursuant to a Project Labor Agreement (“PLA”) in accordance with Labor Law section 222 may have different labor standards for shift, premium and overtime work. Please refer to the PLA’s pre-negotiated labor agreements for wage and benefit rates applicable to work performed outside of the regular workday. More information is available at the Mayor’s Office of Contract Services (MOCS) web page at http://www.nyc.gov/html/mocs/html/vendors/pla.shtml.

All the provisions of Labor Law section 220 remain applicable to PLA work including, but not limited to, the enforcement of prevailing wage requirements by the Comptroller; however, we will enforce shift, premium, overtime and other non-standard rates as they appear in a project’s pre-negotiated labor agreement.

In order to meet their obligation to provide prevailing supplemental benefits to each covered employee, employers must either:

1) Provide bona-fide benefits which cost the employer no less than the prevailing supplemental benefits rate; or
2) Supplement the employee’s hourly wage by an amount no less than the prevailing supplemental benefits rate; or
3) Provide a combination of bona-fide benefits and wage supplements which cost the employer no less than the prevailing supplemental benefits rate in total.

Particular attention should be given to the supplemental benefits requirement. Although in most instances the payment or provision for supplemental benefits is for each hour worked, some classifications require the payment or provision of supplemental benefits for each hour paid. Consequently, some prevailing practices require benefits to be purchased at the overtime, shift differential, Holiday, Saturday, Sunday or other premium time rate.

Benefits are paid for EACH HOUR WORKED unless otherwise noted.

Wasyl Kinach, P.E.
Director of Classifications
Bureau of Labor Law

BOILERMAKER

Boilermaker

Effective Period: 7/1/2015 - 6/30/2016
Wage Rate per Hour: $51.56
Supplemental Benefit Rate per Hour: $41.69
Supplemental Note: For time and one half overtime - $61.94
For double overtime - $82.18

Overtime Description
For Repair and Maintenance work:
Time and one half the regular rate after an 8 hour day.
Time and one half the regular rate for Saturday.
Double time the regular rate for Sunday.
For New Construction work:
Double time the regular rate after an 8 hour day. Double time the regular time rate for Saturday. Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day Memorial Day
Independence Day
Columbus Day
Election Day
Veteran's Day
Thanksgiving Day
Christmas Day
Quadruple time the regular rate for work on the following holiday(s). Labor Day

Paid Holidays
Good Friday
Day after Thanksgiving
Day before Christmas
Day before New Year's Day
Shift Rates
When shifts are required, the first shift shall work eight (8) hours at the regular straight-time hourly rate. The second shift shall work seven and one-half (7 ½) hours and receive eight hours at the regular straight time hourly rate plus twenty-five cents ($0.25) per hour. The third shift shall work seven (7) hours and receive eight hours at the regular straight time hourly rate plus fifty cents ($0.50) per hour. A thirty (30) minute lunch period shall not be considered as time worked. Work in excess of the above shall be paid overtime at the appropriate new construction work or repair work overtime wage and supplemental benefit hourly rate.

(Local #5)

PUBLISH DATE: 6/1/2015     EFFECTIVE PERIOD: JULY 1, 2015 THROUGH JUNE 30, 2016     Excerpt Page 7-8 of 83

PLUMBER

Plumber

Effective Period: 7/1/2015 - 6/30/2016 Wage
Rate per Hour: $65.27
Supplemental Benefit Rate per Hour: $27.08
Supplemental Note: Overtime supplemental benefit rate per hour: $53.88

Plumber - Temporary Services

Temporary Services - When there are no Plumbers on the job site, there may be three shifts designed to cover the entire twenty-four hour period, including weekends if necessary, at the following rate straight time.

Effective Period: 7/1/2015 - 6/30/2016 Wage
Rate per Hour: $52.24
Supplemental Benefit Rate per Hour: $21.24

Overtime Description
Double time the regular rate after a 7 hour day - unless for new construction site work where the plumbing contract price is $1.5 million or less, the hours of labor can be 8 hours per day at the employers option. On Alteration jobs when other mechanical trades at the site are working an eighth hour at straight time, then the plumber shall also work an eighth hour at straight time.

Overtime
Double time the regular time rate for Saturday. Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Memorial Day Independence Day Labor Day Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day
Shift Rates
Shift work, when directly specified in public agency or authority documents where plumbing contract is $8 million or less, will be permitted. 30% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shifts Monday to Friday. 50% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shift work performed on weekends. For shift work on holidays, double time wages and fringe benefits shall be paid.

(Plumbers Local #1)

PLUMBER (MECHANICAL EQUIPMENT AND SERVICE)
(Mechanical Equipment and Service work shall include any repair and/or replacement of the present plumbing system.)

Plumber

Effective Period: 7/1/2015 - 6/30/2016
Wage Rate per Hour: $38.77
Supplemental Benefit Rate per Hour: $13.34

Overtime
Time and one half the regular rate after an 8 hour day. Time and one half the regular rate for Saturday.
Time and one half the regular rate for Sunday.

Overtime Holidays
Time and one half the regular rate for work on the following holiday(s). New Year's Day
President's Day
Memorial Day Independence Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None
**Plumber - Pump & Tank**

Effective Period: 7/1/2015 - 6/30/2016  
Wage Rate per Hour: $62.83  
Supplemental Benefit Rate per Hour: $21.37

**Overtime**  
Time and one half the regular rate after an 8 hour day.  
Time and one half the regular rate for Saturday.  
Time and one half the regular rate for Sunday.

**Overtime Holidays**  
Time and one half the regular rate for work on the following holiday(s).  
New Year’s Day  
President’s Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran’s Day  
Thanksgiving Day  
Day after Thanksgiving  
Christmas Day

**Paid Holidays**  
None

**Shift Rates**  
All work outside the regular workday (8:00 A.M. to 3:30 P.M.) is to be paid at time and one half the regular hourly rate

(Plumbers Local #1)

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**STEAMFITTER**

**Steamfitter I**

Effective Period: 7/1/2015 - 6/30/2016  
Wage Rate per Hour: $54.50  
Supplemental Benefit Rate per Hour: $52.04  
Supplemental Note: Overtime supplemental benefit rate: $103.34

**Overtime**  
Double time the regular rate after a 7 hour day. Double time the regular time rate for Saturday.  
Double time the regular rate for Sunday.

**Overtime Holidays**  
Double time the regular rate for work on the following holiday(s).  
New Year’s Day  
President’s Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran’s Day  
179
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Paid Holidays
None

Shift Rates
Work performed between 3:30 P.M. and 7:00 A.M. and on Saturdays, Sundays and Holidays shall be at double time the regular hourly rate and paid at the overtime supplemental benefit rate above.

Steamfitter II

For heating, ventilation, air conditioning and mechanical public works contracts with a dollar value not to exceed $15,000,000 and for fire protection/sprinkler public works contracts not to exceed $1,500,000.

Effective Period: 7/1/2015 - 6/30/2016
Wage Rate per Hour: $54.50
Supplemental Benefit Rate per Hour: $52.04
Supplemental Note: Overtime supplemental benefit rate: $103.34

Overtime
Double time the regular rate after an 8 hour day. Double time the regular time rate for Saturday. Double time the regular rate for Sunday.

Overtime Holidays
Double time the regular rate for work on the following holiday(s).
New Year's Day
President's Day
Memorial Day

APPENDIX F

CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DOHMH)
OFFICE OF THE AGENCY CHIEF CONTRACTING OFFICER
“NO BID RESPONSE”

PIN: 15BS008200R0X00

___________________________________________________ HAS OPTED NOT TO BID ON
(Contractor name)

BOILERS, HEATERS REPAIRS AND MAINTENANCE SERVICES

For the following reason(s):

Contact Name _________________________________ Phone________________________
(Signature)

Date _____/_____/_____

Please return this form to the DOHMH Authorized Agency Contact(s) or fax to , Attention, no later than the bid opening date.
NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

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

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

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

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

(a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

(b) If any of Contractor’s officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney’s fees.

(c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

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

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

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

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

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

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

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

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

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

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

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

Be it enacted by the Council as follows:

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

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

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

(1) "Contract" shall mean any written agreement, purchase order or instrument valued in excess of one hundred thousand dollars or more pursuant to which a contracting agency is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, and shall include a subcontract between a contractor and a subcontractor.

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

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

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

(1) how its employees can report to the New York city department of investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with such contract or subcontract, and
(2) the rights and remedies afforded to its employees under sections 7-805 and 12-113 of the administrative code for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with such contract or subcontract.

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

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

§2. This local law shall take effect 120 days after its enactment into law and shall apply to contracts and subcontracts for which bids or proposals are first solicited after such effective date; provided, however, that the commissioner of investigation and the city's chief procurement officer shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.
Local Law 33-2012

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

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

Be it enacted by the Council as follows:

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

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

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

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

2. "Remedial action" means an appropriate action to restore the officer or employee to his or her former status, which may include one or more of the following:

(i) reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action, or, as appropriate, to an equivalent position;

(ii) reinstatement of full seniority rights;

(iii) payment of lost compensation; and

(iv) other measures necessary to address the effects of the adverse personnel action.

3. "Commissioner" shall mean the commissioner of investigation.

4. "Child" shall mean any person under the age of nineteen, or any person ages nineteen through twenty-one if such person receives instruction pursuant to an individualized education plan.

5. "Educational welfare" shall mean any aspect of a child's education or educational environment that significantly
impacts upon such child's ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.

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

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

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

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

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

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

2. No officer or employee of a covered contractor or covered subcontractor shall take an adverse personnel action
with respect to another officer or employee of such contractor or subcontractor in retaliation for such officer or employee
making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve
corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of
such contractor or subcontractor, which concerns a contract with a contracting agency, (i) to the commissioner, (ii) to a
council member, the public advocate or the comptroller, who shall refer such report to the commissioner, or (iii) to the city
chief procurement officer, agency chief contracting officer, or agency head or commissioner of the contracting agency, who
shall refer such report to the commissioner.

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

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

[3.] 5. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another
officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or
reasonably believes to present a substantial and specific risk of harm to the health, safety or educational welfare of a child by
another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which
concerns their dealings with the city, (i) to the commissioner, (ii) to a council member, the public advocate, the comptroller or
the mayor, or (iii) to any superior officer.

c. An officer or employee (i) of an agency of the city, or (ii) of a public agency or public entity subject to the
jurisdiction of the commissioner pursuant to chapter thirty-four of the charter who believes that another officer or employee
has taken an adverse personnel action in violation of subdivision b of this section may report such action to the
commissioner.
d. 1. Upon receipt of a report made pursuant to subdivision c of this section, the commissioner shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken.

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

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

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

2. Any officer or employee of a covered contractor or covered subcontractor who believes that he or she has been the subject of an adverse personnel action in violation of paragraph two of subdivision b shall be entitled to bring a cause of action against such covered contractor or covered subcontractor to recover all relief necessary to make him or her whole.
Such relief may include but shall not be limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorneys’ fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the agency chief contracting officer or agency head or commissioner of the contracting agency of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the city, any public agency or other public entity, or local development corporations or not-for-profit corporations the governing boards of which include city officials acting in their official capacity or appointees of city officials, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

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

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

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

i. Not later than October thirty-first of each year, the commissioner shall prepare and forward to the mayor and the council a report on the complaints governed by this section during the preceding fiscal year. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints.

§ 3. This local law shall take effect ninety days after its enactment into law; provided, however, that the provisions of this local law shall apply only to contracts or subcontracts solicited or renewed on or after such effective date.
New York City Administrative Code section 7-805
Remedies of employees.

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

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

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

b. An employee described in subdivision a of this section may bring an action in any court of competent jurisdiction for the relief provided in this section.
REPORTING INFORMATION TO THE
NEW YORK CITY DEPARTMENT OF
INVESTIGATION
If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

Department of Investigation (DOI) Complaint Bureau
212-825-5959
or by mail or in person at:
DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE, 17th FLOOR
NEW YORK, NEW YORK 10038
Attention: COMPLAINT BUREAU
or file a complaint on-line at:
www.nyc.gov/doi

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.

- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over $100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.

- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.
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:
APPENDIX I

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 J

NOTICE TO ALL PROSPECTIVE CONTRACTORS

W/MBE REQUIREMENTS

(Attached separately)
NOTICE TO ALL PROSPECTIVE CONTRACTORS

PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes the program for participation in City procurement (“M/WBE Program”) by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”), and are detailed below.

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A

PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The MBE and/or WBE Participation Goals established for this Contract or Task Orders issued pursuant to this Contract, (“Participation Goals”), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1 of Schedule B, line 1- Total Participation Goals), or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The Participation Goals represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business
Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 4 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If Participation Goals have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the Participation Goals, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If Participation Goals have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant Participation Goal, provided that in accordance with Section 6-129 the value of Contractor’s participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant Participation Goal. In accordance with Section 6-129, the value of Contractor’s participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If Participation Goals have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the Participation Goals, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered (“Master Services Agreement”) and is subject to M/WBE Participation Goals, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor’s certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the Participation Goals that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non-responsive.

(ii) Participation Goals on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If Participation Goals have been established on a Task
Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the Participation Goals as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.


5. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in New York City), or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work. In the event that the Contractor’s selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms’ participation toward the attainment of the Participation Goals. Such certification must occur prior to the firms’ commencement of work. A list of MBE and 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. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).
7. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor’s direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor’s M/WBE Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its M/WBE Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an M/WBE Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or $500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the Participation Goals should be modified.

10. Pre-award waiver of the Participation Goals. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more Participation Goals on the grounds that the Participation Goals are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.

(b) To apply for a full or partial waiver of the Participation Goals, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email, directed to the Authorized Agency Contact at the email and/or the facsimile number set forth for the Agency Authorized Contract on the Title page of this IFB. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the Participation Goals are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the Participation Goals to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its M/WBE Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the Participation Goals. In making such determination, Agency may consider
whether the M/WBE Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of M/WBE Utilization Plan. (a) A Contractor may request a modification of its M/WBE Utilization Plan after award of this Contract. PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below $3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission. The Agency may grant a request for Modification of a Contractor’s M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Participation Goals. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women’s business organizations;

(ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women’s business organizations;

(iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;

(iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the Contractor to Agency’s M/WBE liaison officer and to DSBS;

(viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency’s M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the Participation Goals when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its M/WBE Utilization Plan would be awarded to subcontractors.
12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an M/WBE Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the Participation Goals, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If Participation Goals have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor’s progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If Participation Goals have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor’s performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor’s overall contract performance evaluation.
THE CITY OF NEW YORK

SCHEDULE B – M/WBE Utilization Plan
Part I: M/WBE Participation Goals

Part I to be completed by contracting agency

Contract Overview

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<tr>
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Project Description (attach additional pages if necessary)

The Department seeks a contractor to provide all labor, materials, and equipment that are necessary and required for the provision of repair and maintenance services to gas fired, steam, and hot water boilers, portable boilers, hot water systems, domestic gas fired water heaters, heat exchangers, and auxiliary equipment for all Department facilities located throughout the five boroughs of New York City.

M/WBE Participation Goals for Services

Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.

Prime Contract Industry: Standard Services

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Total Participation Goals 6%
SCHEDULE B - Part II: M/WBE Participation Plan

Part II to be completed by the bidder/proposer.

Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire contract, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the contracting agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your bid or proposal and you do not have to complete or submit this form with your bid or proposal.

### Section I: Prime Contractor Contact Information

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### Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.

#### PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS

- For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals.

  Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture.

  Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.

  \[
  \text{Total Bid/Proposal Value} \times \frac{\text{Agency Total Participation Goals (Line 1, Page 1)}}{\text{Line 2}} = \text{Calculated M/WBE Participation Amount} 
  \]

#### PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS

- For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals.

  Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture.

  Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.

  \[
  \text{Total Bid/Proposal Value} \times \frac{\text{Adjusted Participation Goal (From Partial Waiver)}}{\text{Line 3}} = \text{Calculated M/WBE Participation Amount} 
  \]
Section III: M/WBE Utilization Plan: How Proposer/Bidder Will Fulfill M/WBE Participation Goals. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer or Bidder will fulfill the M/WBE Participation Goals:

☐ As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals. Please check all that apply to Prime Contractor:
  ☐ MBE  ☐ WBE

☐ As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner’s participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.

☐ As a non M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 above, as applicable.

Section IV: General Contract Information

What is the expected percentage of the total contract dollar value that you expect to award in subcontracts for services, regardless of M/WBE status? %

---

Enter brief description of the type(s) and dollar value of subcontracts for all/any services you plan on subcontracting if awarded this contract. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.

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☑ Scopes of Subcontract Work
Section V: Vendor Certification and Required Affirmations

I hereby:

1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York (“Section 6-129”), and the rules promulgated thereunder;

2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;

3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;

4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and

5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature

Date

Print Name

Title
SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT

**Contract Overview**

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M/WBE Participation Goals as described in bid/solicitation documents

- 6%  
  
  Agency M/WBE Participation Goal

Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver

- % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture.

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts some of this type of work but at a lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

**References**

List 3 most recent contracts performed for NYC agencies (if any). Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

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(Complete ONLY if vendor has performed fewer than 3 New York City contracts.)

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VENDOR CERTIFICATION: I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.

Signature: ___________________________ Date: ____________
Print Name: ___________________________ Title: ____________

Waiver Determination

Full Waiver Approved: ☐
Waiver Denied: ☐
Partial Waiver Approved: ☐
Revised Participation Goal: _____ %
Appendix K

HIRING AND EMPLOYMENT RIDER:

HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars ($1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.
After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor’s ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars ($2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars ($500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.
Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.
Appendix L

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. 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 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.

______________________________

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.;
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 PSLL 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 PSLL. 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 PSLL 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 PSLL does not apply to any of the following:

1) an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
2) an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
3) an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

4) 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 PSLL for such employee;

5) 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;

6) an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

7) 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

8) 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 PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. 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 PSLL 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 PSLL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, 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 PSLL 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 PSLL 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 PSLL 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 PSLL 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 PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.
APPENDIX M
DOHMH Health Center Sites Boiler Hot Water Heater Inventory

(Attached Separately)
### Astoria HC
12-26 31st Avenue, Astoria, NY 11106

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<thead>
<tr>
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### Hot Water Heater 1

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### Hot Water Heater 1

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### Corona HC
34-33 Junction Blvd., Corona, NY 11372

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Bedford HC  
485 Throop Avenue, Brooklyn NY 11221

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