

THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND
CONSTRUCTION

DIVISION OF SAFETY AND SITE
SUPPORT

30-30 THOMSON AVENUE
LONG ISLAND CITY, NY, 11101
TEL: 718.391.1000
WEB: www.nyc.gov/ddc

TO BE FILLED IN BY THE BIDDER:

BIDDER'S NAME:

BID SECURITY (CIRCLE ONE):

BID BOND / CERTIFIED CHECK

NUMBER OF ADDENDUMS RECEIVED
AND ATTACHED TO BID:

_____ ADDENDUMS

DDC CLIENT AGENCY:

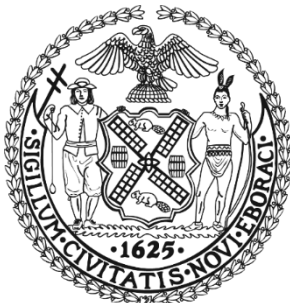
VARIOUS

PREPARED BY:

IN HOUSE

DATE PREPARED:

November 23, 2020



VOLUME 1 OF 2

BID BOOKLET

FOR FURNISHING ALL LABOR AND MATERIALS
NECESSARY AND REQUIRED FOR:

PROJECT ID: PW335AS21

**For furnishing all labor and materials necessary
and required for:**

AIR SAMPLING, DUST WIPE SAMPLING, AND
LABORATORY TESTING SERVICES IN CONJUNCTION
WITH ASBESTOS AND LEAD ABATEMENT PROJECTS
WITHIN THE FIVE BOROUGHES OF THE CITY OF NEW
YORK

TOGETHER WITH ALL WORK INCIDENTAL THERETO

**ALL BOROUGHES
CITY OF NEW YORK**

September 15, 2021 (Revised September 22, 2021)

VIA EMAIL

WARREN & PANZER ENGINEER, P.C.
228 East 45 Street
New York, NY 10017

RE: FMS ID: PW335AS21
E-PIN: 85021B0026001
DDC PIN: 8502019VP0006C
AIR SAMPLING, DUST WIPE SAMPLING AND
LABORATORY TESTING SERVICES IN
CONJUNCTION WITH ASBESTOS AND LEAD
ABATEMENT PROJECTS -CITYWIDE
NOTICE OF AWARD

Dear Contractor:

You are hereby awarded the above referenced contract based upon your bid in the amount of \$2,122,378.00 submitted at the bid opening on April 06, 2021. Within ten (10) days of your receipt of this notice of award, you are required to take the actions set forth in Paragraphs (1) through (3) below. For your convenience, attached please find a copy of Schedule A of the General Conditions to the Contract, which sets forth the types and amounts of insurance coverage required for this contract.

- (1) Execute two copies of the Agreement. Attached are the Signature Agreement pages which must be completed and returned to the agency. The Agreement must be signed by an officer of the corporation or a partner of the firm.
- (2) Submit to the Contracts Unit two properly executed performance and payment bonds. If required for this contract, copies of performance and payment bonds are attached. NOTE: PAYMENT AND PERFORMANCE BONDS ARE NOT REQUIRED FOR THIS CONTRACT.
- (3) Submit to the Contracts Unit the required insurance documents in the amount required by Schedule A. The insurance documentation herewith specified is required for registration of the contract with the Comptroller's Office.

NOT TO EXCEED \$3,000,000.00

All other insurance documents not provided as per the above, must be submitted on or before the contract commencement date. You are required to submit all other certificates of insurance and/or policies in the types and amounts required by Schedule A. Such certificates of Insurance and/or policies must be submitted to the Agency Chief Contracting Office, Attention: Risk Manager, Fourth Floor at the above indicated department address.

Your attention is directed to the section of the Information for Bidders entitled "Failure to Execute Contract". As indicated in this section, in the event you fail to execute the contract and furnish the required bonds (NOTE: Bonds are not required) within the (10) days of your receipt of this notice of award, your bid security will be retained by the City and you will be liable for the difference between your bid price and the price for which the contract is subsequently awarded, less the amount of the bid security retained.

As of August 16, 2019, please be advised that Contract Site Safety Plans for DDC projects must be submitted through DDC's online Site Safety Plan (SSP) application (available via our Agency Portal – DDC Anywhere).

To create an account and begin your Site Safety Pan submission using SSP, click on the link below:

DDC Portal <https://ddcanywhere.nyc/Registration/Registration>

For questions regarding this web-based application, please contact DDC via email at: ddcservicedesk@ddc.nyc.gov.

For questions regarding this award letter, please contact me at holley1@ddc.nyc.gov or Karen General at generalk@ddc.nyc.gov.

Sincerely,



Lorraine Holley
Deputy ACCO

(NO TEXT ON THIS PAGE)

NOTICE TO BIDDERS - NEW BID SUBMISSION PROCEDURES DUE TO COVID-19

The bid submission and opening procedures for this contract will follow the procedures set forth below. The Bid Due Date and the Bid Opening Date, as shown on the Bid Information page of the Bid Booklet (Attachment 1), will now be on different dates and different times.

THE BIDDER MUST CAREFULLY READ THE DATES AND TIMES ON ATTACHMENT 1, AS THEY NOW DIFFER FROM PREVIOUS DDC PROJECTS.

Bid Submission Procedures

1. The representative delivering the bid must maintain required social distancing measures – keep at least 6 feet away from others, and a mask or face covering must be worn.
2. The representative delivering the bid must comply with the Covid daily health screening required to enter the DDC office building at 3030 Thomson Ave. The time required to complete this screening must be accounted for in order to submit the bid on time.

As such, please allow sufficient time for these procedures when arriving to deliver the bid so that the bid may be submitted on time.

The screening requirements are as follows:

Any guest visiting DDC will be required to follow the same health and safety measures as DDC staff, which includes wearing a mask and completing the daily Health Screening.

Upon your arrival to 3030 Thomson Ave, please complete the health screen at the kiosk located by the left hand side of the security desk upon your entry. You will need to provide your name, email address and answer a few questions. Once you complete the health screening, you will need to receive a Green Readiness Score to enter our offices. Should you receive a Red Readiness Score, you will not be allowed to enter our offices. These steps are in place to ensure all precautionary safety measures are followed while in the office, as the health and safety of staff and visitors is our number one priority.

The health screening will follow the sample screening in the following link: <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-symptom-screening-businesses.pdf>

The person dropping off the bid must be able to answer all four questions in the negative.

If there are issues dropping off the bid, the bidder should email CSB_ProjectInquiries@ddc.nyc.gov for additional instructions.

3. All bids must be delivered by hand within the time shown on Attachment A. No bids will be accepted by mail or parcel service (USPS, FedEx, UPS, DHL, etc.).
4. Bid submissions must be in a single, sealed envelope and clearly labeled on the outside with the following:
 - a. Project ID
 - b. Project Name
 - c. e-PIN no.
 - d. Name of Contractor
 - e. Contact person

- f. Email address
 - g. Phone number
5. Bid submissions must not contain any staples or paper clips.
 6. The representative delivering the bid will be required to fill out a sign-in sheet acknowledging delivery of the bid.
 7. The ACCO staff will provide a time stamp sticker to be applied to the bid envelope.

Bid Opening Procedures

1. Using the information from the sign-in sheet, all bidders will receive an email with a link to view the bid opening live, in real-time.
2. The sealed bids will be opened and the bid prices will be read aloud.
3. The bids will be ranked and the apparent low bidder will be announced.
4. After the bid opening, the following will be posted to the City Record On Line (CROL) and the DDC website:
 - a. A scanned copy of the bid submission sign-in sheet
 - b. A link to view the video recording of the bid opening

NOTICE TO BIDDERS

Pre-Bid Questions (PBQs)

Please be advised that PBQs should be submitted to the Agency Contact Person (CSB_projectinquiries@ddc.nyc.gov) at least five (5) business days (by 5:00 PM EST) prior to the bid opening date as indicated in BID INFORMATION, page A-5 and SCHEDULE B, page A-40, VOLUME 1 OF 2 of this BID BOOKLET.

All PBQs must reference the Project ID. If a bidder has multiple PBQs for the same Project ID, the PBQs must be numbered sequentially, even if they are submitted separately.

NYC Contract Financing Loan Fund

Loans at a 3% annual interest rate to perform on New York City contracts

If your business is working as a prime or subcontractor on a project with a City agency or City-funded entity, you may be eligible for a Contract Financing Loan from a participating lender coordinated with the NYC Department of Small Business Services (SBS). Loan repayment terms align with the contract payment schedule.

Loans of up to \$500,000 at an annual interest rate of 3% are available to eligible* businesses to perform on New York City contracts. Closing fees apply.

*To be eligible for a loan, you must:

- ✓ Have an operating business, AND
- ✓ Be applying for financing as a prime or sub-contractor to use toward a contract with a City agency or City-funded entity.
- ✓ Additional Eligibility requirements may also apply.

How it works:

Step 1: Fill out the Contract Financing inquiry form at nyc.gov/contractfinancing

Step 2: If Eligible, a participating lender will contact you within two business days.

Step 3: Begin the loan application process

For more information: **Call 311** or visit nyc.gov/contractfinancing

(NO FURTHER TEXT ON THIS PAGE)

NYC Bond Collateral Assistance Fund

If your business is bidding or planning to bid on a project as a prime or subcontractor with a City agency or the NYC Economic Development Corporation (NYCEDC) and the project requires surety bonding, you may be eligible* to receive **up to \$500,000 in Collateral Assistance to enhance your surety bond application** from a participating bond service provider coordinated with the NYC Department of Small Business Services (SBS).

*To be eligible, you must:

- ✓ Have an operating construction business, AND
- ✓ Be bidding or planning to bid **as a prime or subcontractor** on a contract with a City agency or NYCEDC that requires bonding
- ✓ Additional Eligibility requirements may apply.

How it works:

Step 1: Fill out the Bond Collateral Assistance Fund inquiry form at nyc.gov/bondfund

Step 2: If Eligible, the bond service provider will contact you within two business days

Step 3: Begin the bond application process

For more information: **Call 311** or visit nyc.gov/bondfund

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CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF INFRASTRUCTURE

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CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF SAFETY AND SITE SUPPORT

A. BID BOOKLET

BID INFORMATION

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SPECIAL NOTICE TO BIDDERS

BID SUBMISSION REQUIREMENTS

THE FOLLOWING DOCUMENTS ARE TO BE COMPLETED AND SUBMITTED WITH THE BID:

- (1) Bid Form, including Affirmation (Page A-23)
- (2) Bid Security (if required, see Bid Information on Page A-5)
- (3) Schedule B: M/WBE Utilization Plan (Page A-40, if participation goals have been established)
- (4) The Schedule of Unit Prices, both Part A and Part B (Page A-23)

FAILURE TO SUBMIT THE ITEMS LISTED ABOVE WILL RESULT IN THE DISQUALIFICATION OF THE BID.

- (5) Bidder's Certification of Compliance with Iran Divestment Act (Page A-53)
- (6) Special Experience Requirements (Page A-7 & A-8, if applicable)
- (7) Safety Questionnaire (Page A-49)
- (8) Supply and Services Employment Report (Page A-20 if bid is \$100,000 or more)
- (9) Any addenda issued prior to the receipt of bids

FAILURE TO SUBMIT THE ITEMS LISTED ABOVE MAY RESULT IN THE DISQUALIFICATION OF THE BID.

NOTES:

- (1) All of the above referred to blank forms to be completed and submitted with the bid are included in the BID BOOKLET, page numbers as noted above.
- (2) If the bidder has any questions or requires additional information, please contact the Agency Contact Person noted on Attachment 1 (Page A-5 of this Bid Booklet).
- (3) PASSPort Compliance: The Bidder is advised that Vendex Questionnaires and procedures have been replaced by the PASSPort system. Compliance with PASSPort is mandatory for contract Award. PASSPort details are set forth on Page A-20 of this Bid Booklet.
- (4) SPECIAL EXPERIENCE REQUIREMENTS: The Bidder is advised that Special Experience Requirements may apply to this contract. Such requirements are set forth beginning on Page A-7 of this Bid Booklet.

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BID INFORMATION (ATTACHMENT 1)

**PROJECT ID: PW335AS21
PIN: 8502019VP0005C**

Description and Location of Work:

Air sampling, dust wipe sampling, & laboratory testing services in conjunction with asbestos and lead abatement projects within the five boroughs of the city of New York.

Together With All Work Incidental Thereto
All Boroughs
CITY OF NEW YORK

Documents Available: Online at <https://biddocuments.ddcanywhere.nyc/>

Submission of Bids to: 30-30 Thomson Avenue
First Floor Bid Procurement Room
Long Island City, New York 11101
Between **11:30 AM and 2:00 PM** on **April 6, 2021**

Bid Opening: Live web video stream:
<https://us02web.zoom.us/j/85196947407?pwd=aVBCakFZZ1BORHBvZ05WV3lvMIY1QT09>
Meeting ID: 851 9694 7407 Passcode: 965478
Time and Date: **2:30 PM** on **April 6, 2021**

Pre-Bid Conference: Yes: X No:
If Yes, Mandatory: Optional: X
Time and Date: **10:00AM** on **March 22, 2021** _____

Location: Live web video stream:
<https://us02web.zoom.us/j/89026752547?pwd=d1ZQZ1V5bVo3K1VTRDZBTmh3NzRMdz09>
Meeting ID: 890 2675 2547 Passcode: 945595

Bid Security: Bid Security is not required.

Performance and Payment Security: Performance and Payment Security is not required.

Agency Contact Person: Lorraine Holley
Phone: 718-391-2601 , Fax 718-391-2627
Email: CSB_projectinquiries@ddc.nyc.gov



For questions about site accessibility, please contact our disability services facilitator at (718) 391-2815 or via email at accessibility@ddc.nyc.gov.

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SPECIAL EXPERIENCE REQUIREMENTS

(A) SPECIAL EXPERIENCE REQUIREMENTS FOR THE BIDDER:

The Special Experience Requirements set forth below apply to the bidder. Compliance with such Special Experience Requirements will be determined solely by the City prior to an award of contract. The bidder must demonstrate compliance with the special experience requirements set forth below. The bidder must submit documentation demonstrating compliance with all listed requirements. Such documentation shall include without limitation, all required licenses, certificates and/or documentation of accreditation, as well as resumes of proposed personnel. Licenses and/or certifications that are not valid are not acceptable. Failure to comply with the Special Experience Requirements will result in rejection of the bid as non-responsive.

- a) The bidder must, for the three-year period prior to the bid opening, have been in the business of providing sampling and testing services for asbestos, and lead abatement projects as a routine part of its daily operations;
- b) The bidder must have participated in and received a current rating of “Proficient” in nine (9) of the twelve (12) most recent rounds of the Proficiency Analytical Testing (“PAT”) program entitled “Air Samples PAT (PCM)” administered by the American Industrial Hygiene Association (“AIHA”);
- c) The bidder must have participated in and received a current rating of “Proficient” in nine (9) of the twelve (12) most recent rounds of the Environmental Lead Proficiency Analytical Testing (“ELPAT”) program entitled “Dust Wipes (AAS)” administered by AIHA;
- d) The bidder shall be required, throughout the term of the Contract, to provide the following qualified personnel for the performance of all required services. The bidder must demonstrate that it can provide personnel that comply with the minimum qualification requirements set forth below. Resumes and certificates of proposed personnel must be submitted.
- e) All proposed personnel must be employed by the bidder at the time of the bid. The following are required personnel:
 1. Four (4) Air Sampling Technicians, each of whom must have an Asbestos Project Air Sampling Technician Certificate issued by the NYSDOL and an EPA Lead Risk Assessor Certificate, with three (3) years of experience performing air sampling services on asbestos projects and have at least three (3) months experience performing OSHA personal exposure monitoring for Lead and/or ambient air quality monitoring for lead in accordance with EPA/OSHA/NIOSH sampling procedures within NYC;
 2. Six (6) Project Monitors, each of whom must have an Asbestos Project Monitor Certificate and an Asbestos Project Air Sampling Technician Certificate issued by NYSDOL, and five (5) years of experience performing monitoring services on asbestos projects, including three (3) years of experience performing project monitoring services on asbestos projects within NYC;
 3. Four (4) Lead Risk Assessors, each of whom must have a Lead Risk Assessor Certificate issued by the USEPA, and three (3) years of experience performing risk assessment and dust wipe sampling services on lead projects within NYC;

4. One (1) Project Manager whom must comply with the following criteria: (1) must have an Asbestos Project Monitor Certificate and an Asbestos Project Designer Certificate issued by the NYSDOL, and (2) each individual must have at least seven (7) years of experience performing project management services on asbestos projects, including four (4) years of experience performing project management services on asbestos projects within NYC.
5. One (1) Project Manager whom must comply with the following criteria: (1) have a USEPA Lead Risk Assessor Certificate, (2) have at least three (3) years of experience performing lead hazard inspections and/or lead hazard assessments in NYC, demonstrate four (3) years of experience performing Category 1 and Category 2 USEPA /HUD clearance sampling and a thorough knowledge of the most recent federal, state and local Lead regulatory thresholds and regulations. The Project Manager must have a total of seven (7) years of experience performing project management services on lead projects, including four (4) years of experience performing project management services on asbestos projects within NYC;
6. One (1) Registered Design Professional whom must comply with the following criteria: (1) must have two (2) years of experience preparing Work Place Safety Plans required for asbestos abatement permits, (2) degree in Engineering, Science or Architecture, (3) be registered as a Professional Engineer or Registered Architect in the State of New York, (4) Have a minimum of five years of experience with NYCDEP asbestos regulations and NYCDOB/FDNY regulations.

(f) Subcontracting is not permitted except for Testing Services identified in Exhibit D and Reimbursable Services, as set forth in Article 6.

(B) SUBMISSION REQUIREMENTS: For each project submitted to demonstrate compliance with the Special Experience Requirements, the bidder must complete and submit the Qualification Form included in the Bid Booklet. The City will only evaluate a project if the following criteria are met: (1) the project is described on the Qualification Form, and (2) all information on the Qualification Form is provided. The City will not evaluate any project which does not comply with the criteria set forth herein, including any project which is referred to only on the resume of an individual.

If Special Experience Requirements are indicated for any specific area of work, the submission requirement set forth above shall apply to the entity that will perform the specific area of work.

(C) CONDITIONS: In determining compliance with the Special Experience Requirements for the bidder set forth above, the bidder may not rely on experience of principal(s) or other employees of the bidder.

(D) JOINT VENTURES: In the event the bidder is a joint venture, at least one firm in the joint venture must meet the above described experience requirements. The bidder must identify

M/WBE PROGRAM: M/WBE UTILIZATION PLAN

M/WBE Program Requirements: The requirements for the M/WBE Program are set forth on the following pages of this Bid Booklet, in the section entitled “Notice to All Prospective Contractors.”

Schedule B: M/WBE Utilization Plan: The M/WBE Utilization Plan for this Contract is set forth in this Bid Booklet starting on page A-37. The M/WBE Utilization Plan (Part I) indicates whether Participation Goals have been established for this Contract. If Participation Goals have been established for this Contract, the bidder must submit an M/WBE Utilization Plan (Part II) with its bid.

Waiver: The bidder may seek a full or partial pre-award waiver of the Participation Goals in accordance with the “Notice to All Prospective Contractors” (See Part A, Section 10). The bidder’s request for a waiver must be submitted at least seven (7) calendar days prior to the bid date. Waiver requests submitted after the deadline will not be considered. The form for requesting a waiver of the Participation Goals is set forth in the M/WBE Utilization Plan (Part III).

Rejection of the Bid: The bidder must complete Schedule B: M/WBE Utilization Plan (Part II) set forth in this Bid Booklet starting on page A-39.

The bidder’s submission of Schedule B must include both the Vendor Certification and Required Affirmations (see Section V of Part II). If the bidder does not provide a complete Schedule B submission at the time of bid, the Agency will deem the bid to be non-responsive, unless a full waiver of the Participation Goals is granted (Schedule B, Part III). In the event that the City determines that the bidder has submitted a Schedule B where the Vendor Certification and Required Affirmations are completed but other aspects of the Schedule B are not complete, or contain a copy or computation error that is at odds with the Vendor Certification and Required Affirmations, the bidder will be notified by the Agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a completed Schedule B to the Agency. Failure to do so will result in a determination that the Bid is non-responsive. Receipt of notification is defined as the date notice is emailed or faxed (if the bidder has provided an email address or fax number), or no later than five (5) calendar days from the date of mailing or upon delivery, if delivered.

Impact on LBE Requirements: If Participation Goals have been established for the participation of M/WBEs, the contractor is not required to comply with the Locally Based Enterprise Program (“LBE”). The LBE Program’s requirements are set forth in Article 67 of the Contract.

NOTICE TO ALL PROSPECTIVE CONTRACTORS

PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes the program for participation in City procurement ("M/WBE Program") by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan") and are detailed below. The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129. Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A

PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, ("**Participation Goals**"), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor

that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed nonresponsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

C. **THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED**

AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount

it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of the **Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the **Participation Goals** in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE** Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at zhangji@ddc.nyc.gov or via facsimile at (718) 391-1886. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE** Utilization Plan. (a) A Contractor may request a modification of its **M/WBE** Utilization Plan after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in**

New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission. The Agency may grant a request for Modification of a Contractor's **M/WBE Utilization Plan** if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- (iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- (iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;
- (vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B: MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of an **M/WBE** Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE** Utilization Plan.
2. Pursuant to DSBS rules, construction contracts that include a requirement for an **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.
4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:
 - (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
 - (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
 - (c) making a finding that the Contractor is in default of the Contract;
 - (d) terminating the Contract;
 - (e) declaring the Contractor to be in breach of Contract;
 - (f) withholding payment or reimbursement;
 - (g) determining not to renew the Contract;
 - (h) assessing actual and consequential damages;
 - (i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals

through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

- (j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6- 129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in PASSPort as caution data.

PRE-AWARD PROCESS

The bidder is advised that as part of the pre-award review of its bid, the Agency will require the three lowest apparent responsive and responsible bidders to submit the information described in Sections (A) through (D) below. These bidders will be notified by DDC (by email, facsimile, or in writing), and the Agency's notice will specify the types of information that the bidder must submit to the Agency. The types of information the bidder may be required to submit are described below. Once notified, the bidder must submit such information to the Agency within five (5) business days following receipt of notification from DDC that it is among the low bidders. In the event the bidder fails to submit the required information within the specified time frame, the Agency may reject the bid as being non-responsive.

In the event the bidder fails to submit the required information within the specified time frame, the Agency may reject the bid as being nonresponsive.

- (A) **Project Reference Form:** The bidder must complete and submit the Project Reference Form set forth starting on page A-45 of this Bid Booklet. The Project Reference Form consists of three (3) parts: (1) Contracts Completed by the Bidder, (2) Contracts Currently Under Construction by the Bidder, and (3) Pending Contracts Not Yet Started by the Bidder.
- (B) **Copy of License:** The bidder must submit a copy of the license under which the bidder will be performing the work. Such license must clearly show the following: (1) Name of the Licensee, (2) License Number, and (3) Expiration date of the License. A copy of the license will be required from bidders for the following contracts: Plumbing Work, Electrical Work and Asbestos Abatement.
- (C) **Financial Information:** The bidder must submit the financial information described below:
 - (1) **Audited Financial Statements:** Financial statements (Balance Sheet and Income Statement) of the entity submitting the bid, as audited by an independent auditor licensed to practice as a certified public accountant (CPA). Audited financial statements for the three (3) most recent fiscal years must be submitted. Each such financial statement must include the auditor's standard report.

If the bidder does not have audited financial statements, the bidder must submit an affidavit attesting to the fact that the bidder does not have such statements. In addition, the bidder must submit the following documentation covering the three (3) most recent fiscal years: signed federal tax returns, unaudited financial statements, and a "certified review letter" from a certified public accountant (CPA) verifying the unaudited financial statements.

Unless the most recent audited or unaudited financial statement was issued within ninety (90) days, the bidder must submit interim financial information that includes data on financial position and results of operation (income data) for the current fiscal year. Such information may be summarized on a monthly or quarterly basis or at other intervals.
 - (2) Schedule of Aged Accounts Receivable, including portion due within ninety (90) days.
- (D) **Project Specific Information:** The bidder must submit the project specific information described below:
 - (1) Statement indicating the number of years of experience the bidder has had and in what type of construction.
 - (2) Resumes of all key personnel to be involved in the project, including the proposed project superintendent.

- (3) List of significant pieces of equipment expected to be used for the contract, and whether such equipment is owned or leased.
- (4) Description of work expected to be subcontracted, and to what firms, if known.
- (5) List of key material suppliers.
- (6) Preliminary bar chart time schedule
- (7) The bidder's expected means of financing the project. This submission should be based on the assumption that the contractor is required to finance two times (2X) the average monthly billings for the project throughout the contract period.
- (8) Any other issues the bidder sees as impacting the contractor's ability to complete the project according to the contract.

In addition to the information described in Sections (A) through (D) above, the bidder shall submit such additional information as the Commissioner may require, including without limitation, an explanation or justification for specific unit price items.

The bidder is further advised that it may be required to attend a pre-award meeting with DDC representatives. If such a meeting is convened, the bidder will be advised as to any additional material to be provided.

PASSPort COMPLIANCE

All vendors that intend to do business with the City of New York must complete a disclosure process in order to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. The City of New York has moved collection of vendor disclosure information online. In early August 2017, the New York City Mayor's Office of Contract Services (MOCS) launched the **Procurement and Sourcing Solutions Portal (PASSPort)**, a new online procurement system that replaced the paper-VENDEX process. In anticipation of awards, all bidders must create online accounts in the new PASSPort system and file all disclosure information using PASSPort. **Paper submissions, including certifications of no changes to existing VENDEX packages, will not be accepted in lieu of complete online filings using PASSPort.**

All vendors that intend to do business with the City, but specifically those that fall into any of the following categories, are required to enroll:

- Have a pending award with a City Agency; or
- Hold a current contract with a City Agency and have either an expiring VENDEX or expiring Certificate of No Change.

The Department of Design and Construction (DDC) and MOCS hereby notifies all proposers that the PASSPort system is available, and that disclosure filing completion is required prior to any award through this competitive bid.

To enroll in PASSPort and to access the PASSPort website (including online training), please visit www.nyc.gov/passport. Contact MOCS at passport@mocs.nyc.gov for additional information and technical support.

SUPPLY AND SERVICES EMPLOYMENT REPORT

All bidders will be required to submit a Supply and Services Employment Report (SSER) if the bid amount is \$100,000 or greater.

The SSER template forms are available online:

For bidders with 50+ employees:

https://www1.nyc.gov/assets/sbs/downloads/pdf/businesses/DLS_SS_Employ_Rpt.pdf

For bidders with less than 50 employees:

https://www1.nyc.gov/assets/sbs/downloads/pdf/businesses/Less_Than_50Employees_Cert.pdf

Instructions for completing the Supply and Services Employment Report are available online at:

https://www1.nyc.gov/assets/sbs/downloads/pdf/businesses/DLS_ss_instructions_web.pdf

CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF SAFETY AND SITE SUPPORT

REQUIRED FORMS

(NO TEXT ON THIS PAGE)

SCHEDULE OF UNIT PRICES

PART A: ALL INCLUSIVE HOURLY RATES

All Inclusive Hourly Rates for Specified Titles: The bidder shall submit All Inclusive Hourly Rates for all titles listed below. The All Inclusive Hourly Rate for each title shall include the following: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project, (2) all expenses related to management, oversight and quality control procedures, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead and any anticipated profit, (4) all expenses in connection with non-reimbursable services, as set forth in Article 6 of the Contract.

Extended Amount: The bidder shall submit the Extended Amount for each title. The Extended Amount for each title is the All-inclusive Hourly Rate times the Estimated Hours.

Increase: The bidder is advised that the All-inclusive Hourly Rates shall remain in effect for the three (3) year base term of the contract. If the base term is renewed or extended, such Rates shall be increased, as set forth in Article 7 of the Contract.

Item #	Title	All Inclusive Hourly Rate (In Figures)	Estimated Hours	Extended Amount (In Figures)
Title #1	Air Sampling Technician	<u>\$35.00</u>	325	\$11,375.00
Title #2	Asbestos Project Monitor	<u>\$42.00</u>	17200	\$722,400.00
Title #3	Lead Risk Assessor	<u>\$60.00</u>	7300	\$438,000.00
Title #4	Asbestos Project Manager	<u>\$55.00</u>	2700	\$148,500.00
Title #5	Lead Project Manager	<u>\$55.00</u>	1500	\$82,500.00
Title #6	Registered Design Professional	<u>\$48.50</u>	310	\$15,035.00
			*Total Amount Part A:	\$1,417,810.00

Total Amount for Part A: All Inclusive Hourly Rates for Specified Titles:

(Addition of Extended Amounts for Titles #1-6)

\$ 1,417,810.00 *

* The Bidder shall insert the Total Amount for Part A on the Bid Form on Page A-26 of the Bid Booklet.

SCHEDULE OF UNIT PRICES

PART B: UNIT PRICES FOR TESTING SERVICES

Unit Prices: The bidder shall submit Unit Prices for all items of Testing Services listed below. The Unit Price for each item shall include the following: (1) all expenses incurred by the Consultant and/or its Subconsultant(s) in connection with the performance of the test, (2) all expenses related to providing reports of test results, (3) all expenses related to management, oversight and quality control procedures, (4) all expenses in connection with non-reimbursable services, as set forth in Article 6, and (5) all expenses related to overhead and any anticipated profit.

Extended Amount: In addition to the Unit Price, the bidder shall submit the Extended Amount for each item. The Extended Amount for each item is the Unit Price times the Estimated Quantity.

No Increase: The bidder is advised that the Unit Prices shall remain in effect for the entire term of the contract, including the base term (3 years), the renewal term (1 year) and the extended term (1 year).

Item #	Description of Item	Unit Price	Estimate of Quantities	Extended Amount
	(See Article 6.5.5 of the Contract)	(In Figures)		(In Figures)
Item # 1 [Article 6.5.5(a)]	Air Sample Analysis for Asbestos by Phase Contrast Microscopy	\$4.00 <hr/> 12 Hour TAT	15,200 Samples	\$60,800.00
Item # 2 [Article 6.5.5(a)]	Air Sample Analysis for Asbestos by Phase Contrast Microscopy	\$8.00 <hr/> 2 Hour TAT	21001 Samples	\$168,008.00
Item # 3 [Article 6.5.5(b)]	Air Sample Analysis for Asbestos by Transmission Electron Microcopy	\$35.00 <hr/> 12 Hour TAT	4,251 Samples	\$148,785.00
Item # 4 [Article 6.5.5(b)]	Air Sample Analysis for Asbestos by Transmission Electron Microcopy	\$50.00 <hr/> 2 Hour TAT	3,001 Samples	\$150,050.00
Item # 5 [Article 6.5.5(c)]	Air Sample Analysis for Lead by Flame Atomic Absorption Spectrophotometry	\$25.00 <hr/> 2 Hour TAT	2001 Samples	\$50,025.00
Item # 6 [Article 6.5.5(c)]	Air Sample Analysis for Lead by Flame Atomic Absorption Spectrophotometry	\$18.00 <hr/> 12 Hour TAT	715 Samples	\$12,870.00
Item # 7 [Article 6.5.5(d)]	Lead Dust Wipe by Flame Atomic Absorption Spectrophotometry,	\$12.00 <hr/> 12 Hour TAT	2001 Samples	\$24,012.00

Item #	Description of Item	Unit Price	Estimate of	Extended Amount
	(See Detailed Specifications)	(In Figures)	Quantities	(In Figures)
Item #8 [Article 6.5.5(d)]	Lead Dust Wipe by Flame Atomic Absorption Spectrophotometry,	\$18.00 <u>2 Hour TAT</u>	5001 Samples	\$90,018.00

Total Amount for Part B: Unit Prices for Testing Services:

\$ \$704,568.00 *

(Addition of Extended Amounts for Items #1-8)

* The Bidder shall insert the Total Amount for Part B on the Bid Form on Page A-26 of the Bid Booklet.

BID FORM

THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF INFRASTRUCTURE

BID FOR FURNISHING ALL LABOR AND
MATERIAL NECESSARY AND REQUIRED FOR:

PROJECT ID: PW335AS21

Air sampling, dust wipe sampling, & laboratory testing services in conjunction with asbestos and lead abatement projects within the five boroughs of the city of New York.

Together With All Work Incidental Thereto
City-wide
CITY OF NEW YORK

Name of Bidder: Warren & Panzer Engineers, PC

Date of Bid Opening: April 6, 2021

Bidder is: (Check one, whichever applies) Individual () Partnership () Corporation (X)

Place of Business of Bidder: 228 East 45th Street, New York, NY 10017

Bidder's Telephone Number: 212.922.0077 Fax Number: _____

Bidder's E-Mail Address: jterhune@warrenpanzer.com

Residence of Bidder (If Individual): _____

If Bidder is a Partnership, fill in the following blanks:

Names of Partners

Residence of Partners

If Bidder is a Corporation, fill in the following blanks:

Organized under the laws of the State of New York

Name and Home Address of President: Jeffrey Terhune, New York, NY

Name and Home Address of Secretary: _____

Name and Home Address of Treasurer: _____

BID FORM

The above-named Bidder affirms and declares:

1. The said bidder is of lawful age and the only one interested in this bid; and no person, firm or corporation other than hereinbefore named has any interest in this bid, or in the Contract proposed to be taken.
2. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief: (1) the prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (2) unless otherwise required by law, the prices quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
3. No councilman or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.
4. The bidder is not in arrears to the City of New York upon debt or contract or taxes, and is not a defaulter, as surety or otherwise, upon any obligation of the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except as set forth on the Affirmation included as page C-6 of this Bid Booklet.

The bidder hereby affirms that it has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City.

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

6. Compliance Report

The bidder, as an individual, or as a member, partner, director, or officer of the bidder, if the same be a firm, partnership, or corporation, (1) represents that the bidder's attention has been

specifically drawn to Executive Order No. 50, dated, April 25, 1980, on Equal Employment Compliance of the contract, and (2) warrants that the bidder will comply with the provisions of Executive Order No. 50. The Employment Report must be submitted as part of the bid.

The bidder, as an individual, or as a member, partner, director, or officer of the bidder, if the same be a firm, partnership, or corporation, executes this document expressly warranting that the bidder will comply with: (1) the provision of the contract on providing records, Chapter 8.

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

8. In accordance with Section 165 of the State Finance Law, the bidder agrees that tropical hardwoods, as defined in Section 165 of the State Finance Law, shall not be utilized in the performance of this Contract, except as the same are permitted by the foregoing provision of law.

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

10. M/WBE UTILIZATION PLAN: By signing its bid, the bidder agrees to the Vendor Certification and Required Affirmations set forth below, unless a full waiver of the Participation Goals is granted. The Vendor Certification and Required Affirmations will be deemed to satisfy the requirement to complete Section V of Part II of Schedule B: M/WBE Utilization Plan.

Section V - Vendor Certification and Required Affirmations:

I hereby:

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth in this Contract and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York and the rules promulgated thereunder;
- 2) affirm that the information supplied in support of the M/WBE Utilization Plan is true and correct;
- 3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
- 4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and
- 5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

BID FORM

PROJECT ID. PW335AS21

TOTAL BID PRICE: In the space provided below, the Bidder shall indicate its Total Bid Price in figures. Such Total Bid Price is set forth on the final page of the Bid Schedule.

A. **PART A:** The Bidder shall insert the Total Amount for Part A: All Inclusive Hourly Rates for Specified Titles set forth on Page A-26.

Total Amount for Part A: \$ 1,417,810.00

B. **PART B:** The Bidder shall insert the Total Amount for Part B: Unit Prices for Testing Services set forth on Page A-28.

Total Amount for Part B: \$ \$704,568.00

TOTAL BID PRICE: \$ 2,122,378.00
(a/k/a BID PROPOSAL)

BIDDER'S SIGNATURE AND AFFIDAVIT

Bidder: Warren & Panzer Engineers, PC

By: _____
(Signature of Partner or corporate officer)

Attest: _____ Secretary of Corporate Bidder
(Corporate Seal)

Affidavit on the following page should be subscribed
and sworn to before a Notary Public

BID FORM (TO BE NOTARIZED)

AFFIDAVIT WHERE BIDDER IS AN INDIVIDUAL

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

(Signature of the person who signed the Bid)

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

Notary Public

AFFIDAVIT WHERE BIDDER IS A PARTNERSHIP

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

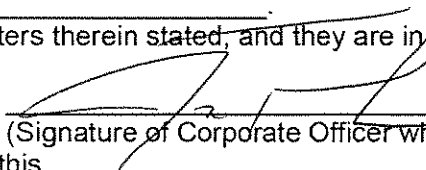
(Signature of Partner who signed the Bid)

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

Notary Public

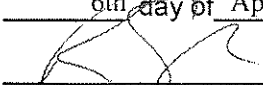
AFFIDAVIT WHERE BIDDER IS A CORPORATION

STATE OF NEW YORK, COUNTY OF Manhattan ss:
Jeffrey Terhune being duly sworn says:
I am the President of the above-named corporation whose name is subscribed to and which executed the foregoing bid. I reside at
New York, NY
I have knowledge of the several matters therein stated, and they are in all respects true.



(Signature of Corporate Officer who signed the Bid)

Subscribed and sworn to before me this
6th day of April, 2021



Notary Public

Pablo M. Santiago
Notary Public - State of New York
No. 01SA6083750
Qualified in New York County
My Commission Expires: 12.29.22

AFFIRMATION

PROJECT ID. PW335AS21

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

NONE

(If none, the bidder shall insert the word "None" in the space provided above.)

Full Name of Bidder: Warren & Panzer Engineers, PC

Address: 228 East 45th Street

City New York

State New York

Zip Code 10017

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER

B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

C- Corporation
EMPLOYER IDENTIFICATION NUMBER
13-3470954

By:


Signature

Title: President

If a corporation, place seal here

This affirmation must be signed by an officer or duly authorized representative.

*Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying of businesses which seek City contracts.

BID BONDS
BID BOND 1
FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS. That we, _____

hereinafter referred to as the "Principal", and _____

hereinafter referred to as the "Surety" are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "CITY", or to its successors and assigns in the penal sum of _____

(\$ _____), Dollars lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal is about to submit (or has submitted) to the City the accompanying proposal, hereby made a part hereof, to enter into a contract in writing for _____

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall not withdraw said Proposal without the consent of the City for a period of forty-five (45) days after the opening of bids and in the event of acceptance of the Principal's Proposal by the City, if the Principal shall:

(a) Within ten (10) days after notification by the City, execute in quadruplicate and deliver to the City all the executed counterparts of the Contract in the form set forth in the Contract Documents, in accordance with the proposal as accepted, and

(b) Furnish a performance bond and separate payment bond, as may be required by the City, for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory in all respects to the City and shall be executed by good and sufficient sureties, and

(c) In all respects perform the agreement created by the acceptance of said Proposal as provided in the Information for Bidders, bound herewith and made a part hereof, or if the City shall reject the aforesaid Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

BID BOND 2

In the event that the Proposal of the Principal shall be accepted and the Contract be awarded to the Principal the Surety hereunder agrees subject only to the payment by the Principal of the premium therefore, if requested by the City, to write the aforementioned performance and payment bonds in the form set forth in the Contract Documents.

It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

There shall be no liability under this bond if, in the event of the acceptance of the Principal's Proposal by the City, either a performance bond or payment bond, or both, shall not be required by the City on or before the 30th day after the date on which the City signs the Contract.

The surety, for the value received, hereby stipulates and agrees that the obligations of the Surety and its bond shall in no way be impaired or affected by any postponements of the date upon which the City will receive or open bids, or by any extensions of the time within which the City may accept the Principal's Proposal, or by any waiver by the City of any of the requirements of the Information for Bidders, and the Surety hereby waives notice of any such postponements, extensions, or waivers.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers the ____day of _____, _____.

(Seal) _____ (L.S.)
Principal

By: _____

(Seal) _____
Surety

By: _____

BID BOND 3

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of _____ County of _____ ss:
On this _____ day of _____, _____, before me personally came
_____ to me known, who, being by me duly sworn, did
depose and say that he/she/they resides at

that he/she/they is the _____ of

the corporation described in and which executed the foregoing instrument; that he/she/they knows
the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was
so affixed by order of the directors of said corporation, and that he/she/they signed his name thereto
by like order.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of _____ County of _____ ss:
On this _____ day of _____, _____, before me personally appeared
_____ to me known and known to me to be one of the members
of the firm of _____ described in and who executed
the foregoing instrument, and he/she/they acknowledged to me that he/she/they executed the same
as and for the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of _____ County of _____ ss:
On this _____ day of _____, _____, before me personally appeared
_____ to me known and known to me to be the person
described in and who executed the foregoing instrument and acknowledged that he/she/they
executed the same.

Notary Public

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATION OF SURETIES

(NO TEXT ON THIS PAGE)

QUALIFICATION FORM

List previous projects completed to meet the special experience requirements for this contract. Please photocopy this form for submission of all required projects.

Name of Contractor: NYC Dept. of Design & Construction

Name of Project: Term Contract

Location of Project: Various Locations, NYC

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: Jean M. Jean-Louis

Title: Project Director Phone Number: 718-391-1064

Brief description of the Project completed or the Project in progress: _____

Environmental Consulting

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: SubContractor

Amount of Contract, Subcontract or Sub-subcontract: \$950,000.00

Start Date and Completion Date: 2005 - 2008

Name of Contractor: NYC Dept. of Mental Health & Hygiene

Name of Project: Term Contract

Location of Project: Various Locations, NYC

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: George Troiano

Title: Project Director Phone Number: (347) 396-6454

Brief description of the Project completed or the Project in progress: _____

Environmental Consulting

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: SubContractor

Amount of Contract, Subcontract or Sub-subcontract: \$600,000.00

Start Date and Completion Date: 2015 - 2017

QUALIFICATION FORM

Name of Contractor: _____

Name of Project: _____

Location of Project: _____

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: _____

Title: _____ Phone Number: _____

Brief description of the Project completed or the Project in progress: _____

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: _____

Amount of Contract, Subcontract or Sub-subcontract: _____

Start Date and Completion Date: _____

Name of Contractor: _____

Name of Project: _____

Location of Project: _____

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: _____

Title: _____ Phone Number: _____

Brief description of the Project completed or the Project in progress: _____

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: _____

Amount of Contract, Subcontract or Sub-subcontract: _____

Start Date and Completion Date: _____

QUALIFICATION FORM

Name of Contractor: _____

Name of Project: _____

Location of Project: _____

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: _____

Title: _____ Phone Number: _____

Brief description of the Project completed or the Project in progress: _____

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: _____

Amount of Contract, Subcontract or Sub-subcontract: _____

Start Date and Completion Date: _____

Name of Contractor: _____

Name of Project: _____

Location of Project: _____

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: _____

Title: _____ Phone Number: _____

Brief description of the Project completed or the Project in progress: _____

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: _____

Amount of Contract, Subcontract or Sub-subcontract: _____

Start Date and Completion Date: _____

QUALIFICATION FORM

Name of Contractor: _____

Name of Project: _____

Location of Project: _____

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: _____

Title: _____ Phone Number: _____

Brief description of the Project completed or the Project in progress: _____

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: _____

Amount of Contract, Subcontract or Sub-subcontract: _____

Start Date and Completion Date: _____

Name of Contractor: _____

Name of Project: _____

Location of Project: _____

Owner or Owner's representative (Architect or Engineer) who is familiar with the work performed:

Name: _____

Title: _____ Phone Number: _____

Brief description of the Project completed or the Project in progress: _____

Was the Project performed as a prime, a subcontractor or a sub-subcontractor: _____

Amount of Contract, Subcontract or Sub-subcontract: _____

Start Date and Completion Date: _____

SCHEDULE B – M/WBE Utilization Plan

Part 1: M/WBE Participation Goals

Contract Overview (To be completed by contracting agency)

APT E-Pin# 9502130026 FMS Project ID# PW335AS21
 Project Title Air Monitoring and Laboratory Testing Agency PIN# 8502019VP0005C
 Contracting Agency Department of Design and Construction Bid/Proposal Response Date To Be Completed Before Issuance
 Agency Address 30-30 Thomson Avenue City Long Island City State NY ZIP 11101
 Contact Person Yamina Youb Title M/WBE Compliance Analyst
 Telephone (718) 391-1607 Email Youbya@ddc.nyc.gov

Project Description (attach additional pages if necessary)

AIR SAMPLING, DUST WIPE SAMPLING, AND LABORATORY TESTING SERVICES IN CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN THE FIVE BOROUGHES OF THE CITY OF NEW YORK

Bidder or proposer is required OR is not required to specifically identify the contact information of all M/WBE firms they intend to use as a subcontractor on this contract, including the M/WBE vendor name, address and telephone number in the space provided below in Part 2 Section 4.

M/WBE Participation Goals for Services

Enter the percentage amount for each category or for an unspecified Goal.

Prime Contract Industry: Construction

Category and Breakdown:

Unspecified	0.00	%
Black American	15.00	%
Hispanic American	0.00	%
Asian American	0.00	%
Women	15.00	%
Total Participation Goals	30.00	%

Line 1

Part 2: M/WBE Participation Plan

(To be completed by the bidder/proposer unless granted a full waiver, which must be submitted with the bid/proposal in lieu of this form)

Section 1: Prime Contractor Contact Information

Tax ID# 13-3470954 FMS Vendor ID# _____
 Business Name Warren & Panzer Engineers, PC Contact Person Jeffrey Terhune
 Business Address 228 East 45th Street City New York State NY ZIP 10017
 Telephone 212.922.0077 Email RMEHTA@WARREN PANZER.COM

Section 3: Contractor M/WBE Utilization Plan

Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer or Bidder will fulfill the M/WBE Participation Goals:

- As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the amount located on Lines 2 or 3 in the panels in Section 2, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals. Please check all that apply to Prime Contractor: MBE WBE
- As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 in the panels in Section 2, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.
- As a non-M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 in the panels in Section 2, as applicable.

Section 2: M/WBE Utilization Goal Calculation

Prime Contractor Adopting Agency Participation Goals
 For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals

Total Bid/Proposal Value \$ 2,122,378.00
 multiplied by x
 Total Participation Goals 30.00 %
 (Line 1 above)

Calculated M/WBE Participation Amount \$ 636,715.00
 Line 2

OR

Prime Contractor With Partial Waiver Approval Adopting Revised Participation Goals
 For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Revised M/WBE Participation Goals

Total Bid/Proposal Value \$ _____
 multiplied by x
 Total Revised Participation Goals _____ %

Calculated M/WBE Participation Amount \$ _____
 Line 3

Section 4: General Contract Information

What is the expected percentage of the total contract dollar value that you expect to award in subcontracts for services, regardless of M/WBE status?

30 %

Enter a brief description of the type(s) and dollar value of subcontracts for all services you plan to subcontract if awarded this contract, along with the anticipated start and end dates for such subcontracts. For each item, indicate whether the work is designated for participation by an M/WBE. Where the contracting agency's solicitation has indicated a requirement that the bidder or proposer specifically identify the contact information of all M/WBEs they intend to use on this contract, vendors must also include the M/WBE vendor name, address and telephone number in the space provided below. Use additional sheets if necessary.

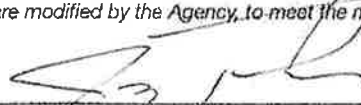
Description of Work	Start Date (MM/YY)	End Date (MM/YY)	Planned \$ Amount	Designated for M/WBE		M/WBE Vendor Name	M/WBE Address	M/WBE Telephone
				Y	N			
Sample Analy	9/21	1/23	\$ 10,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>			() -
2.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
3.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
4.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
5.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
6.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
7.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
8.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
9.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -
10.	/	/	\$	<input type="checkbox"/>	<input type="checkbox"/>			() -

Section 5: Vendor Certification and Required Affirmations

I hereby:

1. acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;
2. affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;
3. agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
4. agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such Goals are modified by the Agency; and
5. agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or if a partial waiver is obtained or such Goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature



Date

6-23-21

Print Name

Jeffrey Johnson

Title

SCHEDULE B – Part 3

Request for Waiver of M/WBE Participation Requirement

Contract Overview

Tax ID# _____ FMS Vendor ID# _____
 Business Name _____ Contact Name _____
 Email _____ Telephone _____
 Contracting Agency _____
 APT E-Pin# _____ Bid/Proposal Due Date _____

M/WBE Participation Goals for Services

Defined by AGENCY in bid/solicitation documents
 Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified _____ %
 Black American _____ %
 Hispanic American _____ %
 Asian American _____ %
 Women _____ %

Total Participation Goals _____ %

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts some of this type of work but at a lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. Identify your subcontracting plan in the vendor certification section below.
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal requested here. Explain under separate cover.

Proposed by VENDOR seeking waiver

Percent of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted to M/WBE businesses for services. Or if M/WBE Qualified Joint Venture, percent of total contract value anticipated to be credited to M/WBE vendor(s).

Unspecified _____ %
 Black American _____ %
 Hispanic American _____ %
 Asian American _____ %
 Women _____ %

Total Participation Goals _____ %

Vendor Contract History

Using the attached Excel template, list all contracts (for City and Non-City work) performed within the last 3 years and provide the requested information for each contract.

From the list of all contracts, provide reference information below for the 5 most relevant contracts in size, scale and scope (performed for New York City or any other entity) to the bid or proposal for which you are submitting this waiver request. Provide the requested information for each subcontract awarded during the life of the listed reference contract.

Please make sure to highlight the 5 reference contracts provided below among the comprehensive list of all your contract awards within the attached Excel template.

Reference 1

Agency/Organization _____ Contract # _____
 Reference Contact _____ Telephone _____ Email _____
 Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____

Prime Contract description _____

- Did the vendor perform as a Prime Contractor or as a Subcontractor? Prime Contractor Subcontractor
- Was the Prime Contract subject to any Goals? City M/WBE Goals State Goals Federal Goals No Applicable Goals
- Did the Prime Contractor meet Goal requirements? Yes No N/A

If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain _____

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.

_____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____

Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

_____ \$ _____

Reference 4

Agency/Organization _____ Contract # _____
 Reference Contact _____ Telephone _____ Email _____
 Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____
 Prime Contract description _____

Did the vendor perform as a Prime Contractor or as a Subcontractor? Prime Contractor Subcontractor
 Was the Prime Contract subject to any Goals? City M/WBE Goals State Goals Federal Goals No Applicable Goals
 Did the Prime Contractor meet Goal requirements? Yes No N/A
 If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain _____

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.
 _____ \$ _____

Reference 5

Agency/Organization _____ Contract # _____
 Reference Contact _____ Telephone _____ Email _____
 Contract Start Date _____ Contract End Date _____ Total Contract Value \$ _____
 Prime Contract description _____

Did the vendor perform as a Prime Contractor or as a Subcontractor? Prime Contractor Subcontractor
 Was the Prime Contract subject to any Goals? City M/WBE Goals State Goals Federal Goals No Applicable Goals
 Did the Prime Contractor meet Goal requirements? Yes No N/A
 If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain _____

If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 Percentage of total contract value subcontracted to other vendors _____ %

If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.
 _____ \$ _____

Vendor Certification

Identify/list all the work areas you intend on subcontracting on the current anticipated contract for which you are submitting this waiver request.

I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith. I further affirm that the work that I did not list as work that will be subcontracted on this contract for which I am submitting this waiver request is work that I have performed on past contracts and will not subcontract if awarded this contract.

Signature _____ Date _____
 Print Name _____ Title _____

Approvals (for Agency completion only)	Waiver Determination
ACCO Signature _____ Date _____	<input type="checkbox"/> Full Waiver Approved
CCPO Signature _____ Date _____	<input type="checkbox"/> Waiver Denied
	<input type="checkbox"/> Partial Waiver Approved
	Revised Participation Goal _____ %

PROJECT REFERENCE FORMS

A. PROJECT REFERENCES – CONTRACTS COMPLETED BY THE BIDDER

List all contracts substantially completed within the last four (4) years, up to a maximum of 10 years, in descending order of date of substantial completion.

Project & Location	Contract Type	Contract Amount (\$000)	Date Completed	Owner Reference & Tel. No.	Architect/Engineer Reference & Tel. No. (if different from owner)
Various Locations, NYC	Environmental Consulting	\$600,000.00	2017	NYCDMH George Troiano (347) 396-6454	
Various Locations, NYC	Environmental Consulting	\$950,000.00	2008	NYCDDC Jean M.Jean-Louis 718-391-1064	

B. PROJECT REFERENCES – CONTRACTS CURRENTLY UNDER CONSTRUCTION BY THE BIDDER

List all contracts currently under construction similar to the contract being awarded.

Project & Location	Contract Type	Contract Amount (\$000)	Date Completed	Owner Reference & Tel. No.	Architect/Engineer Reference & Tel. No. (if different from owner)
Various Hospitals, NYC	Environmental Consulting	\$1,200,000.00	50% HHC 2021	NYCHHC Al Pistone 212.442.3731	
Various Colleges, NYC	Environmental Consulting	\$500,000.00	25% CUNY 2021	CUNY Lisa D'Amico 646.664.2733	
Various Locations, NYC	Environmental Consulting	\$500,000.00	100% NYPA 2021	NYPA Bernice Jones 914.287.3185	
Baruch College	Environmental Consulting	\$10,000,000.00	40% Baruch 2022		Davis Brody Bond, LLP Julie Doern 212.633.4769

C. PROJECT REFERENCES – PENDING CONTRACTS NOT YET STARTED BY THE BIDDER

List all contracts awarded to or won by the bidder but not yet started.

Project & Location	Contract Type	Contract Amount (\$000)	Date Completed	Owner Reference & Tel. No.	Architect/Engineer Reference & Tel. No. (if different from owner)

(NO TEXT ON THIS PAGE)

SAFETY QUESTIONNAIRE

The Bidder must include, with its bid, all information requested on this Safety Questionnaire. Failure to provide a completed and signed Safety Questionnaire at the time of bid opening may result in disqualification of the bid as non-responsive. This Safety Questionnaire will be reviewed as per Section V of the Safety Requirements for Construction Contracts, found in Volume 2 of the Contract.

1. Bidder Information:

Company Name: Warren & Panzer Engineers, PC

DDC Project Number: PW335AS21

Company Size: Ten (10) employees or less
 Greater than ten (10) employees

Company has previously worked for DDC: YES NO

2. Type(s) of Construction Work:

Identify the types of work that the Bidder has performed in the last three years, and the types of work that are part of this Contract.

<u>TYPE OF WORK</u>	<u>LAST 3 YEARS</u>	<u>THIS PROJECT</u>
General Building Construction	<input type="checkbox"/>	<input type="checkbox"/>
Residential Building Construction	<input type="checkbox"/>	<input type="checkbox"/>
Nonresidential Building Construction	<input type="checkbox"/>	<input type="checkbox"/>
Heavy Construction, except building	<input type="checkbox"/>	<input type="checkbox"/>
Highway and Street Construction	<input type="checkbox"/>	<input type="checkbox"/>
Heavy Construction, except highways	<input type="checkbox"/>	<input type="checkbox"/>
Plumbing, Heating, HVAC	<input type="checkbox"/>	<input type="checkbox"/>
Painting and Paper Hanging	<input type="checkbox"/>	<input type="checkbox"/>
Electrical Work	<input type="checkbox"/>	<input type="checkbox"/>
Masonry, Stonework and Plastering	<input type="checkbox"/>	<input type="checkbox"/>
Carpentry and Floor Work	<input type="checkbox"/>	<input type="checkbox"/>
Roofing, Siding, and Sheet Metal	<input type="checkbox"/>	<input type="checkbox"/>
Concrete Work	<input type="checkbox"/>	<input type="checkbox"/>
Specialty Trade Contracting	<input type="checkbox"/>	<input type="checkbox"/>
Asbestos Abatement	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify) <u>Environmental Consulting</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

3. Experience Modification Rate:

The Experience Modification Rate (EMR) is a rating generated by the National Council of Compensation Insurance (NCCI). This rating is used to determine the contractor's premium for worker's compensation insurance. The Bidder / Contractor may obtain its EMR by contacting its insurance broker or the NCCI. If the Bidder cannot obtain its EMR, it must submit a written explanation as to why.

If the Bidder's / Contractor's Incident Rate for any of the past three years is one point higher than the Incident Rate for the type of construction it performs (listed below), the Bidder / Contractor must attach, to this questionnaire, a written explanation for the relatively high rate.

General Building Construction.....	8.5
Residential Building Construction.....	7.0
Nonresidential Building Construction.....	10.2
Heavy Construction, except building	8.7
Highway and Street Construction	9.7
Heavy Construction, except highways.....	8.3
Plumbing, Heating, HVAC.....	11.3
Painting and Paper Hanging	6.9
Electrical Work.....	9.5
Masonry, Stonework and Plastering.....	10.5
Carpentry and Floor Work.....	12.2
Roofing, Siding, and Sheet Metal.....	10.3
Concrete Work.....	8.6
Specialty Trade Contracting	8.6


5. Safety Performance on Previous DDC Project(s)

YES NO Fatality or an incident requiring OSHA notification within 24 hours (work-related in-patient hospitalization, amputation and all loss of an eye) on DDC Project(s) within the last three (3) years.

DDC Project Number(s): _____, _____, _____

The Bidder hereby affirms that all the information provided in this Safety Questionnaire and all additional pages and/or attachments, if applicable, consist of accurate representations.

Date: 4/6/21

By: 
(Signature of Bidder: Owner, Partner, Corporate Officer)

Title: President

(NO TEXT ON THIS PAGE)

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 Section 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.

BIANCA SO
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01SO6409795
 Qualified in Queens County
 My Commission Expires 10-05-2024

Bianca So

Jeffrey Terhune

SIGNATURE

Jeffrey Terhune

PRINTED NAME

President

TITLE

(NO TEXT ON THIS PAGE)



**Department of
Design and
Construction**

**DIVISION OF SAFETY AND SITE SUPPORT
OFFICE OF ENVIRONMENTAL AND HAZMAT SERVICES**

VOLUME 1 OF 2

PROJECT ID: PW335AS21

Air sampling, dust wipe sampling, & laboratory testing services in conjunction with asbestos and lead abatement projects within the five boroughs of the city of New York.

**Together With All Work Incidental Thereto
City-wide
CITY OF NEW YORK**

_____ *Contractor*

Dated _____, 20____

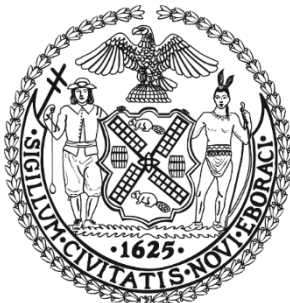


**Department of
Design and
Construction**

**THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND
CONSTRUCTION
DIVISION OF SAFETY & SITE
SUPPORT**

30-30 THOMSON AVENUE
LONG ISLAND CITY, NY, 11101
TEL: 718.391.1000
WEB: www.nyc.gov/ddc

DATE PREPARED:
SEPTEMBER 25, 2020



VOLUME 2 OF 2

FOR FURNISHING ALL LABOR AND MATERIALS
NECESSARY AND REQUIRED FOR:

PROJECT ID: PW335AS21

FOR FURNISHING ALL LABOR AND MATERIALS NECESSARY
AND REQUIRED FOR:

**AIR SAMPLING, DUST WIPE SAMPLING AND
LABORATORY TESTING SERVICES IN
CONJUNCTION WITH ASBESTOS AND LEAD
ABATEMENT PROJECTS WITHIN THE FIVE
BOROUGHES OF THE CITY OF NEW YORK**

TOGETHER WITH ALL WORK INCIDENTAL THERETO
**CITYWIDE
CITY OF NEW YORK**

CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION

STANDARD PROFESSIONAL SERVICE CONTRACT

AIR SAMPLING, DUST WIPE SAMPLING, AND
LABORATORY TESTING SERVICES IN CONJUNCTION
WITH ASBESTOS AND LEAD ABATEMENT PROJECTS
WITHIN THE FIVE BOROUGHES OF THE CITY OF NEW
YORK

NOVEMBER 2020

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the City of New York (the "City") acting by and through the Commissioner of the Department of Design and Construction (the "Commissioner") and _____ (the "Consultant"), located at _____.

WITNESSETH:

WHEREAS, the City desires to have the services set forth herein performed on a requirements basis for various Projects, as specified by the Commissioner on a Work Order basis, and

WHEREAS, the Consultant submitted the lowest responsive and responsible bid for the Contract,

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

ARTICLE 1 – DEFINITIONS

1.1 "Agreement" means the various documents that constitute the contract between the Consultant and the City, including (1) Notice of Solicitation, (2) Bid Documents, (3) all Addenda issued by the Commissioner prior to the receipt of bids, (4) Bid submitted by the Consultant, (5) Work Orders issued to the Consultant, and (6) Contract issued with the Bid Documents, including the Exhibits set forth below. Exhibits C and D were submitted by the Consultant as its bid for the Contract.

- Exhibit A: Contract Information
- Exhibit B: Budget Director's Certificate
- Exhibit C: All Inclusive Hourly Rates
- Exhibit D: Testing Services and Unit Prices
- Exhibit E: Schedule B: M/WBE Utilization Plan
- Exhibit F: Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services
- Exhibit G: Hiring and Employment Rider: HireNYC and Reporting Requirements

1.2 "Agency" means a city, county, borough or other office, position, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

1.3 "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 in conjunction with the City Chief Procurement Officer.

1.4 "City" means the City of New York.

1.5 "City Chief Procurement Officer" or "CCPO" means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

1.6 "Commissioner" or "Agency Head" means the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.

1.7 "Commissioner's Representative" means the Assistant Commissioner designated by the Commissioner or any successor or alternate representative designated by the Commissioner.

1.8 "Comptroller" means the Comptroller of the City of New York, his/her successors, or duly authorized representatives.

1.9 "Consultant" or "Contractor" means the entity entering into this Agreement with the Department.

1.10 "Contract" or "Contract Documents" means the Agreement referred to in Paragraph 1.1 of this Article.

1.11 "Days" means calendar days unless otherwise specifically noted to mean business days.

1.12 "DDC OEHS" means the DDC Office of Environmental and Hazmat Services.

1.13 "Department" or "DDC" means the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or his/her duly authorized representative.

1.14 "Director" means the Director of the DDC Office of Environmental and Hazmat Services. For the purpose of this Contract, the Director is the duly authorized representative of the Commissioner.

1.15 "Drawings" means all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.

1.16 "Government Entity" means the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.

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

1.18 "Mayor" means the Mayor of the City of New York, his/her successors or duly authorized representatives.

1.19 "Modification" means any written amendment of this Agreement signed by both the Department and the Consultant.

1.20 "Notice to Proceed" means the date when a contractor or subcontractor's work is to begin on a project.

1.21 "Procurement Policy Board" or "PPB" means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

1.22 "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.

1.22 "Project" means the Project for which the services set forth in Exhibit A are required, as specified by the Commissioner on a Work Order basis.

1.23 "Safety Standards" means all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through Final Acceptance of the construction work, pertaining to worker safety and accident prevention applicable to the Project and/or the construction work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

1.24 "Shop Drawing" means any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.

1.25 "Site(s)" means the area(s) upon or in which the construction work for the Project is carried on, and such other areas adjacent thereto as may be designated by the Commissioner.

1.26 "Specifications" means all of the directions, requirements and standards of performance applied to the construction work.

1.27 "State" means the State of New York.

1.28 "Subconsultant" or "Subcontractor" means any person, firm, or corporation, other than employees of the Consultant, who or which contracts with the Consultant or his subconsultants to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All Subconsultants and/or subcontractors are subject to the prior written approval of the Commissioner.

1.29 "Work Order" or "Work Order Letter" means an order issued pursuant to this Contract to the Consultant by DDC with a "not to exceed" amount and a specified scope of work to be completed within a definite time period.

ARTICLE 2 – GENERAL PROVISIONS

2.1 General Provisions governing the Contract, including insurance coverage the Consultant and its subconsultants are required to provide, are set forth in Appendix A. The amounts and types of insurance required are set forth in Schedule A, annexed to Exhibit A. Appendix A is included as an Exhibit to the Contract. The Consultant must comply with the General Provisions and, for Work Orders with a value of one million dollars (\$1,000,000) or more, must also comply with the HireNYC Rider. The General Provisions and HireNYC Rider are attached as Exhibits to the Contract.

2.2 Director: For the purpose of this Contract, the Director of the DDC Office of Environmental and Hazmat Services (OEHS) is the duly authorized representative of the Commissioner.

2.3 Abbreviations: The following abbreviations are used throughout the Contract.

- American Industrial Hygiene Association (AIHA)
- American Society of Testing Materials (ASTM)
- Environmental Laboratory Accreditation Program (ELAP)
- Environmental Lead Proficiency Analytical Testing (ELPAT)
- Fire Department of New York (FDNY)
- Flame Atomic Absorption Spectrophotometry (FAAS)
- Housing and Urban Development (HUD)
- National Lead Laboratory Accreditation Program (NLLAP)
- National Voluntary Laboratory Accreditation Program (NVLAP)
- National Institute of Standards and Technology (NIST)
- New York City Department of Environmental Protection (DEP)
- New York State Department of Environmental Conservation (NYSDEC)
- New York State Department of Health (NYSDOH)
- New York State Department of Labor (NYSDOL)
- National Institute of Occupational Health and Safety (NIOSH)
- Occupational Safety and Health Administration (OSHA)
- Phase Contrast Microscopy (PCM)
- Proficiency Analytical Testing (PAT)
- Transmission Electron Microscopy (TEM)
- United States Environmental Protection Agency (USEPA or EPA)

ARTICLE 3 – AGREEMENT TO SERVE

3.1 The City hereby retains the Consultant to perform the services hereinafter described, on the terms and conditions set forth herein, and the Consultant agrees to so serve and to commence work on the date specified in the written Notice to Proceed and shall remain in effect for the period set forth in Exhibit A. The Consultant agrees to provide, to the satisfaction of the Commissioner, the services set forth in this Contract for various Projects, as specified by the Commissioner on a Work Order basis. The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its obligations under this Contract competently and efficiently.

ARTICLE 4 – WORK ORDER PROCESS

4.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, sampling and testing services in accordance with Work Orders issued hereunder. The Consultant's services shall be provided with respect to the Project(s) specified in the Work Order. The Consultant shall not perform services until the Commissioner has issued a written Work Order. In the event the Consultant performs services without a written Work Order, he/she does so at his/her own risk. DDC will not consider any request for payment for services not authorized in writing by a Work Order. Coordination and/or document review performed by the consultant without a written Work Order is not chargeable to the City and is performed at the Consultant's sole risk and expense. Proposal costs are not reimbursable or otherwise chargeable to the City, including without limitation Consultant's project scope review prior to fee proposal submittal, proposal preparation and negotiation, except as expressly, and strictly to the extent, authorized in writing in the Commissioner's Request for Proposal. The requirement for a written Work Order shall not apply in the event the Consultant is directed to provide services to address an urgent condition, as described in Article 4.4 ("Commissioner Designated Priority").

4.1.1 Notice: Notice to the Consultant regarding all matters in connection with this Contract shall be given by

electronic mail or email. In the event the Consultant is given verbal notice of a contractual requirement, such notice will be promptly confirmed by email.

4.1.2 Cellular Telephone: The Consultant shall, for the duration of the contract, provide and maintain in good operating condition an “Emergency Contact Number” for notification by telephone during non-regular business hours, i.e., before 7:00 AM and after 5:00 PM Monday through Friday, and on weekends and holidays.

4.2 Process for Finalizing Work Order: The process for finalizing a regular Work Order is described below. The process for finalizing a Work Order involving an urgent condition is described in Article 4.4 (“Commissioner Designated Priority”).

4.2.1 Request for Proposal: Within three (3) business days prior to the pre-abatement meeting, DDC shall send the Consultant a Request for a Proposal. Such request shall include the project specifications and regulatory filings.

4.2.2 Pre-Abatement Meeting: The Consultant’s Project Manager shall attend a pre-abatement meeting at the site. Notice of such meeting shall be given to the Consultant at least three (3) business days in advance. The pre-abatement meeting shall take place five to ten business days prior to the date on which the Consultant must commence services. At the meeting, DDC will establish the required titles of personnel for sampling services, as well as the estimated hours per title.

4.2.3 Post Lead Abatement Clearance Sampling: The Consultant’s Lead Project Manager must respond within 1 business day to a request from DDC to perform final dust wipe clearance sampling. DDC will establish the required titles of personnel for dust wipe sampling and testing services, as well as the estimated hours per title.

4.2.4 Proposal: Within two (2) business days after receipt of a request from DDC, the Consultant must submit a proposal for the Project. Such proposal must include: (1) proposed Staffing Plan for sampling services, and (2) proposed testing services. The items that must be included in the Staffing Plan are set forth in Article 5.

4.2.5 Review of Proposal: The Commissioner must review the Consultant’s proposal and may direct revisions to the same if necessary prior to issuing the final Work Order.

4.2.6 Start Date: The final Work Order will include the date on which the Consultant must commence the required services. DDC will endeavor to issue the Work Order as soon as possible; however, the Consultant is advised that the start date may be as soon as within twenty-four (24) hours of its receipt of the Work Order. Such start date is subject to revision in the event of problems with scheduling or access to the facility.

4.3 Final Work Order: Following the process set forth above, the Commissioner shall issue a Work Order to the Consultant. The Work Order shall specify the items set forth below. Upon receipt of the Work Order, the Consultant shall contact the designated DDC representative, via telephone or email, to confirm the start date.

4.3.1 Project(s) for which services are required.

4.3.2 Sampling services to be performed by the Consultant.

4.3.3 Testing services to be performed by the Consultant

4.3.4 Documents provided by the Commissioner

4.3.5 Time Provisions: Start date and completion date for required services.

4.3.6 Overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed Amount shall be further broken down into various allowances, depending on the required services. Such allowances may include the following: (1) Allowance Sampling Services, (2) Allowance for Testing Services, and, if applicable, (3) Allowance for Reimbursable Services.

4.3.7 Maximum Price: As indicated in Article 7, the amount of the Allowance for Sampling Services and the amount of the Allowance for Testing Services set forth in the Work Order shall constitute the maximum price to be paid to the Consultant for providing the required services.

4.4 Commissioner Designated Priority: The Consultant may be required to provide services to address an urgent condition. A Work Order involving an urgent condition shall be identified as a “Commissioner Designated Priority”. In such case, the Consultant shall be required to commence services at the site within two (2) hours of notification by email. The email notification shall specify the required titles and estimated hours per title. The Work Order to address the urgent condition shall be finalized within seventy-two (72) hours of the initial notification by email. A Commissioner Designated Priority may include an additional 4 hours of Project Manager time in the Work Order for urgent coordination and response to the site.

4.5 Miscellaneous Provisions: The provision set forth below shall apply to Work Orders issued hereunder.

4.5.1 Supplementary Work Orders: In the event of any changes to the Work Order, the Commissioner shall issue a Supplementary Work Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Work Order issued by the Commissioner.

4.5.2 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Work Orders issued hereunder, the Commissioner may, by issuance of a Supplementary Work Order to the Consultant, reallocate such specific allowance amounts.

4.5.3 Conflicts: In the event of any conflict between a Work Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Work Order shall take precedence over the Contract.

4.5.4 No Right to Reject: The Consultant shall have no right to reject or decline to perform any Work Order issued under the Contract. Accordingly, any rejection of a Work Order by the Consultant, either expressly made or implied by conduct, shall constitute a material breach of this Contract.

4.5.5 Work by Others: In the event there is a need for sampling and testing services, the Commissioner reserves the right not to utilize this requirements contract and to proceed with a new solicitation for the required services, or to have the services performed by another consultant(s), or by City employees, if the Commissioner, in his/her sole opinion, determines that it would be in the best interest of the City to do so.

ARTICLE 5 – QUALIFICATION AND PERSONNEL

5.1 Qualification Requirements: Qualification requirements are set forth below.

5.1.1 Consultant: All required licenses and accreditations must be valid and in effect throughout the contract term.

- (a) Licensed by NYSDOL as an Asbestos Handler “Restricted Class”.
- (b) Registered Special Inspection Agency (SIA) with the NYCDOB in adherence with the New York City Title 15, Sub Chapter C, Section 1-26 regulations.
- (c) Accredited by the US EPA under 40 CFR 745.226 for the performance of lead-based paint activities
- (d) Accredited by ELAP for Fiber Analysis (PCM-NIOSH 7400 Method) and Asbestos Analysis (TEM- 40 CFR 763 App. A No. III) (ELAP is administered by the NYS-DOH)
- (e) Accredited by AIHA for Fiber Analysis (PCM- Asbestos) and Environmental Lead
- (f) Accredited by NVLAP for Airborne Asbestos Fiber Analysis (PCM-Asbestos) (NVLAP is administered by NIST)
- (g) Accredited by ELAP for Lead Air and Dust Wipe Analysis (ELAP is administered by the NYSDOH)

5.1.2 Personnel: Individuals provided by the Consultant for required titles of personnel must satisfy the qualification requirements for the title in question, as set forth in Article 6. The Consultant shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that each individual provided complies with the qualification requirements per title. In exceptional circumstances, the Commissioner, in their sole and absolute discretion, may modify the requirements per title.

5.2 Subcontracting: Subcontracting is only permitted as set forth in Exhibit A. Provisions regarding subcontracting are set forth in Article 5.5.

5.3 Provision of Personnel: Staffing requirements for personnel have been established by the Commissioner and are set forth in Article 6. The Consultant agrees, throughout the term of the Contract, to provide all personnel necessary and required for performance of required services for various Projects, in accordance with Work Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees, unless otherwise approved by the Commissioner. Individuals provided by the Consultant for required titles of personnel must satisfy the qualification requirements for the title in question, as set forth in Article 6.

5.4 Proposed Contract Staffing Plan: Within the time frame set forth in Article 4, the Consultant must submit a proposed Staffing Plan for the Contract for which services are required. Such proposed Staffing Plan must include the items set forth

below. With respect to each proposed individual, the Consultant must provide: (1) the individual's resume, as well as any other information detailing his/her technical qualifications and expertise, and (2) the title for which the individual meets the qualification requirements set forth in Article 6.

5.4.1 Review and Approval of Contract Staffing Plan: The Commissioner must review the Consultant's proposed Staffing Plan and must direct revisions to the same if necessary prior to final approval thereof. As part of such review, the Commissioner must determine: (1) whether each proposed individual meets the qualification requirements for the applicable title, and (2) whether the All-Inclusive Hourly Rate for each proposed individual is in accordance with the rate for the title for which the individual meets the qualification requirements. The Consultant must revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.4.2 Payment Limitation: The specific individuals identified in the approved Contract Staffing Plan will be considered Assigned Personnel for the purpose of the Consultant's entitlement to payment for services performed by such individuals hereunder. The Consultant must not be entitled to payment for any individual not included in the approved Contract Staffing Plan.

5.4.3 No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Article 6, and (2) such principal is included in the approved Staffing Plan for such title. The All Inclusive Hourly Rates set forth in Exhibit C shall apply, even where personnel fulfilling services for a specified title is also a principal..

5.4.4 Replacement of Personnel: No substitutions for approved personnel must be permitted unless approved by the Commissioner. Any proposed replacement for approved personnel must possess qualifications substantially similar to those of the personnel being replaced and are subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the Consultant must remove any personnel and substitute another employee of the Consultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his/her sole discretion.

5.4.5 Revisions to Contract Staffing Plan: The Commissioner may, at any time, direct revisions to the Staffing Plan, including without limitation, increasing or decreasing the specified personnel, based upon the scope of the required services. The Consultant must increase or decrease the specified personnel, as directed by the Commissioner.

5.4.6 Contents of Work Order Letter Staffing Plan: The Consultant's proposed Staffing Plan must include the items set forth below. Such Staffing Plan must include only those titles of personnel necessary for the provision of the required services. Such Staffing Plan must be numbered, dated and signed by the Project Manager.

- (a) List of required titles and specific individual for each title
- (b) The applicable All Inclusive Hourly Rate for each title. The All Inclusive Hourly Rate must be the rate set forth in Exhibit C for the title for which the Commissioner determines the individual meets the qualification requirements.
- (c) Total estimated hours and total estimated amount for each title

5.5 Subconsultants: Subcontracting is only permitted as set forth in Exhibit A. If Exhibit A permits the Consultant to subcontract certain services, the provision set forth below shall apply. If not, the provisions set forth below shall have no application.

5.5.1 Subconsultants Identified in Bid: Not Used

5.5.2 Approval: Provisions regarding subcontracting, including the requirements for approval, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

5.5.3 Replacement Subconsultants: No substitution for any Subconsultant shall be permitted unless approved in advance in writing by the Commissioner. Such approval will only be granted in the case of extenuating circumstances. Any proposed replacement Subconsultant must possess qualifications and experience substantially similar to those of the Subconsultant being replaced. In addition, at the Commissioner's request at any time, the Consultant shall remove any Subconsultant and substitute another Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, if, in his sole opinion, he determines that any Subconsultant may be unable to

satisfactorily provide the required services in a timely fashion.

5.5.4 Payment: Expenses incurred by the Consultant in connection with furnishing Subconsultants for the performance of required services hereunder are deemed included in the payments by the City to the Consultant, as set forth in Article 7. The Consultant shall pay its Subconsultants the full amount due them from their proportionate share of the requisition, as paid by the City. The Consultant shall make such payment not later than seven (7) calendar days after receipt of payment by the City.

ARTICLE 6 – SCOPE OF SERVICES

6.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, sampling and testing services for various capital Projects, as specified by the Commissioner on a Work Order basis. Sampling services shall include air sampling and/or dust wipe sampling. The Consultant's services shall be provided in accordance with the following: (1) all terms and conditions set forth in this Contract, and (2) all Local, State and Federal Laws, Rules and Regulations applicable to the work.

6.1.1 Conflicts of Interest: The Consultant shall fully and fairly represent the interest of DDC in the performance of services under this Contract without conflict of interest or breach of confidentiality. Prior to the commencement of services hereunder, the Consultant shall take all reasonable actions to identify and notify DDC in writing of those cases in which it has performed, or is currently performing work for any contractor, subcontractor, or material supplier which has performed or is performing work on any New York City project. Throughout this Contract, the Consultant shall notify DDC in writing of its intent to perform work on any City project(s) which are not part of this contract. The Consultant shall include these provisions in all subcontracts for services performed by subcontractors or subconsultants.

6.1.2 Various Locations: The Consultant shall perform sampling services at various locations throughout the five boroughs of the City of New York, where abatement work is being performed, either by another entity under a separate contract with the City or by certified workers, employed by the City of New York.

6.2 Personnel: Qualification Requirements and Responsibilities: The Consultant must be required, throughout the term of the Contract, to provide qualified personnel for performance of all required services. The following are set forth below: (1) titles of required personnel, (2) number of individuals per title the Consultant must have in its employ, (3) qualification requirements per title, and (4) responsibilities per title.

6.2.1 Air Sampling Technicians (Asbestos & Lead)

(a) Number of Individuals: Minimum of four (4)

(b) Qualifications: Individuals providing services as Air Sampling Technicians must comply with the following criteria: (1) each individual must have a valid Asbestos Project Air Sampling Technician Certificate issued by the NYSDOL, (2) each individual must have at least three (3) years of experience performing air sampling services on asbestos projects. Individuals assigned to perform air sampling for Lead must meet the requirement above and have at least three (3) months experience performing OSHA personal exposure monitoring for Lead and/or ambient air quality monitoring for lead in accordance with EPA/OSHA/NIOSH sampling procedures. The Air Sampling Technician must have such certificate in his/her possession and must be posted at all times while working on the project

(c) Responsibilities: The Air Sampling Technician will (1) perform air sampling services in accordance with applicable NIOSH methods and in accordance with all applicable federal, state and local laws, rules and regulations, (2) ensure sampling equipment has been calibrated accurately and confirm calibration check at the work site prior to use, (3) determine sampling locations and prepare accurate sampling location drawings/sketch, (4) monitor sampling equipment hourly to ensure integrity of sample collection, (5) prepare air sampling logs, chain of custody, and (6) deliver samples to the laboratory for analysis as required.

(d) Multiple Projects: Multiple abatement projects may occur at the same site or in separate areas of a site. Unless otherwise directed in writing, the Consultant must provide only one (1) technician for a maximum of three (3) projects at a single site or three (3) separate areas of a single project. If regulations required a greater number of coverage per site, the Consultant must follow regulations, or whichever is most stringent.

6.2.2 Lead Risk Assessor (Lead)

- (a) Number of Individuals: Minimum of four (4)
- (b) Qualifications: Individuals providing services as a Lead Risk Assessor must comply with the following criteria: (1) each individual must have and a valid Lead Risk Assessor Certificate issued by the USEPA, (2) each individual must have at least five (5) years of experience performing lead-based paint hazard assessment inspections, (3) each individual must have at least three (3) years of experience performing Category 1 and Category 2 USEPA /HUD lead clearance dust wipe sampling for lead abatement projects, and (4) a thorough knowledge of the most recent federal, state and local lead regulations. The Lead Risk Assessor must have such certificate in his/her possession at all times while working on the project.
- (c) Responsibilities: The Lead Risk Assessor must perform the following services: (1) inspect interior and exterior building components and/or exterior areas (soils) to identify and evaluate lead-based paint hazards in accordance with USEPA/HUD guidelines, (2) obtain samples and prepare sample location diagrams, (3) interpret laboratory results, (4) rate condition of lead-based paint building components or soils (4) recommend remediation or removal actions (5) identify and quantify proposed leads based paint remediation or removal actions, (6) review lead-based paint remediation/removal contract documents, (7) obtain dust wipe samples in accordance with USEPA/HUD Category 1 or Category 2 lead clearance sampling methodology, (8) prepare dust wipe sample location diagrams, (9) evaluate testing data to determine regulatory compliance (10) prepare lead-based paint clearance reports. Perform lead-based paint hazard assessment services in accordance with the most current applicable USEPA/HUD methods and in accordance with all current applicable federal, state and local laws, rules and regulations.
- (d) Multiple Projects: Multiple lead abatement projects may occur at the same site or in separate areas of a site. Unless otherwise directed in writing, the Consultant must provide a minimum of three (3) Lead Risk Assessor's per day when required. If regulations required a greater number of coverage per site, the Consultant must follow regulations, or whichever is most stringent.

6.2.3 Project Monitors

- (a) Number of Individuals: Minimum of six (6)
- (b) Qualifications: Individuals providing services as Project Monitors must comply with the following criteria: (1) each individual must have a valid Asbestos Project Monitor Certificate and an Asbestos Project Air Sampling Technician Certificate issued by the NYSDOL, and (2) each individual must have at least five (5) years of experience performing project monitoring services on asbestos projects, including two (2) years of experience performing project monitoring services on asbestos projects within NYC.
- (c) Responsibilities: The Project Monitor must perform the following services: (1) participate in project meetings, (2) supervise the abatement contractor to ensure that the work is performed in accordance with all regulatory filings, approved variances, asbestos work permits and plans, (3) review, record and photograph asbestos handler licenses and certificates daily, (4) electronically transmit handler and supervisor photograph at the end of each work shift to the OEHS project manager, (5) perform air sampling services in accordance with applicable NIOSH methods and in accordance with all applicable federal, state and local laws, rules and regulations, (6) prepare sample location sketch per work shift or day of area samples and post within one hour of sampling initiation, (7) evaluate testing data to determine regulatory compliance (8) complete daily reports and transmit laboratory results to the OEHS project manager on a daily basis (9) maintain the project schedule, and (10) conduct required regulatory inspections and complete and submit the NYCDEP Project Monitor Report (ACP-15 form) to the NYCDEP within three (3) days after the required project inspection. The Project Monitor is responsible for notifying the DDC OEHS Project Manager immediately of any regulatory inspections, any violations issued or any issues which may result in a violation of any federal, state or local laws, rules and regulations. The Project Monitor must be present at the site while work is being performed. In no case must the Project Monitor leave the site without prior approval from the DDC OEHS Project Manager.
- (d) Multiple Projects: Multiple abatement projects may occur at the same site or in separate areas of a site. Unless otherwise directed in writing, the Consultant must provide only one (1) project monitor for a maximum of three (3) projects at a single site or three (3) separate areas of a single project. If regulations

required a greater number of coverage per site, the Consultant must follow regulations, or whichever is most stringent

6.2.4 Project Manager (Asbestos)

- (a) Number of Individuals: Minimum of one (1)
- (b) Qualifications: Individuals providing services as Project Managers (Asbestos) must comply with the following criteria: (1) each individual must have an Asbestos Project Monitor Certificate and an Asbestos Project Designer Certificate issued by the NYSDOL, and (2) each individual must have at least seven (7) years of experience performing project management services on asbestos projects, including four (4) years of experience performing project management services on asbestos projects within NYC.
- (c) Responsibilities: The Project Manager must perform the following services: (1) oversee the progress of the work for all assigned projects, (2) supervise project monitors and air sampling technicians, (3) provide daily updates on the project, including photographs of the handler and supervisor licenses, (4) review and transmit daily air monitoring data to DDC, (5) prepare and submit weekly project oversight submissions and Final Closeout Reports, (6) attend pre-abatement and progress meetings, (7) review abatement contractor submittals, including regulatory filings, plans, protocols and procedures to identify errors or inconsistencies, (8) review air and dust wipe sampling data to ensure compliance with all applicable federal, state and local laws, rules and regulations, (9) prepare and submit Re-occupancy letters within two (2) hours of achieving clearance criteria, and (10) perform a quality control review of all correspondence, data and reports to ensure the accuracy, quality and delivery of all required project documents prior to submission to DDC. The Project Manager must provide immediate notification to the Director of any situation that requires prompt action to reduce potential hazards to workers and/or members of the public.

6.2.5 Project Manager (Lead)

- (a) Number of Individuals: Minimum of one (1)
- (b) Qualifications: Individuals providing services as Project Managers (Lead) must comply with the following criteria: (1) each individual must have a valid Lead Risk Assessor Certificate issued by the US EPA, (2) each individual must have at least three (3) years of experience performing lead hazard inspections and/or lead hazard assessments in NYC, (3) demonstrate four (4) years of experience performing Category 1 and Category 2 USEPA /HUD clearance sampling and a thorough knowledge of the most recent federal, state and local Lead regulatory thresholds and regulations.
- (c) Responsibilities: Same as set forth above for Project Manager (Asbestos).

6.2.6 Registered Design Professional

- (a) Number of Individuals: Minimum of one (1)
- (b) Qualifications: Individuals providing services as Registered Design Professional must comply with the following criteria: (1) each individual must have two (2) years of experience preparing Work Place Safety Plans required for asbestos abatement permits, (2) degree in Engineering, Science or Architecture, (3) be a registered as a Professional Engineer or Registered Architect in the State of New York, (4) Have a minimum of five years of experience with NYCDEP asbestos regulations and NYCDOB/FDNY regulations.
- (c) Responsibilities: The Registered Design Professional must perform the following services: (1) prepare and gain approval of the Work Place Safety Plan and Tenant Protection Plan required for an asbestos abatement work permit prior to construction and submit signed and sealed documents as required by the NYCDEP for review and final approval, (2) perform Special Inspections required pursuant to Title 28 of the RCNY including, but not limited to special inspections required by Chapter 17 of the Building Code, (3) perform final inspection after all work authorized by the Asbestos Abatement Work Permit is completed, (4) file the signed and sealed inspection report with the NYCDEP on the ATR1 form in accordance with Title XV, Chapter 1 of the RCNY.

6.3 Provisions Applicable to Project Monitoring and Sampling Services: The Consultant must provide, to the satisfaction of the Commissioner, air sampling, dust wipe sampling and laboratory testing services for various capital projects, as specified

by the Commissioner on a Work Order basis. The Consultant's services must be provided in accordance with the following: (1) all terms and conditions set forth in this Contract, and (2) all Local, State and Federal Laws, Rules and Regulations applicable to the work. The provisions set forth below shall apply to such services.

6.3.1 The Consultant must only consult with and take direction from the DDC OEHS Project Manager and/or DDC Section Chief at the site.

6.3.2 The Consultant must notify the DDC OEHS Project Manager within one (1) hour of any regulatory inspection. If violations were discovered during a regulatory inspection corrective action must be implemented immediately and documented and forwarded to the OEHS project manager.

6.3.3 Through the Work Order process set forth in Article 4, the Consultant will be advised of the location of individual work sites in advance of the performance of the Work. The Consultant must confirm all scheduling requirements with the DDC OEHS Project Manager and Unit Section Chief.

6.3.4 The Consultant will be responsible for establishing an air sampling and testing protocol, including air sampling location sketches and any other requirements for each project site in compliance with all Local, State and Federal Laws, Rules or Regulations applicable to the work.

6.3.5 The Consultant must further coordinate its performance of services on site with the abatement contractor's Supervisor to assure that all area air testing is performed in accordance with all Local, State and Federal Laws, Rules and Regulations applicable to the work.

6.3.6 The Consultant must establish, maintain and document to the City a clear Chain of Custody for all air and dust wipe samples. All Chain of Custodies must be fully completed at each required phase of the Project.

6.3.7 The Consultant must review and make corrections as necessary for all survey reports, abatement specifications, notifications, amendments, variance applications and work plans associated with the project for accuracy and completeness and ensure that these documents are posted at the work site.

6.4 Project Monitoring and Sampling Services Deliverables: The Consultant must prepare and submit the deliverables described below.

6.4.1 The Consultant's Project Monitor must complete, execute and submit the Project Monitor's Report (ACP-15 Form) to the NYCDEP within three (3) business days from the date of successful final clearance air monitoring for asbestos projects. Any delay in submitting the ACP-15 Form that may result from the failure of the abatement contractor to provide such form must be immediately reported to the DDC OEHS Project Manager.

6.4.2 The Consultant's Project Manager must, by close of business each Friday, submit an electronic weekly project status spreadsheet to the Director or his/her duly authorized DDC OEHS Project Manager and the DDC Section Chief.

6.4.3 Deliverables must be prepared utilizing the applicable template provided by DDC to the Consultant. As a general rule, the DDC template is to be used for all Final Closeout Reports unless otherwise directed. The Consultant must submit a hard copy Draft Project Closeout Report to the Director within five (5) days from the date on which the NYCDEP issues the Project Completion Form (ACP-21 form). Within five (5) days of submission, the DDC OEHS Project Manager will provide a letter of correction to the Draft Report to the Consultant. Within three (3) days thereafter, the Consultant must submit the Final Project Closeout Report, revised in accordance with the letter of correction.

6.4.4 The Consultant must provide a Final Project Closeout Report, one original and one electronic (PDF) version on compact disk or USB or FTP upload, directed by the Commissioner not more than twenty (20) business days after the NYCDEP Asbestos Project Completion Form (ACP-21 form) is issued. The Consultant must make every reasonable attempt to secure the abatement contractor's documentation prior to final clearance air monitoring. The Consultant must document in writing all efforts to secure this documentation, including use of e-mail and U.S. Mail correspondence to the abatement contractor. The OEHS project manager must be copied on all correspondence to the abatement contractor. In the event the abatement contractor fails to provide the requested documentation; the Consultant must so note in the report and advise the OEHS project Manager. The Consultant must include copies of all correspondence documenting its efforts to obtain the contractor's documents. The failure of the abatement contractor to supply documents to the Consultant must not be justification for failing to meet the twenty (20) business day reporting requirement.

The Final Project Closeout Report must chronicle, in sufficient detail, all activities that were conducted at the project site. This report must follow the template provided by DDC, and must, at a minimum, include copies of the following documents:

- (a) NYCDEP, NYSDOL and USEPA regulatory notifications including but not limited to any project variances, amendments, approvals, and closeout documentation,
- (b) Project Monitor's daily log reports,
- (c) NYSDOL Project Monitors and Air Sampling Technician certifications,
- (d) NYSDOL Asbestos Handling License (Restricted) for the company'
- (e) Laboratory air sample analyses, chain of custody forms, and sample location sketches,
- (f) A minimum of four (4) photographs per each phase of the project as per NYS Code Rule 56 Table 1-Phase II (Abatement) "Asbestos Project Phases of Work",
- (g) NYSDOH ELAP, AIHA and NVLAP laboratory accreditations,
- (h) Facility re-occupancy letter,
- (i) Abatement contractor's project log and NYSDOL handling license,
- (j) Clear and legible photographs of the valid NYSDOL and NYCDEP supervisor/handler certifications specific to the project,*
- (k) Waste manifests for the project

* Arrangements to acquire documentation from the abatement contractor will be the Consultant's responsibility and confirmed at each mandatory pre-abatement meeting. Only clear legible copies will be accepted.

6.5 Laboratory Testing Services

6.5.1 The Consultant must provide laboratory testing services for the Project, as specified by the Commissioner on a Work Order basis.

6.5.2 Testing services provided by the Consultant must be in accordance with Exhibit D. Exhibit D sets forth the following: (1) Testing Services and (2) Unit Prices for Tests.

6.5.3 For each test performed, the Consultant must provide a Laboratory Report summarizing the results of the test. The Laboratory Report must be sent to the Director by email within one (1) business day after performance of the test. The Laboratory Report must be on the Laboratory's letterhead and must, at a minimum, include the items set forth below. The Laboratory Report must be signed by the director of the laboratory.

- (a) Sample ID Number
- (b) Type of Sample & Work Activity
- (c) Location
- (d) Time In
- (e) Time Out
- (f) Flow rate (before & after in liter per minute (lpm)
- (g) Total volume of air collected (liters)
- (h) Fibers per field
- (i) Fibers per cubic centimeter (cc)
- (j) Fibers per millimeter squared (mm²)
- (k) Cassette type
- (l) Test Method
- (m) Turnaround Time
- (n) Analyst Name
- (o) Date of Analysis
- (p) Air Sampling Technician Name & Signature
- (q) Relinquished by Name & Signature
- (r) Relinquished Date & Time
- (s) Received at Lab by Name & Signature
- (t) Sample condition
- (u) Received Date & Time
- (v) Client Name
- (w) Project Name
- (x) Project Address
- (y) Sampling Date

6.5.4 The Consultant may be directed to perform other types of tests or to provide other types of testing equipment. If so directed in writing, the Consultant must provide such services or equipment as a Reimbursable

Service.

6.5.5 The Consultant’s laboratory testing services must conform to the following standards:

- (a) Asbestos air samples analyzed using Phase Contrast Microscopy (PCM) must be analyzed and reported in accordance with the NIOSH 7400 method using “A” counting rules.
- (b) Asbestos air samples analyzed by Transmission Electron Microscopy must be analyzed and reported in accordance with the mandatory and non-mandatory Electron Microscopy Methods set forth at 40 CFR Part 763, Subpart E, Appendix A.
- (c) Lead air samples using Flame Atomic Absorption Spectrophotometry must be analyzed and reported in accordance with NIOSH 7082
- (d) Lead in dust wipe samples using Flame Atomic Absorption Spectrophotometry, Direct Aspiration must be analyzed and reported in accordance with EPA Method 7000B.

6.5.6 Test Results and Laboratory Reports Deliverables: Test results and Laboratory reports must be submitted within the time frames set forth below. All laboratory reports are subject to review and approval by the Director.

- (a) The results of air tests analyzed by Phase Contrast Microscopy must be reported verbally and by email or email to the DDC OEHS Project Manager within two (2) or twelve (12) hours of sampling, with the written laboratory report to follow within one (1) business day after performance of the test.
- (b) The results of air samples analyzed by Transmission Electron Microscopy must be reported verbally and by email to the DDC OEHS Project Manager within two (2) or twelve (12) hours of sampling, with the written laboratory report to follow within one (1) business day after performance of the test.
- (c) The results of lead in air or lead in dust wipe samples analyzed by Atomic Absorption Spectrophotometry must be reported verbally and by email to the DDC OEHS Project Manager within two (2) or twelve (12) hours of sampling; with the written laboratory report to follow within one (1) business day after performance of the test.

6.5.7 Submission Requirements: The Consultant shall comply with the submission requirements set forth below.

Deliverable	Submittal Format	Original	Electronic Formats
Asbestos and Lead Air Reports	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive
Laboratory Reports	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive
Sampling Reports	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive
Abatement Close Out Reports	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive
ATRU applications	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive
Work Place Safety Plans	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive
Tenant protection Plans	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive
ATRI form Executed & Submitted ATR1 form	Electronic & Original	Binder	Electronic FTP Upload or Microsoft One Drive

“Electronic FTP Upload” means transfer through the Internet of PC-compatible documents in compressed format from the Consultant managed FTP-CDE web site.

Originals must be submitted as part of the final invoice

6.5.8 Electronic submissions must include all documents in compatible formats in the most recent version or specified by the commissioner, for example: Electronic media (USB) must be delivered in compatible envelope attached to the back page of the original document, clearly labeled on both the envelope and the USB drive with the Consultant's Name, DDC Project Name & FMS-ID Number and the Type & Date of Submission.

Submission	Format	Compatibility
Text Reports	Microsoft Word	Microsoft Office 2010 or later version
Tables / Spreadsheets	Microsoft Excel	Microsoft Office 2010 or later version
Presentations	Microsoft Power Point	Microsoft Office 2010 or later version
Drawings/ Sketches	Auto CAD	AutoCAD 2018 or later Version
Digital Photos	"JPEG"-Joint Photographic Experts Group	Compatible with Microsoft Office 2010 or later version
Other Components	"PDF"- Portable Document Format	Compatible with Acrobat Standard 2017, Acrobat Standard DC, Acrobat Pro 2017, or Acrobat Pro DC.

6.6 Liquidated Damages: In the event the Consultant fails to commence the required services within the time fixed for the same, or if the Consultant, in the sole determination of the Commissioner, has abandoned the work, the Consultant must pay to the City the amount set forth below, for each and every hour that the Consultant has failed to commence the required services, which said amount, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in commencing the work, is hereby fixed and agreed as liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

Category	Start Time/Submission Deadline	Liquidated Damages
Regular Work Order	Date and time set forth in Work Order	\$100.00 per day
Work Order Designated as a Commissioner Priority	Within 2 hours	\$200.00 per hour
Draft/Final Report	Per the submission schedule as specified in Section 6.4.3	\$100.00 per day

6.6.1 Liquidated Damages received hereunder are not intended to be nor shall they be treated as either a partial of full waiver or discharge of the City's right to indemnification under the agreement, or the Consultant's obligation to indemnify the City, or to any other remedy provided for in this Contract or by law. The Commissioner may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Consultant shall be liable to pay the difference upon demand by the Commissioner.

6.7 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project. If so directed, the Consultant shall provide such Reimbursable Services through entities approved by the Commissioner. Payment for Reimbursable Services shall be in accordance with the terms set forth in Article 7.

6.7.1 No Reimbursable Services shall be provided by the Consultant, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$150, such written authorization must be provided in advance of the expenditure.

6.7.2 Reimbursable Services shall be such services determined by the Commissioner to be necessary for the Project, and may include, without limitation, the services set forth below.

- (a) Long distance travel. In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel means travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant's home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (b) Special equipment for inspection and/or testing required for the Project
- (c) Reproduction and/or printing of deliverables and/or records, except for printing performed in the office of the Consultant or its subconsultant
- (d) Any other services, determined by the Commissioner to be necessary for the Project

6.7.3 The Consultant shall utilize the method of procurement directed by the Commissioner. If so directed, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$20,000.

6.7.4 The Consultant shall utilize the form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with one of the following methods: (a) lump sum; (b) unit price, or (c) actual cost; except for long distance travel, as set forth in Article 7.

6.7.5 In the event the Consultant is directed, as a Reimbursable Service, to purchase any items and/or equipment, such items and/or equipment shall, unless otherwise directed by the Commissioner, be the sole property of the City upon delivery to the designated location. The Consultant shall prepare and maintain an accurate inventory of all items and/or equipment which it is directed to purchase pursuant to the Allowance for Reimbursable Services. Such inventory shall be provided to the City upon request. Upon completion of the required work, as directed by the Commissioner, the Consultant shall turn such items and/or equipment over to the City.

6.8 Non-Reimbursable Services: Throughout the Contract and regardless of whether specified in any Work Order issued hereunder, the Consultant shall be responsible for providing the non-reimbursable items and/or services set forth below. All costs for such services are deemed included in payments to the Consultant as set forth in Article 7.

6.8.1 Transportation: The Consultant shall provide transportation for all personnel performing services, including without limitation: (a) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.7), (b) expenses for time spent by personnel commuting or traveling, and (c) expenses for parking and tolls.

6.8.2 Printing: The Consultant shall provide printing of documents, deliverables and/or reports in accordance with the requirements set forth in this Article.

6.8.3 Office: The Consultant shall provide all necessary office supplies and/or tools, including computers.

6.8.4 Equipment: The Consultant shall provide the equipment set forth below. Such equipment is required for all Consultant's personnel performing services.

- (a) Communications equipment and service, including without limitation cellular smartphones capable of taking, sending and receiving photographs in real time. The telephone numbers of all such personnel shall be submitted to the Commissioner with the approved staffing plan.
- (b) Hand tools, sample media, containers, and other supplies for collecting samples.
- (c) Digital camera capable of recording images and transmitting still and video images in indoor/outdoor applications.
- (d) Air sampling instruments, tripods and ancillary equipment to perform sampling in accordance with City, State and Federal regulations.
- (e) Safety and/or Personal Protective Equipment required under City, State and/or Federal laws. Personal Protective Equipment shall include without limitation, respirators, gloves, hard hats, safety vests, foot protection, hearing protection and eye protection.
- (f) Health and Safety plans or other documents required under City, State and/or Federal law for the Consultant's performance of sampling services hereunder.
- (g) Fees for any and all permits and/ or licenses required by Federal, State, and/or local regulatory agencies.

6.9 Ownership of Documents: As set forth in the General Provisions (Appendix A), any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other

preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City of New York.

6.9.1 During the term of this Contract and at any time within the retention period set forth in the General Provisions, the Consultant shall, upon demand, promptly deliver such material, records or documents to the Commissioner, or make such records available to the Commissioner or his/her authorized representative for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such material, records or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the Consultant. Should such documents prepared under this Contract be re-used by the City for other than the Project originally created, it is understood that the Consultant bears no responsibility whatsoever for such re-use except in those instances where he is re-employed for re-use of the documents.

ARTICLE 7 – PAYMENT TERMS AND CONDITIONS

7.1 General

7.1.1 Total Payments: Total payments for all services performed and all expenses incurred pursuant to this Contract shall not exceed the amount set forth in Exhibit A. The Consultant shall only be entitled to payment for services authorized by Work Order and actually performed.

7.1.2 Guaranteed Minimum: In the event the Consultant is not issued any Work Orders hereunder and the Consultant has, throughout the term of the Contract, submitted reasonable Proposals for specific Projects, the City agrees to pay, and the Consultant agrees to accept, a minimum fee of \$3,750.00. The Consultant further agrees that under such circumstances, it has no action for damages or for loss of profits against the City.

7.1.3 Executory Only: This Agreement shall be deemed executory only to the extent of the moneys appropriated and available for the purpose of the Agreement and no liability or account thereof shall be incurred beyond the amount of such moneys. It is therefore understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Agreement.

7.1.4 Work Orders: Each Work Order shall specify an overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed Amount shall be further broken down into various allowances, depending on the required services. Such allowances may include the following: (1) Allowance Sampling Services, (2) Allowance for Testing Services, and, if applicable, (3) Allowance for Reimbursable Services.

7.1.5 Maximum Price: The amount each respective allowance set forth in the Work Order (the Allowance for Sampling Services and the Allowance for Testing Services), shall constitute the maximum price to be paid to the Consultant for providing the services specified in the Work Order. The Consultant shall not be entitled to payment in excess of such allowance amounts, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

7.1.6 Allowance Amounts: In the event the allowance amounts set forth in the Work Order are not sufficient, as determined by the Commissioner to cover the cost of required services for which allowance amounts are specified, the Commissioner will increase the amounts of such allowances. Notwithstanding the specific amounts allocated for allowances, as set forth in Work Orders issued hereunder, the Commissioner may, by issuance of a “Supplementary Work Order” to the Consultant, reallocate such specific allowance amounts.

7.1.7 Supplemental Work Order Requests: When the amount of the original Work Order Letter is expected to be, or is, exceeded due to unexpected field conditions or scope of work changes, the Consultant shall immediately notify OEHS in writing by submitting a fee proposal for the approval and issuance of a Supplemental Work Order Letter no later than five (5) days after the completion of field work. Supplemental Work Order Letter requests will not be accepted more than five (5) days after completion of field work. Consultant must inform the DDC OHES Project Manager of any foreseeable field conditions or scope of work changes as per Article 6, section 6.4.2.

7.2 Payment for Sampling Services: Each Work Order issued hereunder shall specify an Allowance for Sampling Services performed by the Consultant. The Consultant shall be entitled to payment for those individuals who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner. The Consultant shall not be

entitled to payment for the services of: (1) any individual not assigned to the Project and not included in the approved Staffing Plan, or (2) any principal(s), unless such principal meets the criteria set forth below.

7.2.1 Staffing Plan: A Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services. Such Staffing Plan must specify the specific individuals for the performance of services and an All Inclusive Hourly Rate for each specified individual. The specific individuals set forth in the Staffing Plan shall be considered Assigned Personnel for the purpose of payment hereunder.

7.2.2 All Inclusive Hourly Rates: An All Inclusive Hourly Rate for each Assigned Personnel is set forth in the Staffing Plan. Such All Inclusive Hourly Rate shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the Assigned Personnel meets the qualification requirements. Such All Inclusive Hourly Rate shall apply to all hours during which an Assigned Personnel performs services for the Project, including non-regular business hours. No increase in such rate shall be provided for services performed during non-regular business hours. Such All Inclusive Hourly Rates shall be deemed to include the items set forth below.

- (a) All expenses incurred by the Consultant in the performance of all required services for the Project
- (b) All expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties
- (c) All expenses related to overhead and any anticipated profit
- (d) All expenses in connection with non-reimbursable services, as set forth in Article 6.

7.2.3 No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Article 6, and (2) such principal is included in the approved Staffing Plan for such title. The All Inclusive Hourly Rates set forth in Exhibit C shall apply, even where personnel fulfilling services for a specified title is also a principal.

7.2.4 Amount of Payment: For any week during which an Assigned Personnel performs services, payment to the Consultant for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in subparagraph (a) by the number set forth in subparagraph (b).

- (a) Assigned Personnel's All Inclusive Hourly Rate. The All Inclusive Hourly Rate for an Assigned Personnel shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the employee meets the qualification requirements.
- (b) Total number of hours set forth on time sheets completed by the Assigned Personnel for the week(s) in question during which the Assigned Personnel actually performed services hereunder. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Personnel spent commuting and/or traveling; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Personnel performed services for any other project, (4) any hours the Assigned Personnel spent performing services for the Project for which the Consultant is not entitled to compensation, and (5) any hours other than regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
- (c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Personnel which have been allocated to any category or function other than services performed hereunder. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

7.2.5 Minimum Hours: In the event the Consultant is directed to provide personnel for required services and is unable to proceed with such services at the site due to circumstances, which in the Commissioner's determination are not attributable to any fault on the part of the Consultant, the Consultant shall be entitled to payment for a minimum of four (4) hours for all personnel provided for the required services.

7.2.6 Non-Regular Business Hours: The Commissioner may authorize the Consultant in advance in writing to have an Assigned Personnel(s) perform services during non-regular business hours. Non-regular business hours shall be defined as any hours in excess of eight (8) hours per day, Monday through Friday (i.e., evenings, weekends and holidays). Payment for services performed during non-regular business hours shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit C. The Consultant shall not be entitled to any increase in such rates for services performed during non-regular business hours.

7.2.7 Requisitions: For any week(s) for which the Consultant is requesting payment for services performed by an Assigned Personnel, it shall submit the documentation set forth in this Article 7.

7.2.8 Increases in All Inclusive Hourly Rates: The All Inclusive Hourly Rates set forth in Exhibit C shall apply to the three year base term of the Contract. The All Inclusive Hourly Rates shall be subject to increases at the beginning of each of the following periods: the extended term and each additional year the Contract remains in effect in accordance with Article 8. Any increase in the All Inclusive Hourly Rates shall be subject to the limitations set forth below.

- (a) Any increase in the All Inclusive Hourly Rates shall be based on an increase in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO").
- (b) Any increase in the All Inclusive Hourly Rates shall be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**, as determined by EAO. If, for the prior year, the Index showed an increase, the All Inclusive Hourly Rates shall be increased. If, for the prior year, the Index declined or showed no increase, the All Inclusive Hourly Rates shall remain unchanged.
- (c) Any increase in the All Inclusive Hourly Rates shall be applied on a prospective basis only and shall have no impact on rates paid to date.
- (d) Any increase in the All Inclusive Hourly Rates shall only apply to the portion of the work which the Consultant has not yet performed, as determined by the Commissioner. Any increase in the All Inclusive Hourly Rates shall not apply to any work performed by the Consultant during the base term of the Contract, even if payment for such work is made during the renewal or extended term or thereafter.

7.3 Payment for Testing Services: Each Work Order issued hereunder shall specify an Allowance for Testing Services. Payment to the Consultant for the laboratory testing services set forth in Exhibit D shall be on a unit price basis.

7.3.1 Unit Prices: Unit prices for testing services are set forth in Exhibit D. Such unit prices shall be deemed to include the expenses set forth below.

- (a) All expenses incurred by the Consultant and/or its Subconsultant(s) in connection with the performance of the test, including without limitation, expenses for the following: gathering the sample, transportation, equipment, handling, calibration, set up, consumable material, operator labor, maintenance and cleaning
- (b) All expenses related to providing test results and laboratory reports
- (c) All expenses related to management, oversight and quality control procedures
- (d) All expenses in connection with non-reimbursable services, as set forth in Article 6.
- (e) All expenses related to overhead, including insurance
- (f) Any anticipated profit

7.3.2 No Mark-up: The Consultant shall not be entitled to any mark-up with respect to laboratory testing services.

7.3.3 Requisitions: For payment for laboratory testing services, the Consultant shall submit the documentation set forth in this Article 7.

7.3.4 Increases in Unit Prices: The Unit Prices set forth in Exhibit D shall apply to the three year base term of the Contract. The Unit Prices shall be subject to increases at the beginning of each of the following periods: the extended term and each additional year the Contract remains in effect in accordance with Article 8. Any increase in the Unit Prices shall be subject to the limitations set forth below.

- (a) Any increase in the Unit Prices shall be based on the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO").
- (b) Any increase in the Unit Prices shall be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**, as determined by EAO. If, for the prior year, the Index showed an increase, the Unit Prices shall be increased. If, for the prior year, the Index declined or showed no increase, the Unit Prices shall remain unchanged.
- (c) Any increase in the Unit Prices shall be applied on a prospective basis only and shall have no impact on rates paid to date.
- (d) Any increase in the Unit Prices shall only apply to the portion of the work which the Consultant has not yet performed, as determined by the Commissioner. Any increase in the Unit Prices shall not apply to any work performed by the Consultant during the base term of the Contract, even if payment for such work is made during the extended term or thereafter.

7.4 Payment for Reimbursable Services: In the event the Commissioner directs the Consultant to provide Reimbursable Services, the provisions set forth below shall apply. In such case, the Work Order shall specify an Allowance for Reimbursable Services. In providing Reimbursable Services, the Consultant shall comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Commissioner. If so directed, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$20,000.

7.4.1 Payment: Payment for Reimbursable Services (except for long distance travel) shall be as set forth below.

- (a) If payment is on a lump sum basis, payment shall be based upon the percentage of completion.
- (b) If payment is on a unit price basis, payment shall be based upon the number of completed units.
- (c) If payment is based on actual cost, payment shall be the actual and reasonable cost, as indicated by received bills or any other data required by the Commissioner.

7.4.2 Long Distance Travel: Payment for long distance travel, as set forth in Article 6, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses."

7.4.3 Mark Up: The Consultant shall be entitled to a mark-up of 5% for overhead and profit on payments for Reimbursable Services hereunder; provided, however, the Consultant shall **NOT** be entitled to any mark-up with respect to long distance travel expenses.

7.4.4 Requisitions: For payment for Reimbursable Services, the Consultant shall submit the documentation set forth in this Article 7.

7.5 Requisitions for Payment: Requisitions for payment may be submitted upon completion of the services set forth in the Work Order and written acceptance by the Commissioner of the Project Closeout Report. The Consultant shall submit a separate requisition for each completed Work Order. Requisitions shall be in the authorized form and shall set forth the services performed by the Consultant and the total amount of payment requested. The total amount of payment requested shall be broken down into various categories, depending on the required services. Such payment categories may include the following: (1) Payment for Sampling Services, (2) Payment for Testing Services, and (3) Payment for Reimbursable Services. The Consultant shall submit one original and two (2) copies of each requisition for payment. The requisition shall be submitted in a binder or bound booklet.

7.5.1 Requisitions for payment shall be accompanied by the documentation set forth below.

- (a) Work Order: The Consultant shall submit (1) a copy of the Work Order and/or Supplemental Work Order for which payment is requested, and (2) a copy of the Commissioner's written acceptance of the Project Closeout Report.
- (b) Payment for Sampling Services: For any period for which the Consultant is requesting payment for sampling services, the Consultant shall submit the documentation set forth below.
 - (1) Assigned Personnel's name and title
 - (2) Commissioner approval of the Assigned Personnel, either approved Staffing Plan or documentation approving the Assigned Personnel as a replacement
 - (3) All Inclusive Hourly Rate applicable to the Assigned Personnel. The All Inclusive Hourly Rate for an Assigned Personnel shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the employee meets the qualification requirements.
 - (4) Number of hours per day during which the Assigned Personnel actually performed services for the Project.
 - (5) Detailed time sheets completed by the Assigned Personnel for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Personnel, including without limitation: (1) actual hours during which the employee performed services for the Project, (2) actual hours during which the employee performed services for other projects, (3) non-billable hours, as defined above, (4) actual hours, if any, during which the Assigned Personnel performed services for the Project for which the Consultant is not entitled to compensation, and (5) any non-regular business hours.

- (6) Commissioner authorization for services during non-regular business hours, if applicable
- (c) Payment for Testing Services: For payment for testing services, the Consultant shall submit the documentation set forth below. Payment for testing services shall be in accordance with the unit prices set forth in Exhibit D.
 - (1) Laboratory testing services provided
 - (2) Applicable unit price for the laboratory testing services provided
 - (3) Total amount for all completed laboratory testing services
 - (4) Laboratory analysis reports
 - (5) Copy of the Commissioner's written acceptance of the laboratory testing services provided
 - (6) A cover sheet summarizing the test, with the results attached as backup
- (d) Payment for Reimbursable Services: For any period for which the Consultant is requesting payment for Reimbursable Services, the Consultant shall submit the documentation set forth below:
 - (1) Description of the Reimbursable Service the Consultant was directed to provide.
 - (2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required services.
 - (3) If payment is on a unit price basis, a report indicating the number of completed units.
 - (4) If payment is based on actual cost, receipted bills or any other data required by the Commissioner.

7.5.2 Satisfactory Progress: All payments hereunder are contingent upon the Consultant's satisfactory performance of the required services. The Director is authorized to make deductions for any services performed hereunder which he/she determines to be unsatisfactory.

7.5.3 Monthly Tabulation: The Consultant shall, on a monthly basis, submit a tabulation of the total value of all services provided since commencement of the contract, summarized by the type of services.

7.5.4 Close-out payment(s). Upon termination or expiration of the Contract, or at any time requested by the Commissioner, the Consultant shall provide electronic copies of all deliverables produced for or in relation to the Contract electronically on a single USB drive. All files shall be in portable document format (PDF) unless directed otherwise by the Commissioner and organized by FMS ID. A summary transmittal for all files shall be provided listing relevant details of each file, including, but not limited to, FMS IDs, OEHS Work Order No., type of deliverable (e.g., Hazmat Survey/Design/Project Monitoring Report/ Laboratory Results, IAQ Report; Environmental Phase I or Phase II, EAS or ULURP etc.), and the date of delivery. The Consultant shall not be entitled to final payment without delivery of such records as set forth herein. Nothing in this Article shall be deemed to waive any part of the General Provisions.

ARTICLE 8 - TIME PROVISIONS

8.1 Term of Contract: The Contract shall commence on the date indicated on the Notice to Proceed letter issued by the Commissioner and shall remain in effect for the period set forth in Exhibit A. The Commissioner may, for good and sufficient cause, extend the term of this Contract for a cumulative period not to exceed one year from the date of expiration.

8.2 Continuation of the Contract: In the event (1) services are required for a Project, (2) a Work Order for the Project is issued by the Commissioner during the term of the Contract, including the last day thereof, and (3) the time frame for completion of the Project extends beyond the term of the Contract, the Contract shall remain in effect for purposes of such Work Order through the time frame for completion of the Project, as set forth in the Work Order or any Supplementary Work Order required to complete the Project. For the purpose of this provision, the term of the Contract means whichever of the following is the latest and actual final period of the Contract: (1) the term of the Contract, or (2) the extended term of the Contract.

8.3 Delay: The Consultant agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim has been fully compensated for and is reflected in the All Inclusive Hourly Rates submitted by the Consultant as its bid for the contract.

ARTICLE 9 - PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes the program for participation in City procurement ("M/WBE Program") by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan"), and are detailed below. The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129. Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, ("**Participation Goals**"), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work

is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered (“Master Services Agreement”) and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor’s certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed nonresponsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor’s selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms’ participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms’ commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A

firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of the **Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the **Participation Goals** in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE** Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at casele@ddc.nyc.gov or via facsimile at (718) 391-1886. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE** Utilization Plan. (a) A Contractor may request a modification of its **M/WBE** Utilization Plan after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's

M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- (iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- (iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;
- (vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE** Utilization Plan would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE** Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B: MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of an **M/WBE** Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE** Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for an **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required Participation Goals.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

- (a) Entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) Revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) Making a finding that the Contractor is in default of the Contract;
- (d) Terminating the Contract;
- (e) Declaring the Contractor to be in breach of Contract;
- (f) Withholding payment or reimbursement;
- (g) Determining not to renew the Contract;
- (h) Assessing actual and consequential damages;
- (i) Assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) Exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) Taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

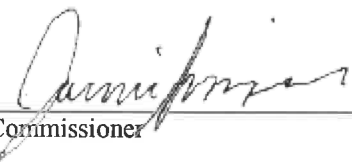
5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

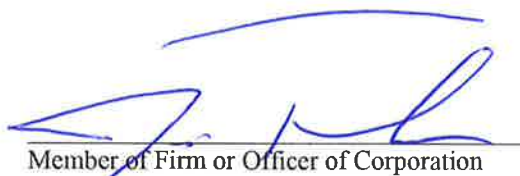
7. The Contractor's record in implementing its M/WBE Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an M/WBE Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate, the day and year first above written, one copy to remain with the Commissioner, one copy to be filed with the Comptroller of the City of New York and one copy to be delivered to the Consultant.

THE CITY OF NEW YORK

By: 
Commissioner

CONSULTANT: Warren & Panzer Engineers, PC

By: 
Member of Firm or Officer of Corporation

Print Name: Jeffrey Ternune

Title: Principal

EIN: 13-3470954

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of NEW YORK County of QUEENS ss:

On this 22nd day of September, 2021 before me personally came Jeffrey Terhune, who being by me duly sworn, did depose and say that he/she resides in the City of SOUTHAMPTON, that he/she is the Principal of WARREN & PANZER ENGINEERS, PC, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

Bianca So
Notary Public or Commissioner of Deeds
BIANCA SO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SO6409795
Qualified in Queens County
Commission Expires 10-05-2024

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

On this ____ day of _____, _____ before me personally came _____, to me known and known to me to be the Commissioner of the Department of Design and Construction of the City of New York, the person described as such in and who as such executed the foregoing instrument and s/he acknowledged to me that he executed the same as Commissioner for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

EXHIBIT A

CONTRACT INFORMATION

- Type of Services: Air Sampling, Dust Wipe Sampling and Laboratory Testing Services for various capital projects, as specified by the Commissioner on a Work Order basis

- Maximum Amount of Contract: Not to Exceed \$3,000,000.00
(Addition of items below)
 - Estimated Amount for Not to Exceed \$2,925,000
 Sampling and Testing Services:

 - Allowance for Reimbursable Services: Not to Exceed \$75,000

- Contract Time Frame:
 - Contract Term: 1095 consecutive calendar days (“ccds”)

 - Renewal of Contract Term: duration: 365 consecutive calendar days
 Increase: up to \$1,500,000.00

 - Extension of Contract Term: 365 consecutive calendar days

- Insurance Requirements: The types and amounts of insurance required are set forth in Schedule A of Appendix A. General Provisions governing the Contract are set forth in Article 7 of Appendix A. Appendix A is included as an Exhibit to the Contract.

- Subcontracts: The Contractor is not permitted to enter into any subcontract(s) for services hereunder, except for testing services identified in Exhibit D and Reimbursable Services, as set forth in Article 6. Provisions regarding subcontracting, including the requirements for approval, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

M/WBEs: To the extent practicable, the Consultant is encouraged to subcontract services to firms that have been certified by the Department of Small Business Services (DSBS) as minority-owned and women-owned business enterprises (MBEs and WBEs). A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/getcertified, by emailing DSBS at MWBE@sbs.nyc.gov, by calling the DSBS certification hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

**EXHIBIT A, CONT'D:
SCHEDULE A**

Article 7 -- Insurance¹	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<input checked="" type="checkbox"/> Workers' Compensation §7.02 <input checked="" type="checkbox"/> Disability Benefits Insurance §7.02 <input checked="" type="checkbox"/> Employers' Liability §7.02	Statutory amounts.
<input checked="" type="checkbox"/> Commercial General Liability §7.03(A)	<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:</p> <p>1. City of New York, including its officials and employees, and</p> <p>2. _____</p> <p>3. _____</p>
Commercial Auto Liability §7.03(B) If vehicles are used in the provision of services under this Agreement, then the Contractor must maintain Commercial Automobile Liability insurance in the amount specified.	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor must provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
<input checked="" type="checkbox"/> Professional Liability/Errors & Omissions §7.03(C)	<u>\$1,000,000.00</u> per claim
<input type="checkbox"/> [OTHER]	<i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i>
<input type="checkbox"/> [OTHER]	<i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i>

¹ Unless otherwise specified, article and section references in Schedule A are to the General Provisions contained in Appendix A, which is an exhibit to the Contract.

Section 10.07 – 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> <p>\$ _____</p>
Section 14.04 – Notice	
Department’s Mailing Address	Agency Head 30-30 Thomson Avenue Long Island City, Queens 11101
Contractor’s Mailing Address and Email Address for Notices	

EXHIBIT B

AUTHORITY

MAYOR'S CERTIFICATE NO. CBX
BUDGET DIRECTOR'S CERTIFICATE NO.

DATED
DATED

APPROPRIATION
COMMISSIONER'S CERTIFICATE

In conformity with the provisions of Section 6-101 of the Administrative Code of the City of New York, it is hereby certified that the estimated cost of the work, materials and supplies required by the within Contract, amounting to

Two Million, One Hundred Twenty-Two Thousand,

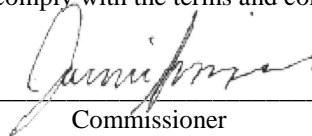
Three Hundred Seventy-Eight

Dollars (\$ 2,122,378.00)

is chargeable to the fund of the Department of Design and Construction entitled Code

Department of Design and Construction

I hereby certify that the specifications contained herein comply with the terms and conditions of the BUDGET.



Commissioner

COMPTROLLER'S CERTIFICATE

The City of New York _____

Pursuant to the provisions of Section 6-101 of the Administrative Code of the City of New York, I hereby certify that there remains unapplied and unexpended a balance of the above mentioned fund applicable to this Contract sufficient to pay the estimated expense of executing the same viz:

\$ _____

Comptroller



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/22/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER EPIC Insurance Brokers & Consultants 350 Hudson St. New York NY 10014	CONTACT NAME: Mary Griffin PHONE (A/C, No, Ext): 212-488-0380 E-MAIL ADDRESS: mary.griffin@epicbrokers.com	FAX (A/C, No): 212-954-5399
	INSURER(S) AFFORDING COVERAGE	
INSURED Warren & Panzer Engineers, P.C. 228 E. 45th Street, 2nd Floor New York NY 10017	INSURER A: Great Divide Ins Co NAIC #: 25224	
	INSURER B: Hartford Fire In Co NAIC #: 19682	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 1637479944

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contr. Pollution <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	ECP2016227-15	11/1/2020	11/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	BAP2024534-13	11/1/2020	11/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	FFX2016231-15	11/1/2020	11/1/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WCA201623015	11/1/2020	11/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A B	Professional Liability Claims Made Valuable Papers Coverage	N	N	ECP2016227-15 10UUMZP0637	11/1/2020 11/1/2020	11/1/2021 11/1/2021	Each Claim \$1,000,000 Aggregate \$2,000,000 BPP/Valuable Papers \$550,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of New York, including its officials and employees and included as Additional Insureds with respect to General Liability coverage when required by written contract.

E-PIN: 85021B0026001, DDC Pin: 8502019VP0006C, Project ID: PW335AS21: Air Sampling, Dust Wipe Sampling and Laboratory Testing Services in Conjunction with Asbestos and Lead Abatement Projects - Citywide

CERTIFICATE HOLDER**CANCELLATION 60**

City of New York Department of Design & Construction
 30-30 Thomson Ave.
 Long Island City NY 11101

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE



CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
WARREN AND PANZER ENGINEERS PC
228 EAST 45TH ST 2NDFL
NEW YORK, NY 10017
1b. Business Telephone Number of Insured
1c. Federal Employer Identification Number of Insured or Social Security Number
133470954

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)
City of New York Department of Design & Construction
30-30 Thomson Ave.
Long Island City, NY 11101
3a. Name of Insurance Carrier
ShelterPoint Life Insurance Company
3b. Policy Number of Entity Listed in Box "1a"
DBL573641
3c. Policy effective period
01/01/2021 to 12/31/2021

4. Policy provides the following benefits:
[X] A. Both disability and paid family leave benefits.
[] B. Disability benefits only.
[] C. Paid family leave benefits only.
5. Policy covers:
[X] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
[] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 09/23/2021 By Antoinette Labanich
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)
Telephone Number 212-295-8000 Name and Title Antoinette Labanich, Account Manager

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.
If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board
According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.
Date Signed By
(Signature of Authorized NYS Workers' Compensation Board Employee)
Telephone Number Name and Title

Please Note: Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. Insurance brokers are NOT authorized to issue this form.



STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (Use street address only) Warren & Panzer Engineers, P.C. 228 East 48 th Street, 2 nd Floor New York, NY 10017 Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)	1b. Business Telephone Number of Insured (212) 922 0077 1c. NYS Unemployment Insurance Employer Registration Number of Insured 1d. Federal Employer Identification Number of Insured or Social Security Number 13-3582930
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) City of New York Department of Design & Construction 30-30 Thomson Ave. Long Island City, NY 11101	3a. Name of Insurance Carrier Great Divide Insurance Company 3b. Policy Number of entity listed in box "1a" WCA201623015 3c. Policy effective period <u>11/1/20</u> to <u>11/1/21</u> 3d. The Proprietor, Partners or Executive Officers are <input checked="" type="checkbox"/> included. (Only check box if all partners/officers included) <input type="checkbox"/> all excluded or certain partners/officers excluded.

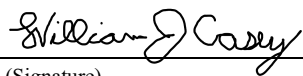
This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

*The Insurance Carrier will also notify the above certificate holder within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) **Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.***

Please Note: Upon the cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: William J Casey
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by:  9/24/2021
(Signature) (Date)

Title: AVP

Telephone Number of authorized representative or licensed agent of insurance carrier: _____

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

**CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT**

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

Edgewood Partners Insurance Center

[Name of broker or agent (typewritten)]

One State Street Plaza, 9th Floor, New York, NY 10004

[Address of broker or agent (typewritten)]

Antoinette.Labanich@epicbrokers.com

[Email address of broker or agent (typewritten)]

212-295-8000

[Phone number/Fax number of broker or agent (typewritten)]

Antoinette Labanich

[Signature of authorized official, broker, or agent]

Antoinette Labanich - Account Manager

[Name and title of authorized official, broker, or agent (typewritten)]

State of Massachusetts)

County of Essex) ss.:

Sworn to before me this 23rd day of September 2021

Patricia L. Clements

NOTARY PUBLIC FOR THE STATE OF Massachusetts



Patricia L. Clements
NOTARY PUBLIC
Commonwealth of
Massachusetts
My Commission Expires
3/18/2027

EXHIBIT C

ALL INCLUSIVE HOURLY RATES

TITLES: Staffing requirements are set forth below. Such staffing requirements specify the titles of personnel which the Consultant will be required to provide through its own employees.

ALL INCLUSIVE HOURLY RATES: All Inclusive Hourly Rates for required titles of personnel are set forth below. Such All Inclusive Hourly Rates were submitted by the Consultant as its bid for the Contract. Such All Inclusive Hourly Rates are deemed to include all expenses incurred by the Consultant in the performance of all required services for the Project. The expenses deemed included in such All Inclusive Hourly Rates are set forth in Article 7. No increase in such rates shall be provided for services performed during non-regular business hours.

INCREASES IN ALL INCLUSIVE HOURLY RATES: The All Inclusive Hourly Rates set forth in this Exhibit C shall be subject to increases after the three year base term of the contract, as set forth in Article 7.

TITLE	ALL INCLUSIVE HOURLY RATE
Project Manager (Asbestos)	\$ _____
Project Manager (Lead)	\$ _____
Project Monitor (Asbestos)	\$ _____
Air Sampling Technician (Asbestos & Lead)	\$ _____
Lead Risk Assessor (Lead)	\$ _____
Registered Design Professional	\$ _____

EXHIBIT D

TESTING SERVICES AND UNIT PRICES

Testing Services and Unit Prices: The Consultant shall provide the testing services set forth in this Exhibit. Payment for Testing Services shall be in accordance with the unit prices set forth on the following page. Such unit prices were submitted by the Consultant as its bid for the Contract. The Consultant shall not be entitled to any mark-up on unit prices for testing services.

Expenses Included: The expenses that are deemed included in the Unit Prices for Testing Services are set forth in Article 7.

Test Results and Laboratory Reports: Requirements for the submission of test results and Laboratory Reports are set forth in Article 6.

Other Testing Services: The Consultant may be directed to perform other types of tests or to provide other types of testing equipment. When so directed in writing, the Consultant shall provide such services or equipment as a Reimbursable Service.

Increases in Unit Prices: The Unit Prices set forth in this Exhibit shall be subject to increases after the three year base term of the Contract, as set forth in Article 7.

TESTING SERVICES

Item #	Description of Item (See Article 6)	Analytical Method	Unit	Unit Price
Item # 1 (Article 6.5.5a)	Air Sample Analysis for Asbestos by Phase Contrast Microscopy 12 hour Turn Around Time (TAT)*	NIOSH 7400	Per test	\$ _____
Item # 2 (Article 6.5.5a)	Air Sample Analysis for Asbestos by Phase Contrast Microscopy 2 hour TAT	NIOSH 7400	Per test	\$ _____
Item # 3 (Article 6.5.5b)	Air Sample Analysis for Asbestos by Transmission Electron Microscopy 12 hour TAT	40 CFR Part 763, Subpart E, Appendix A	Per test	\$ _____
Item # 4 (Article 6.5.5b)	Air Sample Analysis for Asbestos by Transmission Electron Microscopy 2 hour TAT	40 CFR Part 763, Subpart E, Appendix A	Per test	\$ _____
Item # 5 (Article 6.5.5c)	Air Sample Analysis for Lead by Flame Atomic Absorption Spectrophotometry 12 hour TAT	NIOSH 7082	Per test	\$ _____
Item # 6 (Article 6.5.5c)	Air Sample Analysis for Lead by Flame Atomic Absorption Spectrophotometry 2 hour TAT	NIOSH 7082	Per test	\$ _____
Item # 7 (Article 6.5.5d)	Lead Dust Wipe Analysis by Flame Atomic Absorption Spectrophotometry, Direct Aspiration 12 hour TAT	EPA METHOD 7000B	Per test	\$ _____
Item # 8 (Article 6.5.5d)	Lead Dust Wipe Analysis by Flame Atomic Absorption Spectrophotometry, Direct Aspiration 2 hour TAT	EPA METHOD 7000B	Per test	\$ _____

* **Turn Around Time (TAT):** TAT means the period of time within which the Consultant must report the results of a test by telephone, as well as by facsimile or email, to the DDC OEHS Representative. Such period of time shall commence when the sample is clocked in at the laboratory.

EXHIBIT E

SCHEDULE B: M/WBE UTILIZATION PLAN

The Consultant's M/WBE Utilization Plan is set forth in Volume 1. Such M/WBE Utilization Plan was submitted by the Consultant as part of its proposal for the Contract.

EXHIBIT F

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

APPENDIX A

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

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

C. “City” means the City of New York.

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

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

F. “Comptroller” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

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

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

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

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

L. “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.*

M. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

Section 2.03 Certification Relating to Fair Practices

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

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

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

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

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor’s Office of Contract Services. The Contractor acknowledges that the Department’s reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

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

Section 2.06 Authority to Execute Agreement

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

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

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

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

Section 3.02 Subcontracting

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$5,000 or less. Except where the Agreement provides otherwise, the Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$5,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal (www.nyc.gov/pip). Such reports shall be provided in portable document format (PDF) and Microsoft Excel format and delivered to the Commissioner's Representative and to the Office of the Agency Chief Contracting Officer. In addition, the Contractor shall submit a revised report each time it enters into a new subcontract or enters a new subcontractor into the City's Payee Information Portal in an amount that does not exceed \$5,000.00.*

2. *Approval when subcontract is greater than \$5,000.*

a. The Contractor shall not enter into any subcontract for an amount greater than \$5,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$5,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.¹

¹ Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

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

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

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

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

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

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

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

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

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the

existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

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

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

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

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3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

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

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

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) 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.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

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

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

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

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

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

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

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

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

- a. Disapproval of the Contractor; and/or
- b. Suspension or termination of the Agreement; and/or
- c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

Section 4.06 Paid Sick Leave Law

A. Introduction and General Provisions.

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of

work in New York City to be provided with paid sick time.² Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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

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

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

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

B. Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

² Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

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

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

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6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLI does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLI are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLI for such employee;

5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

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

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSLI. Such notice must be in English and the primary language spoken

by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

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

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

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

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. 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 Agreement 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.

2. 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 this Section 4.07, 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.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

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

b. the rights and remedies afforded to its employees under Admin. Code §§ 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 Agreement.

4. For the purposes of this Section 4.07, "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.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records

documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

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

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

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

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

B.

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

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

C.

6. 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.

7. 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 years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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

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

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

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

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

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports,

information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

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

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

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

any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

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

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

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

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

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully

cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

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

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the

United States relating to the particular goods or services procured by the City under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;

8. Other forms approved by the New York State Workers' Compensation Board; or
9. Other proof of insurance in a form acceptable to the City.

Section 7.03 Other Insurance

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. The Contractor is providing professional services pursuant to this Agreement. The Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended

reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

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

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City, or its officials or employees, of a claim upon demand, the Contractor shall reimburse the City, or its officials or employees as the case may be, for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated

to provide the City or its officials and employees with a defense or reimbursement for attorney's fees.

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

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

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

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

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

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

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

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by the City Without Cause

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

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize

any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

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

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

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

Section 10.04 Force Majeure

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

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

C. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be

less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of

suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

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

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the

“EFT Vendor Payment Enrollment Form” available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section 11.02 is applicable to contracts valued at \$25,000.00 and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys’ fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be

finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City

Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

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

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

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

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

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

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

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

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's

functions, including, but not limited to, granting extensions of time to present or respond to submissions;

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

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

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

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

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

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of

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

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

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

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

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in

any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

Section 13.06 Americans with Disabilities Act (ADA)

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

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

Section 13.07 Voter Registration

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

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

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

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

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

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

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

6. For the purposes of Paragraph A of this Section 13.06, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

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

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

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

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

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

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

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

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

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

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

- a. seek to influence an applicant's political preference or party designation;
- b. display any political preference or party allegiance;

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

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

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.08 Political Activity

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

Section 13.09 Religious Activity

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

Section 13.10 Participation in an International Boycott

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

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

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

Section 13.11 MacBride Principles

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

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

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

Section 13.12 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. “Contractors” to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

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

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

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

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

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

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

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.13 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks

and Recreation, Department of Probation, and Department of Youth and Community Development.

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

A. The Contractor hereby designates the business address and email address and the Department hereby designates the business address specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to

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which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

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AFFIRMATION

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

Full name of Proposer or Bidder *[below]*

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____

B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____

C - Corporation
EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers, or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

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.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



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

EXHIBIT G
HIRING AND EMPLOYMENT RIDER

HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process,

and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

(NO TEXT ON THIS PAGE)



DIVISION OF SAFETY & SITE SUPPORT

VOLUME 2 OF 2

PROJECT ID: PW355AS21

**AIR SAMPLING, DUST WIPE SAMPLING AND LABORATORY TESTING SERVICES
IN CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN
THE FIVE BOROUGHES OF THE CITY OF NEW YORK**

**Together With All Work Incidental Thereto
CITYWIDE
CITY OF NEW YORK**

Contractor.

Dated _____, 20____

**APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY**

Acting Corporation Counsel

Dated _____, 20____

(NO TEXT ON THIS PAGE)

CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
SAFETY AND SITE SUPPORT DIVISION


ADDENDA CONTROL SHEET

BID SUBMISSION DATE / TIME: **April 6, 2021, 11:30 AM – 2:00 PM**

BID OPENING DATE/ TIME: **April 6, 2021, 2:30 PM**

PROJECT NO.: **PW335AS21**

DESCRIPTION: **AIR SAMPLING, DUST WIPE SAMPLING, AND LABORATORY TESTING SERVICES IN CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN THE FIVE BOROUGHES OF THE CITY OF NEW YORK**

Addendum		Addendum Contains:					General Counsel Approval
No.	Date	Revised Bid Date/Time	Revised Bid Schedule	Questions & Responses	Additional Amendments	Drawings (number)	
1	3/31/2021	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> (0)	 RCJ 3/30
2		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
3		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
4		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
5		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
6		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
7		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
8		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
9		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
10		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
11		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
12		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	

The Table above is a guide. Refer to the referenced Addendum for specific information.

ATTACH TO CONTRACT DOCUMENTS
THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF SAFETY AND SITE SUPPORT

PROJECT ID: PW335AS21

AIR SAMPLING, DUST WIPE SAMPLING, AND LABORATORY TESTING SERVICES IN
CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN THE
FIVE BOROUGHES OF THE CITY OF NEW YORK

ADDENDUM NO. 1

DATED: 3/31/2021

THIS ADDENDUM IS HEREBY MADE A PART OF THE CONTRACT DOCUMENTS

1. **Refer** to the Contract Documents, Volume 1 Bid Booklet, page A-5
Replace the Bid Information (Attachment 1) with the attached page A-5R:
The Project ID in the title was revised to read PW335AS21.
2. **Refer** to the Contract Documents, Volume 2 Bid Booklet, Article 6, Section 6.2.2: Lead Risk Assessor (Lead)
Replace Page 8 with the attached page 8R:
Under the paragraph (b) Qualifications, the number of years of experience was revised to (5).
3. The attendance sheet and the presentation from the Pre-Bid Conference held on 3/22/2021 are attached.
Please note that the presentation is for informational purposes; should any inconsistencies exist between the
presentation and the Contract Documents; the Contract Documents will prevail.
4. For additional information see the attached page of "Questions Submitted by Bidders and DDC's Responses".

END OF ADDENDUM NO. 1

By signing in the space provided below, the bidder acknowledges receipt of this Addendum consisting of one (1) page and Eighteen (18) pages of attachments.

THIS ADDENDUM MUST BE SIGNED BY ALL BIDDERS AND ATTACHED TO THEIR BID

Alla
Ayzenshtat

Digitally signed by Alla Ayzenshtat
DN: cn=Alla Ayzenshtat, o=NYC DDC,
ou=Safety & Site Support,
email=ayzenshtat@ddc.nyc.gov, c=US
Date: 2021.03.30 19:05:34 -04'00'

Alla Ayzenshtat
Assistant Commissioner

Warren & Panzer Engineers, PC

Name of Bidder

By: 



Department of
Design and Construction

**STANDARD PROFESSIONAL SERVICE CONTRACT
FOR
AIR SAMPLING, DUST WIPE SAMPLING, AND
LABORATORY TESTING SERVICES IN CONJUNCTION
WITH ASBESTOS AND LEAD ABATEMENT PROJECTS
WITHIN THE FIVE BOROUGHES OF THE CITY OF NEW
YORK**

First Deputy Commissioner
Jamie Torres-Springer

Welcome!

This non-mandatory pre-bid conference is for the Standard Professional Service Contract for Safety & Site Support Division-Environmental/Hazmat Services for Various Projects (CITYWIDE)

FMS ID: PW335AS21

PIN: 8502019VP0005C

Please complete Sign-In Sheet!

[Microsoft Forms \(office.com\)](#)

Agenda

- Welcome/Sign-in & Staff Introduction – *Judith Coriolan*
- Overview of DDC – *Alla Ayzenshtat*
- Contract Technical Summary – *Claudia Tejada*
- MWBE Requirements – *Yamina Youb*
- Contract Procurement Process – *Christine Espinal*
- Q & A Session - (Written questions)

Key Staff

- **Safety & Site Support Division** - Office of Environmental & Hazmat Services (OEHS)
 - Alla Ayzenshtat, ASP – Assistant Commissioner
 - Judith Coriolan – Executive Director
 - Claudia A Tejada – Hazmat Section Chief

- **Finance & Procurement**
 - Nicholas Mendoza – Agency Chief Contracting Officer (ACCO)
 - Lorraine Holley – Deputy Agency Chief Contracting Officer (DACCO)
 - Donna Pope – Director (HireNYC contact)
 - Karen General – Deputy Director
 - Christine Espinal – Senior Contract Manager

- **Office of Diversity and Industry Relations (ODIR)**
 - Wayne Lambert - Chief Officer
 - Lea Mapp – Deputy Chief
 - Yamina Youb- MWBE Compliance Analyst
 - Adenike Colonel - MWBE Compliance Analyst

Overview of DDC – Alla Ayzenshtat, ASP

- DDC consists of three primary divisions: Public Buildings, Infrastructure, and Safety & Site Support.
- The Public Buildings Division serves various clients such as NYPD, FDNY, DSNY, NYPL, DPR, DOT, DOC, Courts, DCAS, and cultural facilities.
- The Infrastructure Division serves DEP and DOT and manages projects related to the installation, replacement, and upgrade of water mains, storm and sanitary sewers, and roadways.
- The Safety & Site Support Division serves Infrastructure and Public Buildings primarily through support services during the pre-design, design, construction and post-construction phases. Services such as special inspection, geotechnical reporting, and laboratory analysis are typical. The Office of Environmental & Hazmat Services (OEHS) receives the majority of work from DEP and DOT.

Contract Technical Summary - Claudia A Tejada

- Air Sampling, Dust Wipe Sampling and Laboratory Testing Services for various capital projects, as specified by the Commissioner on a Work Order basis.
- The Consultant shall perform sampling services at various locations throughout the five boroughs of the City of New York, where abatement work is being performed, either by another entity under a separate contract with the City or by certified workers, employed by the City of New York.

Contract Technical Summary - Claudia A Tejada

- This is a **WORK ORDER** based contract - Multiple projects will be assigned simultaneously on a Rotation Basis.

- Staffing Requirements: Qualification Requirements and Responsibilities (Article 6.2):
 - **Four (4) Air Sampling Technicians (Asbestos & Lead)**
 - ✓ Certified NYS Project Air Sampling Technician
 - ✓ Three (3) years experience in asbestos projects
 - ✓ Three (3) months experience in performing air sampling for lead and or ambient air per EPA/OSHA/NIOSH

 - **Four (4) Lead Risk Assessor (Lead)**
 - ✓ Certified EPA Lead Risk Assessor
 - ✓ Five (5) years experience **performing** lead-based paint hazard assessment inspections.
 - ✓ Three (3) years experience in Category 1 and 2 USEPA/HUD lead abatement projects

 - **Six (6) Project Monitors**
 - ✓ Certified NYS Asbestos Project Air Sampling Technician **and** NYS Asbestos Project Monitor
 - ✓ Five (5) years experience in project monitoring, two (2) of which must have been within NYC

Contract Technical Summary - Claudia A Tejada

- **Project Manager (Asbestos)** – minimum of one (1)
 - Asbestos Project Monitor Certificate and Asbestos Designer Certificate issued by NYSDOL
 - Seven (7) years experience in asbestos project management, of which four (4) must have been in NYC

- **Project Manager (Lead)** – minimum of one (1)
 - Lead Risk Assessor Certification issued by the US EPA
 - Three (3) years experience in lead hazard inspections and/or assessment
 - Four (4) years experience in performing Category 1 and 2 USEPA/HUD clearance sampling

- **Registered Design Professional** - minimum of one (1)
 - Two (2) years experience in preparing Work Place Safety Plans for asbestos abatement permits
 - Degree in Engineering, Science or Architecture
 - Registered as a Professional Engineer or Registered Architect in the State of New York
 - Five (5) years experience with NYCDEP asbestos regulations and NYCDOB/FDNY regulations

Contract Technical Summary - Claudia A Tejada

➤ Role & Responsibilities of Project Manager (Article 6.2)

- (1) **oversee** the progress of the work for all assigned projects
- (2) **supervise** project monitors and air sampling technicians
- (3) provide **daily updates** on the project, **including photographs** of the handler and supervisor **licenses**
- (4) **review and transmit** daily air monitoring data to DDC
- (5) **prepare and submit weekly project oversight** submissions and Final Closeout Reports, (6) attend pre-abatement and progress meetings
- (7) **review** abatement contractor **submittals**, including regulatory filings, plans, protocols and procedures to identify errors or inconsistencies
- (8) review air and dust wipe sampling data to **ensure compliance with all applicable federal, state and local laws, rules and regulations**
- (9) **prepare** and submit **Re-occupancy letters** within two (2) hours of achieving clearance criteria, and
- (10) perform a **quality control review** of all correspondence, data and reports to ensure the accuracy, quality and **delivery** of all required project documents prior to submission to DDC. The Project Manager must provide **immediate notification** to the Director of any **situation that requires prompt action** to reduce potential hazards to workers and/or members of the public.

Contract Terms and Submission Deadline – Claudia Tejada

Terms

- 3 years, \$3 million capacity
- 1 year renewal option with up to \$1.5 million capacity increase
- 1 year Time extension in renewal contract

Minority/Women-owned Business Enterprise (M/WBE) Program – Yamina Youb

M/WBE Participation Goal: **30%**
(15% Black American / 15% WBE)

- Local Law 1 of 2013
- M/WBE Utilization can be achieved by:
 - M/WBE prime contractor
 - M/WBE subcontractor(s)
 - Qualified M/WBE Joint Venture

M/WBE firm must be certified by the NYC Small Business Services (SBS). For more information about certified M/WBE vendors, please visit the SBS website at: www.nyc.gov/sbs

Contract Procurement Process - Christine Espinal

- Payee Information Portal (PIP)
- Online Procurement System (Passport) Compliance
- HireNYC: Goods & Services Program – Contact: Donna Pope
 - poped@ddc.nyc.gov
 - 718-391-1556
- Request For Information (RFI)
- All questions/RFI's must be submitted in writing to DDC Bid Room at least 5 business days before BID opening
- Email: CSB_projectinquiries@ddc.nyc.gov

Questions & Answers



Department of
Design and Construction

Thank you

**First Deputy Commissioner
Jamie Torres-Springer**

Pre-Bid Conference Attendance Sheet

PW335AS21

ID	Start time	Name	Title	Company	E-mail	Telephone
1	3/22/21 10:05:23	Lukas Prochniewicz	Project Manager	KAM Consultants Corp.	lukasp@kamconsultants.com	(917) 687-7226
2	3/22/21 10:05:29	Alex Rukasov	Manager	Total Quality Environmental Inc.	alex.rukasov@totalqualityenvironmental.com	718-404-6704
3	3/22/21 10:05:24	Christine Espinal	Contract Manger	DDC/ACCO CSB	espinalc	718-391-1727
4	3/22/21 10:06:47	Mark Drozdov	SVP	Lozier, Inc.	MDrozdov@LozierInc.com	9174175103
5	3/22/21 10:11:52	Yamina Youb	M/WBE Compliance Analyst	DDC	youbya@ddc.nyc.gov	718-391-1607
6	3/22/21 10:13:05	Alla Ayzenshtat	AC - Safety & Site Support	DDC	ayzenshal@ddc.nyc.gov	718-391-1624
7	3/22/21 10:25:27	GEORGE KOUVARAS	PRESIDENT	KAM CONSULTANTS CORP.	GEORGE.KOUVARAS@KAMCONSULTANTS.COM	718-729-1997
8	3/22/21 10:25:34	Adenike Colonel	M/WBE Outreach and Compliance Specialist	NYC DDC	COLONELAD@NYC.DDC.GOV	718-926-0156
9	3/22/21 10:25:43	Kimberly Tejada	Office Manger	Defash Global Resources Inc.	Defash2@aol.com	3476071422
10	3/22/21 10:27:20	Judith Coriolan	Executive Director	DDC	coriolaju@ddc.nyc.gov	718-391-1639
11	3/22/21 10:00:00	Claudia Tejada	Hazmat Section Chief	DDC	tejedacl@ddc.nyc.gov	718-391-1166

Addendum	Addendum Question No.	Bidder's Question	DDC's Response
1	1	Can we have a copy of the sign in sheet?	Questions and attendance list will be provided in an addendum after the meeting.
1	2	Is the bid bond for all 3 years?	No
1	3	What firm is the incumbent?	PW335AS20 was awarded to KAM Consulting Group
1	4	What happens if the bid exceeds the 3 million estimate of the engineers?	This is a standard professional services contract with a maximum of 3 million. It is not to exceed that amount.
1	5	Is the 30% WMBE mandatory?	Yes it is, 15% has to be designated to Black American business and 15% designated to MWBE business.
1	6	Can the registered design professional be from another company or does it need to be of the company that bid the contract?	It has to be a design professional with the company.

CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
SAFETY AND SITE SUPPORT DIVISION


ADDENDA CONTROL SHEET

BID SUBMISSION DATE / TIME: **April 6, 2021, 11:30 AM – 2:00 PM**

BID OPENING DATE/ TIME: **April 6, 2021, 2:30 PM**

PROJECT NO.: **PW335AS21**

DESCRIPTION: **AIR SAMPLING, DUST WIPE SAMPLING, AND LABORATORY TESTING SERVICES IN CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN THE FIVE BOROUGHES OF THE CITY OF NEW YORK**

Addendum		Addendum Contains:					General Counsel Approval
No.	Date	Revised Bid Date/Time	Revised Bid Schedule	Questions & Responses	Additional Amendments	Drawings (number)	
1	3/31/2021	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> (0)	
2	4/2/2021	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> (0)	 4/2/21
3		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
4		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
5		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
6		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
7		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
8		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
9		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
10		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
11		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	
12		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (0)	

The Table above is a guide. Refer to the referenced Addendum for specific information.

ATTACH TO CONTRACT DOCUMENTS
THE CITY OF NEW YORK

DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF SAFETY AND SITE SUPPORT

PROJECT ID: PW335AS21

AIR SAMPLING, DUST WIPE SAMPLING, AND LABORATORY TESTING SERVICES IN
CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN THE
FIVE BOROUGHES OF THE CITY OF NEW YORK

ADDENDUM NO. 2

DATED: 4/2/2021

THIS ADDENDUM IS HEREBY MADE A PART OF THE CONTRACT DOCUMENTS

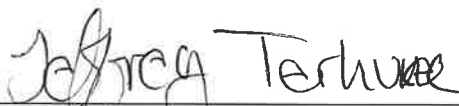
1. **Refer** to the Contract Documents, Volume 1 Bid Booklet, page A-5R
Replace the Bid Information (Attachment 1) with the attached page A-5R1:
The requirements for Bid Bonds, Performance Bonds, and Payment Bonds have been removed.
2. **Refer** to the Contract Documents, Volume 1 Bid Booklet, Page A-8R
Replace Page 8 with the attached page 8R1:
Changes are marked in the right border, and include revisions to the allowable subcontracting requirements in paragraph (f).

END OF ADDENDUM NO. 2

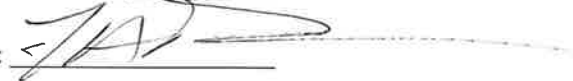
By signing in the space provided below, the bidder acknowledges receipt of this Addendum consisting of one (1) page and two (2) pages of attachments.

THIS ADDENDUM MUST BE SIGNED BY ALL BIDDERS AND ATTACHED TO THEIR BID

Alla Ayzenshtat
Assistant Commissioner



Name of Bidder

By: 



DIVISION OF SAFETY & SITE SUPPORT

VOLUME 2 OF 2

PROJECT ID: PW355AS21

**AIR SAMPLING, DUST WIPE SAMPLING AND LABORATORY TESTING SERVICES
IN CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN
THE FIVE BOROUGHES OF THE CITY OF NEW YORK**

**Together With All Work Incidental Thereto
CITYWIDE
CITY OF NEW YORK**

Contractor.

Dated _____, 20____



DIVISION OF SAFETY & SITE SUPPORT

VOLUME 2 OF 2

PROJECT ID: PW355AS21

AIR SAMPLING, DUST WIPE SAMPLING AND LABORATORY TESTING SERVICES
IN CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT PROJECTS WITHIN
THE FIVE BOROUGHES OF THE CITY OF NEW YORK

Together With All Work Incidental Thereto
CITYWIDE
CITY OF NEW YORK

Contractor.

Dated _____, 20__

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Handwritten signature of David G. Vali

Acting Corporation Counsel

Handwritten initials and date 12/22/20

Dated December 22, 2020