

**CITY OF NEW YORK
DEPARTMENT OF SANITATION**

**BID BOOKLET
FOR
EMERGENCY PURCHASES
OF
GOODS**

OLDER ADULT FOOD ACCESS PROGRAM

TIME, DATE, AND PLACE BIDS ARE DUE:

THIS IS AN E-MAIL BID.

**BIDS MUST BE SENT
BY JULY 21, 2020 AT 4:00 P.M.TO
NYCFOOD@DSNY.NYC.GOV**

APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS

Agency: DSNY

Description of services: Emergency Older Adult Food Access Program

I hereby approve as to form the annexed contract by standard type of class. This approval is valid until _____ and for a maximum of 50 contracts. The above approval is made on the express understanding that the substantive language of the subject contracts will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts, or other similar details may be completed.

Approved as to Form
Certified as to Legal Authority



Acting Corporation Counsel

7/1/2020
Date

Bid Booklet for an Emergency Purchase of Goods

BID BOOKLET FOR EMERGENCY PURCHASE OF GOODS

Before bidding, the bidder is responsible for: (1) thoroughly reading the Contract and its Exhibits; and (2) taking into account any difficulties the bidder may encounter that could affect the cost of preparing and providing the Goods.

**THE CITY OF NEW YORK
DEPARTMENT OF SANITATION (DSNY)
BID FOR:**

EMERGENCY OLDER ADULT FOOD ACCESS PROGRAM

Bidder's Name: _____

Bidder's Business Address: _____

Telephone #: _____ Fax #: _____ Email Address _____

Bidder is: Check one: [] a Corporation; [] a Partnership; [] an Individual

Bidder's Taxpayer ID #: _____

Date of Bid: _____

WHEREAS, on March 13, 2020, the President of the United States proclaimed that the novel coronavirus disease (COVID-19) outbreak in the United States constitutes a national emergency;

WHEREAS, on March 20, 2020, the Federal Emergency Management Agency ("FEMA"), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, announced that federal emergency aid had been made available for the State of New York to supplement states, tribes, and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and FEMA Public Assistance ("FEMA PA") is available to local governments in affected areas in the State of New York;

WHEREAS, on March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security ("CARES") Act (Public Law No: 116-136), which includes appropriations to certain federal agencies, including FEMA and the United States Department of Housing and Urban Development for the Community Development Block Grant ("CDBG"), to provide assistance to states and localities in response to the COVID-19 emergency;

WHEREAS, the City of New York is providing emergency goods and services to individuals affected by COVID-19 and intends to seek reimbursement of FEMA PA funds and CDBG funds, among other federal funding sources, for these goods or services;

WHEREAS, the City of New York determined that the COVID-19 outbreak has resulted in an unprecedented need to address food insecurity and feed hungry New Yorkers, including those in vulnerable populations such as older adults;

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WHEREAS, the New York City Department of Sanitation (“DSNY” or “the Department”) requires vendors to provide and deliver freshly prepared meals to older adult residents of New York City;

WHEREAS, the Department is procuring freshly prepared meals and their delivery to the residences of older adults in New York City in accordance with New York City Emergency Executive Order (“EO”) 101 (amending EO 100), 2 C.F.R. 200.320(c) and where applicable, the corresponding regulation in 45 C.F.R. Part 75;

WHEREAS, DSNY will be entering into an inter-agency Memorandum of Understanding (“MOU”) with the New York City Department for the Aging (“DFTA”) which will detail the responsibilities of both agencies in DSNY implementing an older adult feeding program that includes the original older adults served by DFTA as well as other older adults who requested food through the City of New York’s GetFood emergency food home delivery program;

WHEREAS, the Bidder, after being awarded the Contract, will be ready, willing and able to provide and deliver the required goods.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. The above-named Bidder affirms and declares that the person signing this bid (the “signatory”) is of lawful age, and that the corporation, partnership, firm, or organization placing the bid has authorized the signatory to sign this bid as: (a) an officer of a corporation; (b) a partner in a partnership; or (c) an individual bidder.
2. The following documents are part of this bid and will be incorporated into the resulting contract by reference:
 - (a) All of the documents contained in this Bid Booklet and Attachments, as well as the completed documents submitted by the successful bidder listed in Section 3, below;
 - (b) Any addenda to this bid issued by DSNY;
 - (c) The Scope of Services included with this bid, attached herein as Exhibit 1;
 - (d) Special Instructions to Bidders – Contract Specific Terms and Conditions, attached herein as Exhibit 2;
 - (e) Federal Contract Riders, including the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts, the FEMA Rider, and the CDBG Rider, all attached herein as Exhibit 3;
 - (f) The Whistleblower Protection Expansion Act Rider, attached herein as Exhibit 4; and
 - (g) The successful bidder’s Insurance Broker’s Certification and/or Certificates of Insurance.

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3. Every bidder must include the following completed documents with its bid, or the bid may be deemed non-responsive:
 - (a) Bid Page;
 - (b) First two weeks of menus, including the description of the meals and a breakdown of the meals within the meal plan worksheet, attached herein as an exhibit;
 - (c) Evidence that experience requirements have been met;
 - (d) The "Signature Page and Affidavit";
 - (e) Affirmation of Non-Debt (Tax Affirmation); and
 - (f) Bidder's Certification of Compliance with Iran Divestment Act.
4. Before DSNY can award the Contract, the Successful Bidder must additionally submit:
 - (a) Insurance Broker's Certification and/or Certificates of Insurance.
5. In the event that the terms of the documents that make up this Contract conflict, the terms of the Uniform Federal Contract Provisions Rider shall prevail, followed by the other Federal Contract Riders, followed by the Scope of Services, and followed by the Special Instructions to Bidders – Contract Specific Terms and Conditions.
6. Where the Uniform Federal Contract Provisions Rider refers to 2 CFR Part 200 or a section of 2 Part 200, such reference shall be construed to refer to the similar or identical provision adopted by the U.S. Department of Health and Human Services in 45 CFR Part 75, if applicable.
7. The Contractor acknowledges that this Agreement is anticipated to be funded with federal funds pursuant to the CARES Act. The Contractor represents and warrants that it will comply with the applicable provisions of the CARES Act and any amendments thereto.
8. The Contracts resulting from this solicitation may be transferred to DFTA, another agency of the City of New York, or a City-controlled public benefit corporation in the future.
8. The **UNIT PRICE** shall be used to evaluate the lowest responsive and responsible bidders.
9. DSNY does not promise to require any unit price items or to require the Bidder's estimate of the number of unit price items needed.
10. DSNY intends to award one or more contracts to the lowest responsive and responsible bidders in response to this solicitation until the full needed capacity for older adult meals is met.

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11. For Contract Work performed to DSNY's satisfaction, DSNY will pay the successful bidder as applicable:
 - (a) At the Lump Sum Bid Price for each lump sum item DSNY directs the successful bidder to perform;
 - (b) At the Unit Price for each unit DSNY directs the successful bidder to perform; and
 - (c) The actual and reasonable value of allowance work that DSNY directs the successful bidder to perform, including overhead and profit.
12. DSNY intends to start this contract on or about August 6, 2020. The term of each contract resulting from this solicitation shall end on January 4, 2021. The contracts may be renewed until June 30, 2021 at the City's sole option with 30 days' written notice to each Contractor.
13. The bidder must hold its bid price for 45 days.
14. The bidder may submit any questions about this bid to DSNY's Agency Chief Contracting Officer ("ACCO") or to NYCFood@dsny.nyc.gov.

Emergency Older Adult Food Access Program

SCHEDULE OF PRICES – MEAL PACKAGES

****Please Note: Vendors are not required to bid on all line items to be considered for award****

Col 1 Bid Item Number	Column 2 Description of Goods	Column 3 Estimated Number of Units	Column 4 Unit price	Column 5 Total Bid Amount [Column 3 x Column 4]
1	* Meal Package	_____ 6-Meal Packs (minimum 1,200 6-meal packs per week)	\$_____ Per 6-Meal Package	\$ _____
2	* Meal Package (Glatt Kosher)	_____ 6-Meal Packs (minimum 1,200 6-meal packs per week)	\$_____ Per 6-Meal Package	\$ _____
3	* Meal Package (Halal)	_____ 6-Meal Packs (minimum 1,200 6-meal packs per week)	\$_____ Per 6-Meal Package	\$ _____
4	* Meal Package (please fill in either Pan- Asian, Latin, Spanish, Vegetarian, or other) _____	_____ 6-Meal Packs (minimum 1,200 6-meal packs per week)	\$_____ Per 6-Meal Package	\$ _____

*** Meal Packages must include 2 daily meals (lunch and dinner) for 3 days (6 total meals).**

Please Note: All unit prices must include overhead, profit, and delivery costs

Although bid prices must include delivery costs, please note the delivery costs here:
\$ _____ per meal

All bids must be submitted to NYCFood@dny.nyc.gov

SIGNATURE PAGE AND AFFIDAVIT

Bidder: _____

By: _____
(Signature of a corporate office; a partner; a member of a joint venturer; or an individual bidder)

Title: _____

Date: _____

I swear that:

- I am the _____ of the corporation named above, or
- I am a member of the partnership or joint venture named above, or
- I am the individual named above.

I reside at _____.

The bidder authorized me to sign this bid on its behalf. I have knowledge of the matters stated in the bid, and they are true in all respects.

AFFIRMATION OF NON-DEBT (TAX AFFIRMATION)

The undersigned bidder affirms and declares that said 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 any obligation to the City of New York, and has not been declared not responsible, or been disqualified from receiving public contracts, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except:

_____.
Full name of Bidder _____
Address _____
City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE THE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER: _____
- B - Partnership or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER: _____
- C - Corporation
EMPLOYER IDENTIFICATION NUMBER: _____
- D - Other (specify: _____)
TAXPAYER IDENTIFICATION NUMBER: _____

By: _____
(Signature)

(Print Name)

(Title)

Date: _____

**If a corporation place seal here.
Must be signed by an officer or duly authorized representative.**

**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR
NEW YORK CITY CONTRACTORS**

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

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

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

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

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

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

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

[Please Check One]

BIDDER'S CERTIFICATION

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

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

Dated _____, New York

_____, 20__

SIGNATURE

PRINTED NAME

TITLE

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

Notary Public

SCHEDULE A

Insurance Requirements	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<p>■ Workers' Compensation §7.02</p> <p>■ Disability Benefits Insurance §7.02</p> <p>■ Employers' Liability §7.02</p>	<p>Statutory amounts.</p>
<p>■ Commercial General Liability §7.03(A)</p>	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds: City of New York, including its officials and employees.</p>
<p>■ Commercial Auto Liability §7.03(B)</p>	<p><u>\$1,000,000.00</u> per accident combined single limit.</p> <p>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.</p>
Liquidated Damages	
<ul style="list-style-type: none"> Violation of Section 3.02(H), reporting subcontractors in the City's Payee Information Portal 	<p>\$100 per day</p>
Notice	
<p>Department's Mailing Address and Email Address for Notices</p>	<p>New York City Department of Sanitation Kirk Eng, Agency Chief Contracting Officer 44 Beaver Street, 2nd Floor New York, New York 10004 kieng@dsny.nyc.gov</p>

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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.

ATTACHMENTS

- Exhibit 1: Scope of Services
- Exhibit 2: Special Instructions to Bidders – Contract Specific Terms and Conditions
- Exhibit 3: Federal Contract Riders
- Exhibit 4: Whistleblower Protection Expansion Act Rider

Attachment 1:

Scope of Services

Scope of Services

As the COVID-19 crisis has exacerbated food insecurity in New York City, the purpose of this emergency solicitation is to provide immediate food assistance for those older adults in New York City who are at risk of becoming or who already are food insecure.

To lessen the obstacles food insecure and home-bound older adults face in securing meal assistance, or from losing access to established meal assistance programs due to the pandemic, New York City, through its Office of the Food Czar with its Department of Sanitation (DSNY), has been providing and delivering meals to older adults at their homes through the Senior Food Access Program, expanding upon the work started early in the crisis by the New York City Department for the Aging (DFTA). DFTA commenced its COVID emergency feeding program early in the crisis to replace senior centers' on-site congregate meal service when these centers closed in March 2020. DSNY and DFTA will be entering into an inter-agency Memorandum of Understanding (MOU) which will detail the responsibilities of both agencies in DSNY implementing an older adult feeding program that includes the original older adults served by DFTA as well as other older adults who requested food through the City of New York's GetFood emergency food home delivery (EFD) program.

As the City begins to reopen but remains in a State of Emergency, the need remains for at-home food delivery to older adults as a population that remains at higher risk. The contracts resulting from this solicitation will replace DSNY's initial Senior Food Access Program contracts. These contracts may be transferred to DFTA, another agency of the City of New York, or a City-controlled public benefit corporation in the future.

Through this solicitation, each successful bidder ("Contractor") will be contracted as part of the Emergency Older Adult Food Access Program to prepare and deliver food to older adults. The Emergency Older Adult Food Access Program will provide needed freshly prepared meals made specifically to meet the standards of this program for older adults, which will be delivered directly to their homes.

General Description

The City of New York, through DSNY, is seeking to continue to provide food delivery services to vulnerable older adults in New York City with an economic need or without access to reliable options of obtaining food. The Emergency Older Adult Food Access Program will provide and deliver freshly prepared meals to older adults at their homes within each of the five boroughs of New York City. This Solicitation seeks to fill demand for general food types, as well as specialty food types, including certified Glatt Kosher, certified Halal, Pan-Asian, Latin, Spanish, and vegetarian.

The Contractor must be able to provide meals prepared specifically for this Emergency Older Adult Food Access Program that meet the program nutrition standards for older adult residents. The Contractor must be able to freshly prepare and package meals—either served fresh or chilled/frozen—based on menus prepared for this program and deliver these items to older adults' homes throughout the five boroughs up to seven days per week, in accordance with Federal, State, and City food safety regulations. Weekend deliveries may be required, and all scheduling issues will be resolved prior to the Contract start date.

Section 1: Locations and Program Specifics

Through the Emergency Older Adult Food Access Program, DSNY contractors will provide prepared meals that have been packaged and deliver these items to vulnerable older adults at their homes.

Schedule of Prices (Quantities, Capabilities, and Per Meal Price):

Bidders will submit bids for prepared meals. As part of its bid, the Bidder will enter on the Schedule of Prices the quantity of prepared meals that the Contractor can provide per week and the price per meal that it can provide under the Contract. This Contract requires that each older adult recipient receives a six-meal pack at each delivery, containing three lunches and three dinners. The intention for each delivery is to provide enough food to feed each recipient two meals a day for three days. The bid amounts on the Schedule of Prices for the prepared meals must be inclusive of the delivery costs. Bidders must also specifically note the delivery costs on a separate line on the Schedule of Prices.

To submit a bid, the Bidder must be able to deliver directly to at least 600 older adults' doors 6-meal packs of freshly prepared meals two times per week (for a minimum of 1,200 6-meal packs between two days). The Bidder must be duly permitted and or licensed by the appropriate City, State, and/or federal agencies regulating its food preparation activities. The Bidder must have at least three years of experience in food preparation consistent with the minimum bid requirements of this solicitation. The Bidder must clearly demonstrate with its past work and references that it can meet the capacity that it bids. The bid must provide details on how the Bidder's experience in food service and its food-preparation site, kitchen, restaurant, distribution facility, logistics, and delivery system enables the Bidder to successfully complete the performance requirements of this contract and meet the volume of meals promised in its bid and delivery requirements. Bids should be based upon price per meal pack.

A Bidder may propose to provide certified Glatt Kosher, certified Halal, Pan-Asian, Latin, Spanish, and/or vegetarian meals as well as meals that are not certified Glatt Kosher, certified Halal, Pan-Asian, Latin, Spanish, or vegetarian¹. If the Bidder is proposing to provide certified Glatt Kosher, certified Halal, Pan-Asian, Latin, Spanish, or vegetarian meals, the Bidder should so indicate on the bid sheet. For providers of Halal or Glatt Kosher meals, the Bidder must demonstrate that the food is properly certified as such.

The prepared meals must be freshly prepared for the purposes of this Contract and cannot be pre-packaged frozen food that is available in retail establishments. For the prepared meals, there must be variety across the meal pack; the meal pack cannot contain three of the same lunches or dinners. Also, the price per meal should be averaged across the pack and presented as one price regardless of meal type—lunch vs. dinner. Deep fried foods, candies, and desserts are prohibited.

¹ Pan-Asian food shall be defined as food which is prepared as if it is from an Asian country, such as China, Japan, or Thailand. Latin food shall be defined as food which is prepared as if it is from a Latin American country, such as Cuba, the Dominican Republic, Puerto Rico, or Brazil. Spanish food shall be defined as food which is prepared as if it is from Spain. Vegetarian food shall be defined as food which is prepared without any meat or fish proteins.

DSNY will award the contract to the responsive and responsible bidders that provide the lowest price to the City, taking into account the ability to perform. Bids shall be due on July 21, 2020 at 4:00 p.m.; they must be sent by e-mail to NYCFood@dsny.nyc.gov. Bidders may submit questions until July 15, 2020 at 2:00 p.m.; all questions must be sent to NYCFood@dsny.nyc.gov with “Question” in the subject line. Based on the bids submitted by the due date, DSNY will award contracts to the lowest responsive and responsible bidders until the full needed capacity for older adult meals is met. DSNY intends to start this contract on or about August 6, 2020. The term of the contracts resulting from this solicitation shall expire on January 4, 2021, but may be renewed until June 30, 2021 at the City’s sole option with 30 days’ written notice to each Contractor.

Prepared Meal Guidelines

The Contractor’s prepared meals must meet the Meal Nutrition Requirements developed for DSNY by the New York City Department of Health & Mental Hygiene (DOHMH) and that are provided in Section 5, below. Prepared meals may contain chilled or frozen food. Bidders must submit 2 weeks of proposed prepared meal menus with their bid as well as a breakdown of the proposed meals’ contents and nutritional framework within the meal plan framework provided with this Solicitation. The details of the meals will be reviewed for compliance by DSNY and DOHMH as part of the bid review process.

During the term of the contract, Contractors will be required to submit 2 additional weeks of proposed menus within the meal plan framework, provided in Section 5, for analysis of compliance by DOHMH nutritionists. Once the additional two weeks of meal plans are approved, the Contractor should provide those meals to older adults in sequence and then should repeat that four week menu sequence. If needed, menu sequencing can be adjusted but should avoid repetition within each week and limit repetition across each month. Substitution of items in the prepared meals requires pre-approval by DSNY’s Agency Chief Contracting Officer (“ACCO”) and/or DOHMH. Substitution of items without pre-approval is considered a breach of contract.

Subcontracting/Partnering:

To propose and operate a program that fully addresses the key elements laid out above, as well as meet the requirements and performance expectations described in this Contract, DSNY strongly encourages bidders to critically evaluate their own organizational capabilities and strengths and, if helpful to meet the Contract requirements, consider establishing joint ventures or otherwise working or partnering with other organizations as a way of leveraging resources, structures, products and/or other strengths with other organizations. Subcontracting may also be utilized in association with this Contract but requires approval by the DSNY ACCO of both the proposed subcontractor(s) and the utilization thresholds. No subcontractor (including any entity that would assist with food preparation or food delivery) can commence work until the ACCO has approved the subcontractor. Doing so without pre-approval is considered a breach of the Contract.

Section 2: Program Expectations

A. Customer Service

1. Program Expectations

- a. The Contractor is responsible for all components of this food service operation including meal content planning; purchasing; storage and/or preparation; individual packaging, labeling, program branding, meal instructions, potential needed flyer notifications to older adults; routing; transportation; home delivery, tracking, and reporting; verification of food delivery; assessment of customer satisfaction and feedback; processes to ensure safe/no-contact delivery; and donation of undeliverable food and/or taking back undeliverable food for use on a subsequent day. Where meals are obtained from more than one caterer/ subcontractor, the Contractor must be able to determine the source of each meal delivered and food safety control, compliance measures, and quality control steps taken in the preparation and packaging of the meals.
- b. The Contractor will provide with its bid a meal plan and nutritional information for each meal—lunch and dinner options—for week 1 and 2 of the DSNY program within the Meal Plan Framework for DSNY’s and DOHMH’s review and approval. After the commencement of service, the Contractor will provide an additional 2 weeks of meal plans set out by the Contractor within the enclosed Meal Plan Framework on a date to be designated by DSNY/DOHMH. The meal plan will be reviewed by DOHMH.
- c. The Contractor must have the capabilities to deliver packaged meals as negotiated and agreed upon which may include on a daily basis, including weekends (Sunday through Saturday) and holidays.
- d. Within two (2) business days of Contact award, the Contractor shall provide the agency with the following information²:
 - i. The Contractor’s telephone number;
 - ii. The Contractor’s procedure for informing the agency of a service delay/closure;
 - iii. Instructions on proper food handling, including, but not limited to, storage and heating instructions tailored to the type of meals it is delivering.

B. Food and Food Preparation

1. Program Expectations

- a. The Contractor shall participate in a baseline assessment with DSNY and/or DOHMH for the first and second menu and contents cycle that provides data on the source and volume of all foods included in the menu cycles.
 - b. The Contractor and its subcontractor/caterer/ shall have and maintain all permits and licenses necessary to do business in the jurisdiction they are located in and for the type of business they are operating. The Contractor (and subcontractors, if applicable) shall comply with all applicable local, state and federal laws regarding meal programs and food products such as food safety, handling, and preparation, storage, cleanliness, sanitation, disease prevention/control, facilities and equipment, including the proper posting of any required permits, notices or certificates. For informational purposes, the Contractor is encouraged to consult DOHMH’s Bureau of Food Safety and Community Sanitation’s
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“Health Department Requirements for Opening a Restaurant or Other Food or Beverage Establishment³,” NY State Sanitary Code Subpart 14-1⁴ and NY State Law’s 9 CRR-NY 6654.10 (b) Nutrition services provider responsibilities,⁵ Article 81 of the NYC Health Code: “Food Preparation and Food Establishments” (found at: <https://www1.nyc.gov/assets/doh/downloads/pdf/rii/article81-book.pdf>), and NYC Health Code Articles 71,75 and 81.

- c. The Contractor and applicable subcontractors shall maintain and provide upon request, copies of all applicable permits, notices or certificates required for operation. The Contractor shall post, where required to do so, any permits, notices or certificates in an appropriate and prominent place.
- d. The Contractor shall make its best efforts to ensure that all delivery staff shall be free from communicable disease in accordance with U.S. Food and Drug Administration (FDA), U.S. Centers for Disease Control & Prevention (CDC) and New York City and New York State health regulations.
- e. The Contractor will be able to commit to being able to provide detail on the origin of food products from its source of production.
- f. The Contractor’s program director shall visit the caterer/subcontractor if there are substantial or repeated agency complaints or noted problems and will document the problem and its resolution.
- g. The Contractor shall immediately report any suspected outbreaks of food-borne illness to DSNY and DOHMH, per NYC Health Code Section 81.43, and must follow any instructions given by DSNY.
- h. The Contractor should ensure that each meal format meets the following packaging standards:
 - i. Meals should be individually portioned and placed into containers with covers to fully contain the food. Labeling must comply with City, State, and federal law, rules, and regulations.
 - ii. Containers must be made of food grade material. Microwavable containers must display the “microwave safe” words or icon.
 - iii. Containers are easy to open and shall be made of non-porous, disposable, recyclable materials. The containers cannot be made of Styrofoam. All packaging and containers must be compatible with the City’s recycling program.
 - iv. Each meal should have a large-print label which contains the “packed-on” date, and the “consume-by” date, as well as instructions for safe handling, including storage and heating instructions.
 - v. The individual meal containers and meal pack boxes should also be labeled alerting recipients in cases where the meals contain potential allergens.

2. Meal Nutrition Requirements

- i. As discussed previously, the Contractor will comply with the meal plan review requirements. DSNY reserves the right to refuse payment for meals that are delivered that do not have pre-approval. Meal contents may not be altered without sufficient prior notice and approval of the ACCO.
- ii. Menus will adhere to the nutritional guidelines specified in the Meal Plan Nutrition Requirements Chart provided by DSNY and DOHMH. DSNY and/or

³ Found online at: <https://www1.nyc.gov/assets/doh/downloads/pdf/environmental/fse-application-packet.pdf>

⁴ <https://regs.health.ny.gov/volume-title-10/1997429580/subpart-14-1-food-service-establishments>

⁵[https://govt.westlaw.com/nycrr/Document/I4fb189c8cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/I4fb189c8cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

DOHMH may waive or allow small modifications to these requirements at their discretion, and only through pre-approval.

C. Delivery and Older Adult List Data Procedures and Requirements

1. Program Expectations

- a. The Contractor must follow the “Older Adult Vendor Protocol for Delivery Attempts and Undeliverable Food” document that follows this Scope of Services.
- b. All deliveries will be completed between 8:00 a.m. and 5:00 p.m. If the hours of delivery in the Scope of Services conflict with the hours of delivery in the Special Instructions to Bidders – Contract Specific Terms and Conditions, the hours of delivery in the Scope of Services shall take precedence.
- c. DSNY will provide the Contractor with a list of home delivery locations shared through a secure file share system prior to the delivery date. DSNY will set the timing of list sharing and it may be less than 24 hours prior to the scheduled delivery. The format of the lists will be set by DSNY and should not be varied by the Contractors.
- d. The Contractor must provide Outcome Reports to DSNY detailing the successful and unsuccessful deliveries, refusals and other items like address corrections or changes. Outcome Reports must be provided within a set format through the set file share system to DSNY by 10:00 AM the morning after delivery.
- e. The Contractor must certify that all required deliveries have been made at the end of each work day and be able to provide details to DSNY of the delivery details when requested by DSNY. Should the “Older Adult Vendor Protocol for Delivery Attempts and Undeliverable Food” be followed and food is undeliverable, the Contractor must be able to provide details to DSNY of the delivery attempt when requested by DSNY.
- f. The Contractor must maintain temperature logs or otherwise document that foods were packaged, stored, transported, and delivered within proper holding temperature guidelines, and the City may request such documentation.
- g. The Contractor and its employees are prohibited from soliciting any form of contribution or gratuity from individuals who receive the meals, or from anyone else.

E. Organizational Capability and Business Operations

1. Program Expectations

- a. The Contractor shall have an organizational structure that ensures accountability for the program’s success.
 - i. The Contractor shall provide DSNY, for DSNY’s program oversight, with the Contractor’s organizational structure for the specific purpose of designating the staff person(s) responsible for the following contract requirements:
 - i. Legal and fiscal responsibility for administering and overseeing participation in the program, including the safeguarding of program funding;
 - ii. Compliance with federal laws (including regulations) and applicable state, and local laws (including regulations), including federal, state and local guidelines on social distancing and other protective measures pertaining specifically to the COVID-19 virus;

- iii. The establishment, adoption, and periodic update of written standards of conduct that establish standards and formal procedures for disclosing, addressing, and resolving:
 - a. Any conflict of interest, and any appearance of conflict of interest, by members of the governing body, officers and employees of the program, and consultants and agents who provide services or furnish goods to the program; and
 - b. Complaints, including investigations, when appropriate.
 - c. Quality control standards to ensure food is delivered to recipients in a safe and edible condition.
- b. The Contractor shall designate multiple vendor personnel as contacts for the program during the Program's hours of operation, including weekends and holidays, and present DSNY with each contact's phone number and/or e-mail address, as well as a dedicated contact to deal with delivery and routing issues.
- c. The Contractor shall ensure that any subcontractor, including caterers, food preparation companies, and delivery staff, adhere to all requirements and performance expectations as laid out in this Contract.
- d. The Contractor shall have a written emergency preparedness plan covering both Citywide emergencies aside from the COVID-19 pandemic (e.g., a blackout, hurricane, or snow storm) and program emergencies (e.g., facility emergency, staff shortage, or vehicle in need of repair). For anticipated snow storm events, the Contractor's plan should include providing the required meals in advance of the storm.
- e. The Contractor shall have a Continuity of Operations plan.
- f. The Contractor shall have an emergency contact list and, at a minimum, update it every three months.
- g. In case of an emergency, the Contractor must notify us immediately.
- h. The Contractor shall conduct an emergency exercise (e.g., a Table Top exercise), at least once annually⁶.
- i. The Contractor shall notify DSNY immediately after the Contractor becomes aware of any permanent or short-term change in staffing of critical personnel.
- j. The Contractor shall conduct criminal history background checks on all potential employees and volunteer staff. Such criminal background checks should be done in accordance with local, state, and federal law. The Contractor shall perform at least two reference checks on all potential employees.
- k. The Contractor shall conduct orientation and training to staff and volunteers. An individual certified in food protection by DOHMH or another agency with jurisdiction must do the training. Training plans, schedules, and attendance at trainings must be documented.
- l. The Contractor shall ensure that all delivery staff are trained in temperature maintenance; meal assembly; proper food handling requirements; and emergency procedures.
- m. The Contractor shall ensure that all drivers have a valid current license⁷ appropriate to operate the delivery vehicle; at least one-year driving experience; no more than one moving violation; and no convictions for driving while intoxicated or impaired within 24 months of hire. The Contractor shall maintain a current NYS Department of Motor Vehicles (DMV) report as proof of driving record; however, if a driver's current license is from a state other than New York, then the Contractor must maintain the equivalent

⁶ <https://www.ready.gov/business/testing/exercises>

⁷ Drivers who present with an out-of-state license at the time of hire and are a resident of NY State are required to have a NY State license within 30 days of becoming a permanent resident. Staff who live out of state but work in NY may use their out-of-state license.

report based on the state where the driver's license is from. Drivers should be knowledgeable in food protection.

- n. The Contractor (or its subcontractor) is expected to own or lease the requisite number of vehicles to perform all required deliveries. All vehicles must be registered with the DMV as often as is required by law and shall, upon request, provide the City with evidence of such registration. Vehicles must be well-maintained and in running order so that the vehicles pass the requisite annual DMV inspections.
- o. The Contractor, at its sole cost and expense, must maintain the insurance coverage in the minimum limits detailed in Schedule A of this Contract. The Contractor must maintain Commercial General Liability insurance, written on an "occurrence" basis and not a "Claims made" basis, protecting against all liability for bodily injury, death, personal injury and property damage, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for any policy year, and designating itself as "named insured" and the City of York, including its officials and employees, as "additional insured."
- p. The Contractor must maintain automobile insurance that shall insure against (i) bodily injury liability, (ii) uninsured motorists coverage, (iii) medical payments, no-fault or personal injury protection coverage, (iv) property damage liability with limits as reasonably designated by the City from time to time but in any event with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence with respect to personal and bodily injury, death, and property damage, and which shall designate the City as additional insured and loss payee.
- q. The Contractor must maintain Workers' Compensation, Disability Benefits, and Employer's Liability Insurance consistent with New York State law.
- r. The Contractor must take and record the final time and cooking temperature of prepared food.
- s. The Contractor shall ensure that prepared meals will be transported in vehicles or in packs/containers that are temperature controlled in order to prevent the cold food from being transported above 40 degrees Fahrenheit, and the hot food from dropping below 140 degrees Fahrenheit during transport. These vehicles should be equipped with either refrigeration or freezer, in insulated bags and cold packs, or other system that properly maintain the temperature, quality, and food safety as specified in the New York City Health Codes.
- t. The Contractor must ensure that all food items in the meal packs do not contain food items that are spoiled when delivered. DSNY will not pay the Contractor for the spoiled food items or the entire meal packs, at DSNY discretion, that contain spoiled food or food that is in an unacceptable condition when delivered.
- u. The Contractor shall have procedures to address foreseeable emergencies to prevent interruption of service. This includes having a contingency plan for when a vehicle needs to be taken out of service or when there is a quality control or delivery problem with the meals, including the ability to send out staff to pick up or replace meals or products. This also includes the ability to propose items or meals to substitute for approved meals or items that the Contractor is no longer able to secure. The Contractor must propose replacements that are compliant with the Meal Plan Guidelines and may not use non-complaint meals or items as the only means of meeting its required meal delivery volume.
- v. The Contractor's (and subcontractors', if applicable) food preparation site(s) shall comply with all applicable local, state, and federal laws, rules, and regulations regarding sanitation and disease control, lighting, ventilation, sewage, plumbing, water flow, drainage, food storage, and the sanitary handling and preparation of food.

- w. The Contractor shall ensure that its food-preparation sites or any other food storage facility or distribution hub remains free of rodents or vermin, utilizing the services of an appropriately licensed pest control service as required by law or if requested by DSNY.
- x. If any meals are deemed to be undeliverable, because the intended recipient does not live at the stated address, the intended recipients does not answer the phone, buzzer, or the door, or because the intended recipient refuses delivery of the food, the Contractor shall reuse (for the City's Emergency Food Access Program, including this older adult program) if possible or, if reuse is not possible, donate said unused food to a registered New York State nonprofit organization that engages in food distribution. Food may only be donated if it was properly temperature maintained and protected according to DOHMH regulations and guidelines. The Contractor must then provide documented proof to DSNY that the donation was made; the proof must include all of the following information:
 - i. Contractor's name;
 - ii. Recipient organization's name, address, and tax identification number;
 - iii. Date the donation was made;
 - iv. Quantity and description of meals donated; and
 - v. Signature, printed name, and title of representative of recipient organization.

F. Budget, Reporting, and Contract Management

1. Program Expectations

- a. The Contractor's budget must fully support the effective delivery of services described in this Contract.
- b. The Contractor must be financially stable.
- c. The Contractor shall notify DSNY of any changes in its financial status in a timely manner, e.g., if the organization is at risk of or becomes financially unstable at any point in during the Contract term.
- d. The Contractor must have appropriate financial infrastructure related to staffing⁸, accounting practices⁹, and accounting system¹⁰, to produce credible data to make financial decisions.
- e. The Contractor must retain original location records for six years after the Contract end date (or longer if required under the federal rules), including;
 - i. Menus that have been approved and used, with documented substitutions;
 - ii. Copies of meal packaging, labels, and reheating instructions;
 - iii. Nutrition analysis by DOHMH;
 - iv. Food supply costs and inventory, including invoices and receipts;

⁸ The staff fall into the three functional aspects of the finance function: transactional, operational, and strategic. The transactional are the clerical tasks that support the accounting function, such as copying, filing, and making bank deposits; they require someone with excellent attention to detail and exposure to basic accounting principles. The operational are the range of accounting functions, such as paying bills and producing monthly financial statements; they require someone with strong nonprofit accounting knowledge, including managing grants and contracts. And the strategic are the systems development, financial analysis, planning, and communication about the organization's financial position.

⁹ Accounting practice is the system of procedures and controls that an accounting department uses to create and record business transactions. Accounting practice should ideally be extremely consistent, since there are a large number of business transactions that must be dealt with in exactly the same manner in order to produce consistently reliable financial statements. The following are key practices 1) Treatment of restricted contributions; 2) Functional classification of expenses; 3) Employee time tracking; 4) Allocation of common costs to each appropriate activity; 5) Accrual basis accounting; and 6) Capitalization and Depreciation.

¹⁰ Organized set of manual and computerized accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for management decisions. An accounting system is how the organization keeps its business's records. The organization would put into their accounting system transactions such as invoices, money spent for the program, bills from suppliers, and rent paid. The accounting system will then take these transactions and use them to build reports, such as the balance sheet and income statement, which help an organization track expenses and make decisions.

- v. Proof that staff meets job requirements, including driving records and background checks and that references were verified; and
- vi. Training plans, schedules, and staff attendance at trainings.

2. Invoicing

- a. The Contractor will invoice DSNY within a set format approved by DSNY on a bi-weekly basis and DSNY will remit payment in accordance with New York City's prompt payment rules.

3. Quantity Reduction

- a. DSNY shall have the right to reduce the quantities ordered from the Contractor due to performance issues or reduction in demand for older adult meals with 48 hours' written notice.

Section 3: COVID-19 Guidelines

The Contractor's drivers must be trained to follow COVID-19 guidelines regarding social distancing and maintain appropriate distances from others at the delivery locations. The following other precautions should be taken:

1. Loading the delivery vehicles: Start times should be staggered so that delivery drivers do not all arrive at the Contractor's food preparation site, food-storage site or warehouse at the same time.
2. Customer Delivery: Drivers must wear face coverings that cover their nose and mouth at all times. They must sanitize their hands and then put on latex gloves before every delivery. After each delivery, drivers must then remove the gloves, throw them away, and sanitize their hands again.
3. Invoices/Purchase Orders: Invoices and Purchase Orders will be sent electronically to DSNY.
4. Food Preparation & Packaging: All food preparation and packing must follow accepted COVID-19 guidelines, including the requirement that all food preparers must wash their hands regularly with soap and water for 20 seconds.
5. Drivers must follow the following DOHMH guidance:
 - a. <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-guidance-for-vehicle-operators.pdf>

Section 4: NYS Office for the Aging Contract Requirements

The following provisions are required by the New York State Office for the Aging (NYSOFA) and must be adhered to by the Contractor. These provisions must also be adhered to by all of the Contractor's subcontractors and must be included in all subcontracts.

1. **Targeting.** The Contractor, to the extent it has discretion regarding to whom it will provide services, agrees to provide services to those unserved and underserved older adults in greatest social or economic need, particularly those who are low income, low income minorities, older adults with limited English proficiency, Native Americans, and frail/persons with disabilities and older adults residing in rural in accordance with their need for such services, and to meet specific objectives established by the area agency on aging (AAA) for providing services to the above groups within the PSA. The Contractor agrees to concentrate the services on older adults in the targeted populations identified by the AAA following the methods the AAA has established for complying with the targeting

requirements under the Older Americans Act (OAA) and the Equal Access to Services and Targeting Policy issued by the New York State Office for the Aging (See: 12-PI-08 [7/17/2012]).

2. **Language Access.** The Contractor shall inform persons with limited English proficiency of the availability of language assistance, free of charge, by providing written notice of such assistance in a manner designed to be understandable by limited English proficiency persons at service locations and, at a minimum, have a telephonic interpretation service contract or similar community arrangement with a language interpretation services provider of their choice. The Contractor shall train staff that have contact with the public in the timely and appropriate use of these and other available language services.
3. **Contributions.** The Contractor shall provide participants an opportunity to voluntarily contribute to the cost of the service received, as appropriate. The Contractor shall use all collected contributions to expand the service for which the contributions were given to supplement the funds received under the OAA.
4. **Client Needs.** The Contractor shall assist participants in taking advantage of benefits under other programs.
5. **Non-duplication.** The Contractor assures that the services it provides are coordinated and do not unnecessarily duplicate services provided by other sources.
6. **Reporting.** The Contractor shall provide the AAA, through the contact information listed in Schedule A, with timely information needed to satisfy reporting requirements as specified by NYSOFA.
7. **Record Retention and Accessibility.** The Contractor agrees to maintain appropriate records and to retain them for six years after final contract payment is made. The Contractor agrees to provide access to all books, documents, and all pertinent materials related to the contract for examination to authorized representatives of the Administration on Aging (AoA)/Administration for Community Living (ACL), the New York State Comptroller or her/her representatives, and staff of NYSOFA and/or of the AAA.
8. **Confidentiality.** The Contractor agrees that, to the extent it or its subcontractors, if any, maintains personal information relating to applicants or recipients of services pursuant to the contract, such information will be kept confidential and shared with the AAA; or with other entities upon the informed consent of applicant, recipient, or an authorized representative of the applicant or recipient; or as required by Federal or State laws.
9. **AAA Funding Liability.** Payment to the Contractor is subject to the availability of Federal/State funds and the AAA shall have no liability under the contract beyond the amounts available under adopted Federal and State budgets. To the extent that the contract extends beyond the renewal date of AAA's Application, it is contingent upon provision of funding to the AAA in the subsequent year.
10. **Conformance with AAA Area Plan.** The Contractor agrees that it and any subcontractors will perform such work in accordance with the terms of the Area Plan. The AAA agrees to make the Area Plan available to the Contractor.
11. **Warranty for Data and Programming.** The Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure, or error due to inaccuracy of the service's or product's operations in processing date/time data (including but not limited to calculating, comparing, and sequencing) various time/date transitions including leap year calculations. The Contractor accepts responsibility for damages resulting from any delays, errors, or untimely performances resulting therefrom, including but not limited to the failure or untimely performance of such services.
12. **Responsibility.** The Contractor certifies that, to the best of its knowledge and belief, it is and will remain in compliance with 2 CFR Part 376 – Nonprocurement Debarment and Suspension, concerning public (Federal, State, or local) transactions. If necessary, the Contractor will submit an explanation of why it cannot provide this certification.
13. **Subcontracts.** If the Contractor enters into subcontracts for the performance of work pursuant to this contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors

and subcontractor staff. Nothing in the subcontract shall impair the rights of the AAA under this contract or the Area Agency Plan as approved by the New York State Office for the Aging. It shall be the responsibility of the Contractor to monitor and assess the activities performed under such subcontracts, and to ensure that these activities are provided in accordance with all applicable requirements contained in this contract and Federal and State law.

14. **OAA Title III Programs.** The Contractor agrees that for programs established and funded in whole or in part pursuant to Title III of the Older Americans Act, Contractor shall: specify how it intends to satisfy the service needs of low-income minority, older adults with limited English proficiency, and older adults residing in rural areas in the area served by it; to the maximum extent feasible, provide services to low-income minority individuals, older individuals with limited English proficiency, and older adults residing in rural areas in accordance with their need for such services; and meet specific objectives established by the AAA, for providing services to low-income minority individuals, older adults with limited English proficiency, and older adults residing in rural areas within the planning and service area.

Section 5: Meal Nutrition Requirements

Food Group/Nutrient	Per Meal	Per Day	Per Box 6 meals (lunch and dinner only)
<p>Protein Minimum</p> <p><i>Recommend no processed meat.</i></p> <p><i>Recommend at least one protein per day is plant-based and features minimally processed plant food such as beans, lentils, peas, nuts, seeds, or soy (e.g. edamame, tofu).</i></p> <p><i>Recommend no more than 1 beef protein per box.</i></p>	0-2 oz. or equivalent	4 oz. or equivalent	12 oz. or equivalent
<p>Fruit/Vegetable Minimum</p> <p><i>Whole fruit and vegetables are encouraged</i></p>	2 cup equivalents	<p>4 cup equivalents</p> <p>Must include at least 1 cup equivalent of non-starchy vegetables</p> <p>Must include at least 1 cup equivalent of fruit</p>	<p>12 cup equivalents</p> <p>Must include at least 3 cups equivalent of non-starchy vegetables</p> <p>Must include at least 3 cup equivalents of fruit</p>
<p>Grain/Whole grains Minimum</p> <p><i>Use of all whole grains is encouraged</i></p>	2 ounces	4 ounces	<p>12 ounces minimum</p> <p>6 ounces are whole grain</p>
<p>Dairy Minimum</p> <p><i>Recommend use of unsweetened, low-fat dairy.</i></p>	<p>0-1 cup equivalents</p> <p>(1 recommended)</p>	<p>1 cup equivalents</p> <p>(2 recommended)</p>	<p>2 cup equivalents</p> <p>(4 recommended)</p>

<i>Dairy cannot be used for protein requirement.</i>	See additional requirements below if serving milk (dairy or soy)	See additional requirements below if serving milk (dairy or soy)	See additional requirements below if serving milk (dairy or soy)
Sodium	500-800 mg	1,000-1,600 mg	3,000-4,800 mg
Calorie	Minimum 600 calories per meal not to exceed 750 calories	Minimum 1,200 calories per day not to exceed 1,500 calories	Minimum 3,600 calories not to exceed 4,500 calories
Saturated Fat	< 10% of total calories	< 10% of total calories	< 10% of total calories
Fiber	N/A	≥ 20 g	≥ 60 g
Additional Requirements	<p>No deep fried foods, candy, or desserts</p> <p>No beverages other than unsweetened milk or unflavored fluid calcium-fortified soymilk)</p> <p>Recommend soy milk has no more than 9 g sugar per 8 fluid ounces</p>		
Additional Recommendation	<p>Recommend <10% of total calories per day come from added sugars</p> <p>Recommend increasing unsaturated plant oils (e.g., olive oil plant oils (e.g, butter, coconut and palm oils).</p>		

Notes:

- Substitutions due to supply chain issues should be made in consultation with City agency nutritionists.
- For all items: recommend limiting added sugars and sodium.
- The amount per meal estimates provision of 1/3 of the DRIs. Use of the meal pattern does not necessarily ensure that meals meet 33 1/3% of the DRIs and the Dietary Guidelines for Americans. Meals are likely to require specific types of fruits and vegetables, whole grains, and high fiber foods in order to ensure the key nutrients are met per USDA ChooseMyPlate.gov.
- “Cups”, “Ounces” and “equivalents” per USDA ChooseMyPlate.gov. For example, vegetable cup equivalents can be found here: <https://www.choosemyplate.gov/eathealthy/vegetables> (see “cup of vegetable table”).
- Caloric Value - USDA ChooseMYPlate.gov recommends the following: To achieve a healthy weight (as opposed to maintaining weight) for a 65 year old male, 194 pounds, 68 inches tall, less than 30 minutes physical activity = 2,000 per day; for a 65 year old female, 166 pounds, 63 inches tall, less than 30 minutes physical activity = 1,600 per day. Average heights and weights taken from average Americans 60+, described here: <https://www.cdc.gov/nchs/data/nhsr/nhsr122-508.pdf>

**OLDER ADULT PROTOCOL
FOR DELIVERY ATTEMPTS AND UNDELIVERABLE MEALS**

Overview –

- DSNY requires Vendors to follow the **VENDOR DELIVERY** and **UNDELIVERABLE MEALS** protocols below for deliveries under the DSNY contract.
- If Vendor has followed the **VENDOR DELIVERY** Protocol, has attempted delivery to an older adult, and recorded “Unable to Deliver” in the “Delivery Outcome” field of the Outcome Report two times in a row due to being unable to get in touch with the older adult both times,
 - Then the Food Czar Team will mark the older adult as inactive and remove them from future delivery lists but will not delete the older adult from the master older adult database in case the recipient opts back in to receive deliveries.
 - Food Czar Team will follow up each removal with Opt-Back-In Letter to the older adult.

VENDOR DELIVERY Protocol

- Call first and Confirm address is correct – Driver must call prior to delivery
- Call all numbers – If there are multiple #s, Driver must try all until they reach the older adult
- If there is a Doorman and there has been no answer to the driver’s call attempts – Have Doorman call
- Buzz apartment and knock on Door – Driver must go to apartment door even if the older adult is not reached by phone
- Call again if no door or buzzer answer – This second call must be made if no one answers first calls & buzzer/door

When Not to Leave Meals/What is Undeliverable and Recording Result in Outcome Report

- When No Answer by Phone, Door / Buzzer, and Second Phone Call
 - Do not leave meal. Mark “Unable To Deliver” on Delivery Outcome field on Outcome Report
 - NOTE: Leaving a voicemail message does not equal answering the phone – do not leave meal because you left voicemail
- When the Older Adult Recipient Refuses Meal
 - Do not leave meal. Mark “Refused” on Update Record field on Outcome Report
- When the Older Adult Recipient Says Too Much Food/Requests Delivery Next Week
 - Mark “Suspend” on Update Record field on Outcome Report – this will remove the recipient from the delivery list for one delivery only.

Troubleshooting and Recording Result in Outcome Report

- Older Adult Recipient Answers/Wants Food but States Address is Different
 - Driver determines if delivery is feasible to new address.
 - If feasible deliver.
 - If not feasible, mark “Unable to Deliver” on Delivery Outcome field on Outcome Report
 - In all cases, mark “Address Edit” on Update Record field on Outcome Report and provide updated address information.
- Older Adult Recipient Answers Phone States Home Later
 - Ask when they plan to return
 - Only leave food if shelf-life will not expire before recipient states they will return.
 - If cannot leave food, mark “Unable to Deliver” on Delivery Outcome field on Outcome Report
- Building Refuses Entry
 - Use Emergency Food Delivery Letter to get approval to go to apartment door
 - If building staff still refuses to allow Driver to go to apartment door, only leave meals if the older adult recipient has answered Driver calls or Doorman calls
 - Must Mark Meal Box with Name/Apartment Number for Doorman

Attachment 2:

Special Instruction to Bidders -
Contract Specific Terms and Conditions

**SPECIAL INSTRUCTIONS TO BIDDERS
CONTRACT SPECIFIC TERMS AND CONDITIONS**

[INSTRUCTIONS TO AGENCY: ATTACH THE FOLLOWING: (1) MACBRIDE PRINCIPLES RIDER; AND (2) IRAN DIVESTMENT ACT COMPLIANCE RIDER AND BIDDER'S CERTIFICATION.]

GENERAL. These terms and conditions constitute a binding agreement between the successful Bidder and the New York City Agency conducting the solicitation. All Bids are subject to the following terms and conditions unless modified in the solicitation or in this Contract.

DEFINITIONS. The following definitions shall apply to this Contract:

1. "Acceptance" by the City means a written acknowledgement that the goods furnished and delivered and/or services related thereto meet Contract requirements.
2. "Administrative Code" means the New York City Administrative Code.
3. "Agency" means the City agency that is conducting the solicitation and will enter into this Contract on behalf of the City.
4. "Agency Chief Contracting Officer" or "ACCO" means the position delegated authority by the Agency head to organize and supervise the procurement activity of subordinate Agency staff.
5. "Bid" means a bid submitted by a Bidder.
6. "Bidder" means the person, firm, company, or other entity who submits a Bid in response to the solicitation for the furnishing and delivery of goods and/or the provision of services related thereto to the City. The term "Bidder" also refers to a person, firm, company, or other entity awarded this Contract resulting from the solicitation.
7. "City" means the City of New York, acting by and through the Agency.
8. "Commissioner" means the Commissioner of the Agency.
9. "Comptroller" means the Comptroller of the City of New York.
10. "Contract" includes the invitation for bids, instructions to bidders, the Bid and schedule of quantities and prices, drawings and specifications, together with the purchase order or other contract documents, this Special Instructions to Bidders Contract Specific Terms and Conditions, and any change orders or modifications.
11. "Procurement Policy Board" or "PPB" means the board established pursuant to City Charter §311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
12. "PPB Rules" means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), §1-01 et seq.
13. "State" means the State of New York.

BID SUBMISSION. Any Bid received after the time and date set for receipt of bids is late and may be rejected in its entirety.

1. **"OR EQUAL" BIDDING** – When a bid standard or equal is specified, Bidder may offer an article that it certifies to be equal and must submit proof, with its Bid, that the article is equal in quality, performance and other essentials required to furnish the bid standard. If Bidder fails to name a substitute, it will be required to furnish the bid standard. The Agency shall determine, in its sole discretion, whether the bid standard has been met.

2. **PRICING** – Bidder shall insert unit price and extension against each item. In case of a discrepancy, the unit price shall govern. Bids must be typewritten or written legibly in blue or black ink. Any erasure(s) or alteration(s) to Bidder-provided information shall be initialed by the signer in ink, or the Bid may be rejected in its entirety.
3. **SAMPLES** – If the solicitation indicates that sample(s) and/or drawing(s) of any item are required of the Bidder, for inspection and/or testing to ensure compliance with the specifications of the solicitation, a written request shall be submitted by the Agency and the Bidder shall submit the sample(s) and/or drawing(s) free of charge to the attention of the Agency, as specified in the written request. When sample(s) and/or drawing(s) are no longer required, the Bidder shall remove them at the Bidder's expense. Sample(s) and/or drawing(s) not removed within thirty (30) days after written notice to do so shall be deemed abandoned by the Bidder and the City shall have the right to dispose of them as its own property. The City will not be responsible for the destruction of or damage to a sample(s) and/or drawing(s) during examination.
4. **NEW AND UNUSED GOODS** – Unless otherwise stated in writing by the City, deliveries must consist only of new and unused goods.

AWARD. This Contract will be awarded to the responsive and responsible Bidder who submits the lowest Bid.

1. **LOW TIE BIDS** – Low tie bids will be decided by the ACCO in his or her sole discretion, which may be exercised in the manner described in Section 3-02(p) of the PPB Rules.
2. **NON-RESPONSIVE BIDS** – A Bid that does not conform to the requirements in the solicitation will be considered non-responsive and may not be accepted.
3. **DISCOUNT** – Trade discounts will be a factor in determining the award. Cash discounts will not be a factor in determining awards but may be considered in tie bids.
4. **ITEM AND CLASS AWARDS** – Items may be combined and awarded as a group to achieve a savings in ultimate cost by reducing the number of orders to be issued. When class bids are indicated, the Bidder must bid on every item in the class. A Bidder desiring to bid “no charge” on an item in a class must so indicate; otherwise, the bid for the class will be construed as incomplete.

DELIVERY AND INSPECTION.

1. **F.O.B. DELIVERY POINT** – All prices bid must be F.O.B. delivery point, unloaded, inside and assembled, unless otherwise specified by the City.
2. **FOREIGN GOODS** – If offering foreign goods, the Bidder must mark it as such and provide the country of origin.
3. **LABELS** – The original, un mutilated label or marking of the manufacturer must be securely affixed to all goods that are customarily labeled or identified.
4. **CONTAINERS AND REELS** – Delivery containers and reels become the property of the City unless otherwise specified. If it is specified that delivery containers and reels will not become the property of the City, they shall be promptly removed after delivery and disposed of in accordance with all applicable laws, rules and regulations by the Bidder at no cost to the City. Delivery containers and reels not removed within fourteen (14) days by the Bidder after written notice from the City shall be deemed abandoned and the City shall have the right to dispose of them as its own property at the Bidder's expense.
5. **DELIVERY**–
 - (a) Delivery shall be made between 9:00 A.M. and 3:30 P.M. Monday through Friday, or as otherwise indicated by the City. Deliveries scheduled on a holiday shall instead be made on the following business day.
 - (b) Delivery time shall be computed in calendar days from the later of the printed date that the purchase order was accepted into the City's Financial Management System or that indicated as the mailing date, or as otherwise provided in this Contract.

6. **DELIVERY DELAY** –

- (a) If the Bidder cannot make delivery by the due date because of any fault of the City, it shall notify the ACCO in writing before the due date and the ACCO may grant the Bidder an extension of time.
- (b) If the delayed delivery is occasioned through no fault of the City or the Bidder, the Bidder shall notify the ACCO in writing before the due date and the ACCO may grant the Bidder an extension of time; or the ACCO may, in his or her discretion, obtain the items elsewhere without liability to the City or to the Bidder.

7. **INSPECTION** – The City shall have the right to inspect the goods at the delivery point and/or at any other place it may select. Inspection shall in no way be deemed a waiver by the City of any right to later reject, revoke acceptance or recover damages for goods accepted which are not in fact free from defects, or a waiver of the Bidder's obligation to deliver conforming goods. The City reserves the right to inspect the premises where the goods are manufactured, prepared or stored.

8. **RISK OF LOSS** – Title and risk of loss shall not pass from the Bidder to the City until the goods have been received at the delivery point and accepted by the City. The Bidder bears the risk of loss of all goods until inspected and accepted. If acceptance is revoked, the Bidder bears the risk of loss thereafter.

9. **REJECTED GOODS** –

- (a) **NON-CONFORMING GOODS** – The Agency may revoke acceptance of or reject any goods which, upon examination, are found not to meet the specification requirements. Upon written notification of rejection from the Agency, non-conforming goods shall be removed immediately by the Bidder and replaced with conforming goods, at no cost or expense to the City. The City shall have the right to dispose of rejected goods left longer than thirty (30) days, at no cost or liability to the City, and the Bidder shall have no right of action for damages or any right to an accounting therefor.
- (b) **FOODSTUFFS AND DRUGS** – No written notice of rejection needs to be given for rejection of foodstuffs and drugs by the City. Unless otherwise directed, the Bidder, on oral notice from the Agency, shall immediately remove and replace rejected foodstuffs and drugs, at no cost or expense to the City. The City may, in its sole discretion, immediately dispose of rejected foodstuffs and drugs as its own property.
- (c) **SPECIAL LIFE AND HEALTH HAZARDS** – Any food, drug, or other commodity found by the Agency to be unwholesome or otherwise unfit for human consumption or use shall not be removed by the Bidder until it has been examined by the appropriate governmental authority. If condemned, the commodity shall be disposed of as provided by law, at no cost or expense to the City.

10. **NON-DELIVERY OR REJECTION** – If the Bidder fails to make delivery within the time specified or if the delivery is rejected, the City may obtain the goods from other sources under the buy-against procedure set forth herein.

PAYMENT. The City will make every effort to pay invoices within thirty (30) days after receipt of proper invoice in accordance with the prompt payment provisions of the PPB Rules and after acceptance of the goods. Any cash discounts or claims by or on behalf of the City against the Bidder may be deducted by the City from any money due to the Bidder.

1. **BUY-AGAINST PROCEDURE** – In the event the Bidder fails to perform in accordance with this Contract and there is a continued need for the goods, an Agency may obtain the required goods from a successor bidder. If the new purchase price to obtain the goods from other sources exceeds the Bidder's order price, the City shall charge the non-performing Bidder the excess cost, the cost of reletting the order and, where applicable, liquidated damages. If the new purchase price is less than the order price, the non-performing Bidder shall have no claim to the difference in price, and the reletting cost and any applicable liquidated damages shall be charged against the non-performing Bidder. All such charges against a non-performing Bidder shall be deducted from money that is due or shall become due to the non-performing Bidder from the City. In the event that there is no money due to the non-performing Bidder, the non-performing Bidder shall pay the amount of the charges to the City.

2. **RECORDS AND AUDIT –**

- (a) **RECORDS.** – The Bidder agrees to maintain separate and accurate books, records, documents and other evidence (“books and records”), and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. The Bidder agrees to retain all books and records, relevant to this Contract, including those required pursuant to the foregoing sentence for six (6) years after the final payment or expiration or termination of this Contract, or for a period otherwise prescribed by law, whichever is later. In addition, if any litigation, claim, or audit concerning this Contract has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit.
- (b) **AUDIT** - This Contract and all books and records required to be maintained or retained pursuant to this Contract, including all vouchers or invoices presented for payment and the books and records upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Agency, and the Agency’s Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. The Bidder shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by the Agency and by the Comptroller in the exercise of his or her powers under law.

3. **ELECTRONIC FUNDS TRANSFER –** This Section 3 (Electronic Funds Transfer) is applicable if this Contract is for more than \$25,000.

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

WARRANTIES AND REPRESENTATIONS.

- 1. **MANUFACTURERS’ WARRANTIES AND GUARANTEES –** The Bidder shall issue or obtain all manufacturers’ warranties and guarantees of all equipment and materials required by this Contract in the name of the City, unless otherwise agreed by the parties, and deliver such with the invoice.
- 2. **PROCUREMENT OF CONTRACT –** (a) The Bidder represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Bidder) has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Bidder may retain consultants to draft bids, negotiate contracts, and perform other similar services. The Bidder further represents and warrants that no payment, gift, or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Bidder makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution of this Contract.

(b) For any breach or violation of the representations and warranties set forth in Section 2(a) above, the Commissioner shall have the right to annul this Contract without liability, entitling the City to recover all monies paid to the Bidder; and the Bidder shall not make claims for, or be entitled to recover, any sum or sums due under this Contract. The rights and remedies of the City provided in this Section 2 (Procurement of Contract) are not exclusive and are in addition to all other rights and remedies allowed by law or under this Contract.

3. **CONFLICTS OF INTEREST** – (a) The Bidder represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Contract. The Bidder further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Bidder in the performance of this Contract.

(b) Consistent with New York City Charter (“City Charter”) Section 2604 and other related provisions of the City Charter, the Administrative Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Contract. This Section 3(b) shall not prevent directors, officers, members, partners, or employees of the Bidder from participating in decisions relating to this Contract where their sole personal interest is in the Bidder.

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

INDEMNIFICATION.

1. **GENERAL INDEMNIFICATION** - The Bidder shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even of the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of the operations of the Bidder and/or its subcontractors or in any way relating to this Contract to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Contract or applicable law. Insofar as the facts or law relating to any claim would preclude the City from being completely indemnified by the Bidder, the City shall be partially indemnified by the Bidder to the fullest extent permitted by law.
2. **INFRINGEMENT INDEMNIFICATION** - The Bidder shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of any infringement of any patent, copyright, trade secrets, trademark or any other property or personal right of any third party by the Bidder and/or its subcontractors in the performance of this Contract. The Bidder shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Contract specifications and/or scope of services. Insofar as the facts or law relating to any claim would preclude the City from being completely indemnified by the Bidder, the City shall be partially indemnified by the Bidder to the fullest extent permitted by law.
3. **WITHHOLDING PAYMENT** - In the event that any claim is made or any action is brought against the City for which the Bidder may be required to indemnify the City pursuant to this Contract, the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover the said claim or action.

COMPLIANCE WITH LAWS. The Bidder shall comply with all local, state and federal laws, rules and regulations applicable to the goods furnished and delivered and/or services related thereto provided under this Contract.

1. **PPB RULES** – This Contract is subject to the provisions of the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Contract, the PPB Rules shall take precedence.

2. **EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION** – This Contract is subject to all applicable provisions of federal, State and local laws, and rules and regulations promulgated pursuant thereto, relating to equal employment opportunity and non-discrimination, including but not limited to, the following, as applicable:
- (a) As required by Section 6-123 of the Administrative Code, the Bidder shall not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Administrative Code. The Bidder shall include a provision in any contract with a first-level subcontractor supplying goods and/or services related thereto under this Contract for an amount in excess of \$50,000 that such subcontractor shall not engage in any such unlawful discriminatory practice.
 - (b) The Bidder agrees to comply with Section 220-e, subdivisions (a) through (e), of the New York Labor Law.
 - (c) Pursuant to Section 6-108 of the Administrative Code, the Bidder agrees that:
 - i. It shall be unlawful for any person 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.
 - ii. It shall be unlawful for any person or any servant, agent or employee of any person, described in paragraph (i) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
 - (d) If this Contract is funded in whole or in part by federal or State funds, the Bidder shall meet the standards and applicable legal requirements relating to equal opportunity and non-discrimination of the funding source.
3. **PARTICIPATION IN INTERNATIONAL BOYCOTT** – This Section 3 (Participation in International Boycott) is applicable if this Contract is for more than \$5000.
- (a) The Bidder agrees that neither the Bidder nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix Section 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.
 - (b) Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Bidder or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Contract.
 - (c) The Bidder shall comply in all respects with the provisions of Section 6-114 of the Administrative Code and the rules issued by the Comptroller thereunder.
4. **MACBRIDE PRINCIPLES** – This Section 4 (MacBride Principles) is applicable if this Contract is for more than \$10,000. It does not apply if the Bidder is a not-for-profit corporation. If this Section 4 is applicable to this Contract, the MacBride Principles Provisions for New York City Contractors Rider is attached hereto and made a part hereof.
5. **IRAN DIVESTMENT ACT COMPLIANCE AND BIDDER'S CERTIFICATION** – This Section 5 (Iran Divestment Act Compliance and Bidder's Certification) is applicable if this Contract is for more than \$5000. If this Section 5 is applicable to this Contract, the Iran Divestment Act Compliance Rider and Bidder's Certification are attached hereto and made a part hereof.

CHOICE OF LAW: FORUM. This Contract shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Bidder, and shall be governed by and construed in accordance with the laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the laws of the United States, where applicable. The Bidder agrees that any and all claims asserted by or against the City arising under or

related to this Contract shall be solely heard or determined either in the Federal or State courts located in the City and County of New York.

SPECIAL PROVISIONS.

1. **MODIFICATION** – Changes may only be made to this Contract as duly authorized by the City. If the Bidder deviates from the requirements of this Contract without a duly approved written change order or written contract modification or amendment, the Bidder does so at its own risk.
2. **WAIVER** – Waiver by the City of a breach of any provision of this Contract shall not be deemed a waiver of any other breach and shall not be construed to be a modification of this Contract unless and until the same shall be agreed to in writing by the City.
3. **ASSIGNMENTS** – No assignment of this Contract shall be valid without the prior written consent of the ACCO, or his or her designee.
4. **SALES, EXCISE AND FEDERAL TAXES** – Unless this Contract indicates otherwise, the City is exempt from the payment of any sales, excise or federal transportation taxes. The price bid must be exclusive of taxes and will be so construed. The purchase order may be accepted in lieu of a Sales Tax Exemption Certificate.
5. **TERMINATION** –
 - (a) Upon ten (10) days' prior written notice to the Bidder, the City may terminate or suspend this Contract, in whole or in part, without cause where the City deems it to be in the interest of the City. If the City terminates this Contract without cause, the City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date, but will pay the Bidder for the satisfactory provision of goods and/or services related thereto in accordance with this Contract prior to the termination date. Under no circumstances will the City pay the Bidder for anticipatory or lost profits.
 - (b) Upon ten (10) days' prior written notice to the Bidder or such shorter notice as the ACCO may determine, the City may terminate or suspend this Contract, in whole or in part, for cause upon (i) a breach by the Bidder of a material term or condition of this Contract, including unsatisfactory performance, or (ii) insolvency or the commencement of any proceeding by or against the Bidder, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Bidder for the benefit of creditors. The notice of termination for cause shall state the grounds for termination. Termination will not be effective if the ACCO determines that the grounds for termination have been fully cured by the Bidder prior to the end of the ten (10) day period.
6. **DISPUTE RESOLUTION** – All disputes between the City and the Bidder that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of the PPB Rules, Section 4-09. The procedure for resolving all such disputes set forth in Section 4-09 of the PPB Rules shall be the exclusive means of resolving any such disputes. The dispute resolution provisions of this Section 6 (Dispute Resolution) and Section 4-09 of the PPB Rules 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.
7. **CLAIMS AND ACTIONS** –
 - (a) Any claim against the City or the Agency based on this Contract or arising out of this Contract that is not subject to dispute resolution under the PPB Rules or this Contract shall not be made or asserted in any legal proceeding, unless the Bidder shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Contract.
 - (b) No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Contract, or within six (6) months of the termination or expiration of this Contract, or within six (6) months after the accrual of the cause of action, whichever first occurs.

8. **GENERAL RELEASE** - The acceptance by the Bidder or its assignees of the final payment under this Contract whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Bidder, of which the Bidder was aware or should reasonably have been aware, arising out of the performance of this Contract, including the goods furnished and delivered hereunder and/or the provision of services related thereto, based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.
9. **NOTICE** – The Bidder and the Agency hereby designate the business address specified in this Contract as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed.
10. **SEVERABILITY** – If any provision of this Contract is held unenforceable for any reason, all other provisions shall nevertheless remain in full force and effect.
11. **INVESTIGATIONS CLAUSE** –
- (a) The Bidder agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or 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.
- (b) (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, 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:
- (2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
- (c) (1) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (e) below without the City incurring any penalty or damages for delay or otherwise.
- (d) The penalties that may attach after a final determination by the Commissioner or agency head may include but shall not exceed:
- (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

- (2) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this 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.
- (e) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (e)(1) and (e)(2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (e)(3) and (e)(4) below, in addition to any other information that may be relevant and appropriate:
- (1) the party's good faith efforts or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
 - (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
 - (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
 - (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph (d) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in paragraph (c)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- (f) Definitions. The following definitions shall apply to this Section 11 (Investigations Clause):
- (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
 - (2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
 - (3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.
 - (4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.
- (g) In addition to and notwithstanding any other provision of this Contract, the Commissioner or agency head may in his or her sole discretion terminate this Contract upon not less than three (3) days written notice in the event the Bidder fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Contract by the Bidder, or affecting the performance of this Contract.

Attachment 3:

Federal Contract Riders

**UNIFORM FEDERAL CONTRACT PROVISIONS RIDER
FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS
(Version 02.16.2018)**

A. Definitions. As used in this Rider:

- (1) “Awarding Entity” means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.
- (2) “City” means the City of New York.
- (3) “Commissioner” means the head of the City agency entering into this Contract.
- (4) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
- (5) “Contract” refers to the contract or the agreement between the Awarding Entity and the Contractor.
- (6) “Contractor” means the entity performing the services pursuant to a Contract.
- (7) “Federal Agency” means the U.S. agency or agencies funding this Contract in whole or in part.
- (8) “Government” means the U.S. government.
- (9) “Rider” means this Uniform Federal Contract Provisions Rider.

B. Termination and Remedies for Breach of Contract. The following provisions concerning remedies for breach of contract and termination apply to Contracts between the City and the City’s Contractor.

- (1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the City may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the City may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess

expense of such completion, including any and all related and incidental costs, as so certified by the City may be charged against and deducted out of monies earned by the Contractor.

(2) **Termination.** The City shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:

a. **Termination for Cause.** The City shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the City to be necessary, the City shall effect termination according to the following procedure:

i. *Notice to Cure.* The City shall give written notice of the conditions of default signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Contract pending the outcome of the default proceedings pursuant to this section.

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

iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination (“Notice of Termination”), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15

calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.

iv. *Grounds for Default.* The City shall have the right to declare the Contractor in default:

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

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

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

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

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

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

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

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

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

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

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

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

v. *Basis of Settlement.* The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in its Notice of Termination. The City shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

b. **Termination for Convenience.** The City shall have the right to terminate the Contract for convenience, by providing written notice (“Notice of Termination”) according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

c. **Termination due to Force Majeure**

- i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Force Majeure Events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
- ii. In the event the Contractor cannot comply with the terms of the Contract (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.
- iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

d. Termination due to Reductions in Federal Funding

- i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.
- ii. In the case of the reduction option referred to in subparagraph (i), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30

calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the City shall not be bound to utilize any of the Contractor's suggestions and that the City shall have sole discretion as to how to effectuate the reductions.

- iii. If the City reduces funding pursuant to this paragraph (c), the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

C. Standard Provisions. The Contractor shall comply with, include in its subcontracts, and cause its subcontractors to comply with the following provisions, as applicable:

- (1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.
- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.
- (4) *Energy Efficiency.* The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
- (5) *Debarment.* The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.
- (6) *Lobbying.* The Contractor certifies, to the best of its knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and
 - (c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.
 - (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (7) *Solid Waste Disposal Act.* Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (8) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.
- (9) *Records Retention.* The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract for three years after final payment under the Contract is made and all other pending matters are closed.

(10) *Records Access.* The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

(11) *Small Firms, M/WBE Firms, and Labor Surplus Area Firms.* Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

(12) *Intangible Property.*

- a. Pursuant to 2 CFR § 200.315(d), the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.
- b. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable

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

- c. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- d. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.
- e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- f. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive

irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

D. Special Provisions for Construction Contracts. If this Contract involves Construction work, design for Construction, or Construction services, all such work or services performed by the Contractor and its subcontractors shall be subject to the following requirements in addition to those set forth above in paragraphs (A), (B), and (C):

(1) *Federal Labor Standards.* The Contractor will comply with the following:

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, in Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.
- b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
- c. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but “permissible” salary deductions.
- d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

(2) *Equal Employment Opportunity.* Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include

the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction .

Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000.

1. As used in these specifications:
 - a. “Covered area” means the geographical area described in the solicitation from which this Contract resulted;
 - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an

approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not

employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- (3) **Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR § 60-1.4(b).

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration

for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

E. Rights to Inventions. [Special Provisions For Contracts Involving Experimental, Developmental, or Research Work.]

(1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (A), (B), and (C), unless the Contract specifically states that this provision is superseded:

a. Definitions. The following definitions apply to this section (D).

- i. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*).
- ii. “Subject invention” means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.
- iii. “Practical Application” means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- iv. “Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- v. “Small Business Firm” means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- vi. “Nonprofit Organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt

from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

- b. *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- c. *Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.*
 - i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
 - ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.

- iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may be granted at the discretion of the Federal Agency.

d. Conditions When the Government May Obtain Title

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

- i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Federal Agency may only request title within 60 calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.
 - ii. In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.
 - iii. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
- e. Minimum Rights to Contractor and Protection of the Contractor Right to File*
- i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the

times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

- ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty calendar days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Contractor Action to Protect the Government's Interest

- i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable

the Government to obtain patent protection throughout the world in that subject invention.

- ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- iii. The Contractor will notify the Federal Agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.
- iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."

g. Subcontracts

- i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or

research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.

- h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- i. *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- j. *March-in Rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

 - i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

- ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
 - iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
 - iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. *Special Provisions for Contracts with Nonprofit Organizations.*
If the Contractor is a nonprofit organization, it agrees that:
- i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
 - ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
 - iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
 - iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also

satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding Small Business Firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv).

1. *Communication.* The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the City upon request.

FEDERAL EXHIBIT 1

NOTICE TO BIDDERS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals and Timetables for Minorities

<u>Trade</u>	<u>Goal</u> <u>(percent)</u>
Electricians	9.0 to 10.2
Carpenters	27.6 to 32.0
Steamfitters	12.2 to 13.5
Metal Lathers	24.6 to 25.6
Painters	28.6 to 26.0
Operating Engineers	25.6 to 26.0
Plumbers	12.0 to 14.5
Iron Workers (structural)	25.9 to 32.0
Elevator Constructors	5.5 to 6.5
Bricklayers	13.4 to 15.5
Asbestos Workers	22.8 to 28.0
Roofers	6.3 to 7.5
Iron Workers (ornamental)	22.4 to 23.0
Cement Masons	23.0 to 27.0
Glazers	16.0 to 20.0
Plasterers	15.8 to 18.0
Teamsters	22.0 to 22.5
Boilermakers	13.0 to 15.5
All Other	16.4 to 17.5

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such

geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Contract, the "covered area" is the City of New York.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) RIDER
(10/27/2015)**

**For use with contracts funded by the FEMA Grant and Cooperative Agreement Programs,
including the Public Assistance Program**

(This Rider should not be used with contracts funded by the following FEMA Programs: Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. This Rider should be accompanied by the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.)

1. Suspension and Debarment. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:
 - (a) This contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this contract, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.
 - (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the term of this contract and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
2. Davis-Bacon Act. For the purposes of Section D(1)(a) of the Uniform Federal Contract Provisions Rider, compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) is not required of the Contractor pursuant to FEMA regulations. However, if this Contract is funded by another federal funding source (e.g., the U.S. Department of Housing and Urban Development CDBG or CDBG-DR programs), compliance with the Davis-Bacon Act is required to the extent required by law and as set forth in the contract documents.
3. Rights to Inventions Made Under a Contract or Agreement. Section E of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts does not

apply to the following FEMA Programs: Public Assistance Program, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program.

4. Copeland “Anti-Kickback” Act. The Contractor shall comply with provisions of the Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (A).
5. Contract Work Hours and Safety Standards Act. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (B).
6. Access to Records.
 - (a) The Contractor agrees to provide the City of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - (b) The Contractor agrees to permit any of the foregoing parties to reproduce said documents by any means or to copy excerpts and transcriptions as reasonably needed.
 - (c) The Contractor agrees to provide the FEMA Administrator or his/her authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
7. Logos. The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
8. Compliance with Law. The Contractor acknowledges that FEMA financial assistance will be used to fund the contract only and agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
9. Federal Government not a Party. The Contractor acknowledges and understands that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the contract.
10. False Claims. The Contractor acknowledges that 31 U.S.C. Chap. 38 applies to the Contractor’s actions pertaining to this contract.

CDBG Rider

(Version 02.16.2018)

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ARTICLE 1. DEFINITIONS

As used in this CDBG Rider:

(a) “Act” means Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

(b) “Agency” means the entity, or entities, executing this Agreement on behalf of the City of New York.

(c) “Agreement” means either the “contract” (as defined by 2 CFR § 200.22) between the City and the Contractor or the agreement between the City and “Subrecipient” as defined by 2 CFR § 200.93 as the context requires.

(d) “City” means the City of New York.

(e) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.

(f) “Contractor” and/or “Subrecipient” means the entity or entities executing this Agreement, other than the Agency.

(g) “Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$250.

(h) “Grant” means Community Development Block Grant Program funds provided to the City of New York by the Federal Department of Housing and Urban Development or a pass-through entity.

(i) “Hometown Plan” means a voluntary areawide plan that was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

(j) “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(k) “Program” means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(l) "Real property" means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and moveable equipment.

(m) “Subcontractor” means any person, firm or corporation, other than employees of the Contractor or the Subrecipient, or another Subcontractor who is engaged by the Contractor or the Subrecipient to furnish (i) services, (ii) labor or (iii) services and/or labor and materials at the site of the work performed under this Agreement.

ARTICLE 2. HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT

[Applicable to Contractors and Subrecipients]

This Agreement is subject to Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended (The Act) and all rules, regulations and requirements now issued or hereafter issued pursuant to the Act; the Agreement may be suspended and/or terminated without liability to the City if the Grant to the City pursuant to the Act is suspended or terminated, and unless and until the City or Agency receives Community Development funds in an amount that is deemed sufficient to enable it to fund this Agreement, the City or Agency is under no obligation to make any payments to the Contractor or Subrecipient. In this regard, the Agency is under no obligation to make any payments to the Contractor or Subrecipient, and shall not make any such payment, and the Contractor or Subrecipient shall not commence performance, until:

- (a) the Agency has received from the City's Office of Management and Budget instructions to proceed, evidencing compliance with the National Environmental Policy Act, as amended, and with regulations of the U.S. Department of Housing and Urban Development, related thereto, found at 24 CFR Part 58, and
- (b) the Contractor or Subrecipient has been notified of such instructions by the Agency. Furthermore, the Contractor or Subrecipient and the City mutually agree that the Contractor or Subrecipient shall not advance any funds, from any source without limitation, to pay for costs intended to be paid for under this Agreement prior to the receipt and notification described in this paragraph (a), and the City shall not reimburse the Contractor or Subrecipient for any costs incurred in violation of this provision.

ARTICLE 3. LABOR REQUIREMENTS

[Applicable to Contractors and Subrecipients; must be included in all subcontracts]

- (a) **Section 3.** This Agreement is subject to Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448) and implementing regulations at 24 CFR Part 135, as may be amended during the term of this Agreement. Pursuant to 24 CFR § 135.38, the Contractor or Subrecipient agrees to the following:
 - 1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.
3. The Contractor or Subrecipient agrees to send to each labor organization or representative of workers with which the Contractor or Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's or Subrecipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The Contractor or Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor or Subrecipient will not subcontract with any Subcontractor where the Contractor or Subrecipient has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor or Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor or Subrecipient is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's or Subrecipient's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

8. The Contractor or Subrecipient agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the Agency detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.
- (b) ***The Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.)***. In Construction contracts involving an excess of \$2000, unless exclusively in connection with the rehabilitation of residential property containing fewer than 8 units, the Contractor shall pay and the Subrecipient shall cause its contractors to pay all laborers and mechanics at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7, which enforce statutory labor standards provisions. **This provision supersedes section D(1)(a) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**
- (c) ***Overtime***. In Construction contracts involving an excess of \$2000, and subject to the exception in 24 CFR section 570.603 (regarding the rehabilitation of residential property containing less than 8 units), Contractor shall comply and the Subrecipient shall cause its contractor to comply with sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701 *et seq.*), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages. **This provision supersedes section D(1)(b) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**

ARTICLE 4. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS

[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section D(1)(c)-(d), (2), and (3).]

If this Agreement involves Construction work, design for Construction, or Construction services, all such work or services performed by the Subrecipient and its Subcontractors shall be subject to the following requirements:

- (a) ***Impermissible Salary Deductions***. In Construction contracts of any amount, the Subrecipient shall cause its Subcontractor to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3,

requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but “permissible” salary deductions.

- (b) ***Federal Labor Standards.*** In Construction contracts of any amount, the Subrecipient shall cause its Subcontractors to comply with the more detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.
- (c) ***Equal Employment Opportunity.*** In Construction contracts or subcontracts in excess of \$10,000, the Subrecipient shall cause its Subcontractors to comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR § 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000. (Federal Notice Required by 41 CFR § 60-4.3)

- 1. As used in these specifications:
 - a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
 - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2. Whenever the contractor or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice

which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.

3. If the contractor is participating (pursuant to 41 CFR § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to

each Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance

of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR § 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

B. Equal Opportunity Clause

Subrecipient shall include the following provisions, which are required by 41 CFR § 60-1.4(b), in all federally assisted contracts and subcontracts.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment

without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order

11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS

[Applicable to Contractors and Subrecipients]

This Agreement is subject to:

- (a) Section 109 of the Act, which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The Contractor or Subrecipient agrees to comply with provisions of 24 CFR Parts 6, 8, and 146.
- (b) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.
- (c) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107, which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.
- (d) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this Agreement.

- (e) 24 CFR § 5.109, “Equal participation of faith-based organizations in HUD programs and activities.”
- (f) Consistent with 24 CFR § 570.614, the Contractor or Subrecipient warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

The non-discrimination provisions in this Article shall be incorporated in and made a part of all subcontracts executed in connection with this Agreement.

- (g) Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

ARTICLE 6. ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT

[Applicable to Contractors and Subrecipients]

- (a) For agreements, subcontracts, and subgrants of amounts in excess of \$150,000, the Contractor or Subrecipient shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33 U.S.C. §§ 1251, et seq.) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).
- (b) The Subrecipient and Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
- (c) This Agreement is subject to laws and authorities listed in 24 CFR § 58.5, including the Historic Preservation Act of 1966 (Section 1 of Pub. L. No. 89-665, as amended by Pub. L. No. 96-515; 54 U.S.C. §§ 100101 and 300101 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

- (d) This Agreement is subject to the Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.
- (e) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

ARTICLE 7. UNIFORM RELOCATION ASSISTANCE

[Applicable to Contractors and Subrecipients]

This Agreement is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601-4655) and regulations at 49 CFR Part 24 and 24 CFR section 570.606.

ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

[Subdivision (a) is applicable to Contractors and Subrecipients; subdivision (b) is applicable to Subrecipients only; subdivision (c) is applicable to Contractors only]

- (a) Pursuant to 2 CFR § 2400.101 and 24 CFR § 85.1, Subrecipients and Contractors are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (commonly referred to the “Super Circular”), as applicable.
- (b) For the procurement of all subcontracts and goods contracts, Subrecipients are required to follow the procurement standards in 2 CFR §§ 200.318-200.326, except as allowed by 2 CFR § 200.110.
- (c) Contractors are subject to the Uniform Federal Contract Provisions Rider, attached to this Agreement.

ARTICLE 9. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS

[Paragraphs (a), (b), (d), and (e) are applicable to Contractors and Subrecipients; paragraph (d) is applicable to Subrecipients only]

- (a) Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor or Subrecipient will be returned to the City. All interest on funds advanced to the Contractor or Subrecipient will be returned to the City.
- (b) The Contractor or Subrecipient agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor or Subrecipient shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of Community Development Block Grant funds, including 24 CFR § 570.503(b)(3), which provides that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).
- (c) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and readily accessible.
- (d) The Subrecipient shall submit to the Agency a detailed description of its accounting, reporting and internal control systems, including but not limited to the procedures for cash receipts, cash disbursements, payrolls, personnel policies, fixed petty cash controls and other systems which are necessary under the circumstances. The Agency shall evaluate and document all systems and only upon acceptance and approval of the accounting, reporting and internal control systems by the Agency, shall funds be disbursed to the Subrecipient, other provisions of the Agreement notwithstanding.
- (e) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor's or Subrecipient's chief fiscal officer or its insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount equal to cash advances from the City. If the bond is cancelled or coverage is substantially reduced, the Contractor or Subrecipient shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor or Subrecipient until it has received assurance that adequate coverage has subsequently been obtained.
- (f) No money under this Agreement shall be disbursed by the Agency to any Contractor or Subrecipient except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor or Subrecipient is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR Part 58.

ARTICLE 10. RECORDS AND AUDITS

[Applicable to Contractors and Subrecipients]

- (a) (i) The Subrecipient shall maintain records in accordance with requirements prescribed by or in 2 CFR § 200.333, HUD and/or the City with respect to all matters covered by this Agreement and retained for at least three years after the City makes final payments and all other pending matters concerning this Agreement are closed, subject to the exceptions in 2 CFR § 200.333. (ii) The Contractor shall maintain records in accordance with the requirements elsewhere in this Agreement.
- (b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information, as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:
 - (i) Annual Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Annual Performance Report.
 - (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased equipment.
- (c) At any time during normal business hours and as often as the City, the Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor or Subrecipient shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

ARTICLE 11. SUBCONTRACTORS

[Applicable to Contractors and Subrecipients]

- (a) The provisions of this Agreement shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor or Subrecipient. The Contractor or Subrecipient shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor or Subrecipient.
- (b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor or Subrecipient.

- (c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor or Subrecipient, and the Contractor or Subrecipient shall remain responsible therefor.

ARTICLE 12. CONFLICTS; EXHIBITS

[Applicable to Contractors and Subrecipients]

- (a) If any provision in this CDBG Rider directly conflicts with any other provision in the Agreement, the provision in CDBG Rider shall be controlling.
- (b) Federal Exhibits 1 and 2 are attached to, and made a part of this CDBG Rider.

ARTICLE 13. REVERSION OF ASSETS

[Applicable to Subrecipients]

- (a) At the Agreement's expiration, the Subrecipient shall transfer to the City all CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.
- (b) Any real property under the Subrecipient's control that was acquired or improved in whole or in part with Community Development funds in excess of \$25,000 must be used to either (i) meet the national objectives in Section 570.208 for a period of five years after acquisition if the property or completion of the improvements, as applicable, or (ii) disposed in a manner which results in the Program being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property.
- (c) Title to all Equipment in excess of \$250 purchased pursuant to this Agreement with CDBG funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

[Applicable to Subrecipients. Contractors must follow section C(11) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.]

Subrecipient shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- (b) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

ARTICLE 15. INTANGIBLE PROPERTY

[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section C(12).]

- (a) Pursuant to 2 CFR § 200.315(d), the federal Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Agreement or subcontract; and (b) any rights of copyright to which a Subrecipient purchases ownership with grant support.
- (b) Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Agreement (“Copyrightable Materials”), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Subrecipient hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Subrecipient shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Subrecipient for no purpose other than in the performance of this Agreement without the prior written permission of the City. The City may grant the Subrecipient a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.
- (c) The Subrecipient acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Subrecipient shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

- (d) The Subrecipient represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Subrecipient has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.
- (e) The Subrecipient shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Agreement and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- (f) If the Subrecipient publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

ARTICLE 16. HATCH ACT; LOBBYING; CONFLICTS OF INTEREST

[Applicable to Subrecipients.]

- (a) Hatch Act: The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- (b) Lobbying: The Subrecipient certifies, to the best of its knowledge and belief, that:
 - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and

3. It will require that the language of this Article 16(b) be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 2 CFR §§ 200.112 and 200.318(c) and 24 CFR § 570.611.

ARTICLE 17. SUSPENSION AND TERMINATION

[Applicable to Subrecipients.]

- (a) The City may take enforcement action against a Subrecipient for non-compliance, as described in 2 CFR §§ 200.338 and 200.339(a)(1) & (2), including suspension or termination.
- (b) The City may terminate for convenience pursuant to 2 CFR § 200.339(a)(3).

FED. EXHIBIT 1

NOTICE TO BIDDERS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL HUD COMMUNITY DEVELOPMENT FUNDED CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth above.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals and Timetables for Minorities

Trade	Goal (Percent)		
Electricians	9.0	to	10.2
Carpenters	27.6	to	32.0
Steamfitters	12.2	to	13.5
Metal Lathers	24.6	to	25.6
Painters	28.6	to	26.0
Operating Engineers	25.6	to	26.0
Plumbers	12.0	to	14.5
Iron Workers (structural)	25.9	to	32.0
Elevator Constructors	5.5	to	6.5
Bricklayers	13.4	to	15.5
Asbestos Workers	22.8	to	28.0
Roofers	6.3	to	7.5
Iron Workers (ornamental)	22.4	to	23.0
Cement Masons	23.0	to	27.0
Glazers	16.0	to	20.0
Plasterers	15.8	to	18.0
Teamsters	22.0	to	22.5
Boilermakers	13.0	to	15.5
All Other	16.4	to	17.5

Goals and Timetables for Women

From April 1, 1980 until the present	6.9
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These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this

second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Agreement, the "covered area" is the City of New York.

Attachment 4:

Whistleblower Protection Expansion Act Rider

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

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

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

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

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



REPORT
CORRUPTION, FRAUD, UNETHICAL CONDUCT
RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT
CALL THE NYC DEPARTMENT OF INVESTIGATION
212-825-5959

DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:
New York City Department of
Investigation (DOI)
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



Or scan the QR Code above
to make a complaint

**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at 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 to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes 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