NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSTRUCTION MANAGEMENT RETAINER
CONSULTANT CONTRACT
FOR THE PROVISION OF CONSTRUCTION MANAGEMENT AND OTHER CONSULTANT SERVICES
NYCEDC CONTRACT NO. 108200005
PROJECT CODE NO. 10820

CONSTRUCTION MANAGEMENT SERVICES CONTRACT

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSTRUCTION MANAGEMENT RETAINER
CONSULTANT CONTRACT
FOR THE PROVISION OF CONSTRUCTION MANAGEMENT AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 108200005
PROJECT CODE NO. 10820

PART I **SPECIFIC TERMS AND CONDITIONS**

PART II **GENERAL TERMS AND CONDITIONS**

PART III **APPENDICES**

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSTRUCTION MANAGEMENT RETAINER
CONSULTANT CONTRACT
FOR CONSTRUCTION MANAGEMENT AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 108200005
PROJECT CODE NO. 10820

PART I
SPECIFIC TERMS AND CONDITIONS

New York City Economic Development Corporation (the "Corporation" or "NYCEDC") and the Consultant identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other valuable and good consideration, do hereby agree to all of the terms and conditions set forth in (i) these Specific Terms and Conditions (Part I) set forth immediately below, (ii) the General Terms and Conditions (Part II) annexed hereto and made a part hereof and (iii) the Appendices (Part III) annexed hereto and made a part hereof. Capitalized terms shall have the meaning set forth in *Definitions* (Appendix A) unless otherwise defined in this Contract or the context otherwise requires.

1. The Contract

1.1 **Contract**: These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
1.2 **NYCEDC Contract No.** 108200005
1.3 **Contract Date:** The date the Contract is fully executed
1.4 **Commencement Date:** December 1, 2024
1.5 **Term:** Five (5) years with options to renew at NYCEDC's sole discretion for the completion of Project Assignments
1.6 **Project:** Construction Retainer for Construction Management and Related Consultant Services
1.7 **Project Site:** Citywide, as determined on a Project Assignment basis
1.8 **Maximum Contract Price:** $2,000,000
1.9 **Subcontractors' Costs:** The Subcontractors' Costs will be established in amounts set forth on a Project Assignment basis, in accordance with *Payments* (Appendix C).
1.10 **General Conditions Costs:** The General Conditions Costs will be established in amounts set forth on a Project Assignment basis, in accordance with *Payments* (Appendix C).
1.11 **Retainage:** Percentage to be paid in accordance with *Payments* (Appendix C) for each Project Assignment.
1.12 **Retainage Payment Date:** See *Payments* (Appendix C) for each Project Assignment.
1.13 **M/WBE Participation Goal**: 40%

2. **Parties**

2.1 **The Corporation**: New York City Economic Development Corporation, a not-for-profit corporation, organized under the laws of the State of New York.
2.2 **Director**: Executive Vice President of Capital Program
2.3 **The Consultant**: NV5-Naik JV, a limited liability company, having an office at:
32 Old Slip, Suite 401
New York, NY 10005
Federal Tax ID #: 87(2)(b)
2.4 **Principal**: Joseph Menzer, VP
2.5 **Person in Charge:** Joseph Menzer, VP

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**
New York City Economic Development Corporation
One Liberty Plaza
New York, N.Y. 10006
Attn: Executive Vice President of Capital Program

with a copy to:

New York City Economic Development Corporation
One Liberty Plaza
New York, N.Y. 10006
Attn: General Counsel

3.2 **Notices to the Consultant:**
NV5-Naik JV
32 Old Slip, Suite 401
New York, NY 10005
Attn: Joseph Menzer

4. **Funding Source** The payments to be made to the Consultant by the Corporation pursuant to this Contract will be made from funds identified in each Project Assignment and in accordance with the provisions of Appendix L – Outside Funding Source Provision, and may include funds in accordance with the provisions of Appendix J - Applicable Agreements and Appendix K - Applicable Requirements, as stated below**.** The Consultant agrees to comply with the provisions of each of such Appendices.

4.1 **Type of Funds:** To be determined on a Project Assignment basis
4.2 **Funding Agencies:** To be determined on a Project Assignment basis
4.3 **Applicable Statutes:** To be determined on a Project Assignment basis
4.4 **Applicable Agreements:** To be determined on a Project Assignment basis

This Contract may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully executed instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the Contract Date herein above written.

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By: Elizabeth Arnaiz (Feb 27, 2025 17:07 EST)

Name: Elizabeth Arnaiz

Title: EVP

NV5-NAIK JV

By:

Name: Joseph Menzer, PE

Title: Partner

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSTRUCTION MANAGEMENT RETAINER
CONSULTANT CONTRACT
FOR THE PROVISION OF CONSTRUCTION MANAGEMENT AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 108200005
PROJECT CODE NO. 10820

PART II
GENERAL TERMS AND CONDITIONS

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSTRUCTION MANAGEMENT RETAINER
CONSULTANT CONTRACT
FOR THE PROVISION OF CONSTRUCTION MANAGEMENT AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 108200005
PROJECT CODE NO. 10820

PART II
GENERAL TERMS AND CONDITIONS

ARTICLE 1 PERFORMANCE OF SERVICES 1
ARTICLE 2 COMPENSATION 7
ARTICLE 3 SUSPENSION OR TERMINATION 9
ARTICLE 4 PERSONNEL AND SUBCONTRACTORS 13
ARTICLE 5 DOCUMENTS AND MATERIALS 19
ARTICLE 6 INDEMNIFICATION, CLAIMS AND INSURANCE 22
ARTICLE 7 REPRESENTATIONS AND WARRANTIES 30
ARTICLE 8 APPLICABLE LAWS, RULES AND REGULATIONS 31
ARTICLE 9 M/WBE REQUIREMENTS 35
ARTICLE 10 MISCELLANEOUS 40

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSTRUCTION MANAGEMENT RETAINER
CONSULTANT CONTRACTFOR THE PROVISION OF ON-CALL CONSTRUCTION MANAGEMENT AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 108200005
PROJECT CODE NO. 10820

PART II
GENERAL TERMS AND CONDITIONS

The Corporation and the Consultant agree as follows:

ARTICLE 1
PERFORMANCE OF SERVICES

1.1 Services. The Corporation hereby retains and engages the Consultant and the Consultant agrees to perform the Services as described in the *Scope of Services* (Appendix B), attached hereto, and as specified in accordance with any Executed Project Assignment awarded to the Consultant on an as-needed basis in connection with a Project Assignment according to the Project Assignment Process below.

1.1.1 Project Assignment Process

1.1.1.1 The Corporation may assign a Project Assignment to the Consultant through the Project Assignment Process, as follows:

(i) Each Project Assignment Process will start with a Project Assignment Solicitation that is issued by the Corporation to the Consultant. The Project Assignment Solicitation will include:

1.1.1.1.i.1 the certain Services and Tasks the Corporation seeks for a specific Project, including, without limitation, a description of the specific construction Project, anticipated milestones, and any additional background information that will assist the Consultant in developing its Project Assignment Proposal;

1.1.1.1.i.2 the deadline for the Consultant to submit a Project Assignment Proposal;

1.1.1.1.i.3 any Outside Funding Requirements related to the procurement, administration and implementation of the Project Assignment including, the requirements related to M/WBE Participation and Diverse Utilization Goals;

1.1.1.1.i.4 the manner in which the Corporation intends to pay for Project Assignment Team staffing costs under the Project Assignment, which may include:

(1) lump sum payment, (2) payment based on hourly billing rates with applicable Overhead Rates, or (3) a combination thereof, in accordance with *Payments* (Appendix C);

1.1.1.1.i.5 and any additional Project Assignment specific information or submittal requests the Corporation may have for the Consultant.

(ii) The following methods may be employed by the Corporation, in its sole discretion, in the Project Assignment Solicitation:

1.1.1.1.ii.1 A "sole source" assignment for a Project Assignment may be employed when the Consultant has:

1.1.1.1.ii.1.1 Previous association with the Project Assignment;

1.1.1.1.ii.1.2 familiarity of the Project Assignment site and/or project type;

1.1.1.1.ii.1.3 availability given the work-load distribution among the available consultants on retainer;

1.1.1.1.ii.1.4 and/or, any combination of the above justifications

1.1.1.1.ii.2 A "mini-RFP" process where the Consultant, along with other consultants on retainer, are provided with the identical documents related to the specific Project Assignment, and the Consultant is asked to submit a Project Assignment Proposal for the Corporation's review and selection. Any specific submittal requirements for the mini-RFP will be outlined by the Corporation in the Project Assignment Solicitation, prior to submission of the Consultant's Project Assignment Proposal;

1.1.1.1.ii.3 A "rotation" and/or assignment based on the Corporation's needs;

1.1.1.1.ii.4 Any combination of the above.

(iii) Upon receiving the Project Assignment Solicitation, the Consultant will submit to the Corporation for its review, a Project Assignment Proposal for the specific Project Assignment reflecting the requirements of the Project Assignment Solicitation including, but not limited to, the following:

1.1.1.1.iii.1 Description of all specific Tasks and Services to be performed and the Consultant's approach to performing those Tasks, Services, and the Work generally;

1.1.1.1.iii.2 A Project Assignment schedule including projected milestones including Final Completion, overall timeline, and duration for each Task, as well as

key relationships between Tasks (e.g. predecessors for each Task that must be maintained to ensure performance within the overall time-line);

1.1.1.1.iii.3 Titles, names, and resumes of the members of the proposed Project Assignment Team, who will deliver the Project Assignment with any relevant Subconsultants and Subcontractors;

1.1.1.1.iii.4 M/WBE Subcontractor Participation Plan and any other required M/WBE forms;

1.1.1.1.iii.5 A summary page explaining the proposed Maximum Project Assignment Price that shall include:

1.1.1.1.iii.5.1 Project Assignment Team staffing costs in a Project Assignment Cost schedule, including the estimate of hours and actual hourly wages to be paid for the Services of the Project Assignment Team

1.1.1.1.iii.5.2 Subcontractors' Costs

1.1.1.1.iii.5.3 General Conditions Costs, with a list of all the items to be covered under General Conditions throughout the Project Assignment;

1.1.1.1.iii.5.4 Insurance costs; and

1.1.1.1.iii.5.5 a competitive Fixed Fee Profit for the completion of the Work.

(iv) At the Corporation's sole discretion and on an as-needed basis, the Corporation may negotiate with the Consultant and its Project Assignment Proposal before agreeing to an Executed Project Assignment.

1.1.1.2 The Executed Project Assignment will establish the agreed upon terms of the Project Assignment, including the assigned Scope of Services, schedule, Project Assignment Team, M/WBE Participation Goals, a not-to-exceed Maximum Project Assignment Price, and any additional requirements relating to the Project Assignment for the Consultant's successful delivery of the Project Assignment.

(i) Corporation and Consultant will amend the Contract as necessary to reflect the cost of each Executed Project Assignment.

1.1.1.3 Consultant may be required to provide Services for various Project Assignments simultaneously and shall satisfactorily complete the Services described in the various concurrent Project Assignments.

1.1.1.4 Consultant's strict adherence to the Executed Project Assignment schedule and Maximum Project Assignment Price are required.

1.1.2 The Corporation may issue a Project Assignment Solicitation during any of the following phases of construction:

1.1.2.1 Pre-Construction Phase – For each Project Assignment, the Corporation may choose to during the design of an ongoing specific project require the Consultant to provide Pre-Construction Services that will guide the specific project towards construction. The Consultant will: review design deliverables at the end of various design phases to review constructability, monitor project costs, develop and track project schedules, and facilitate the construction bid process. Pre-Construction Services will commence upon the Corporation's Notice To Proceed date and will terminate following the Consultant's analysis and negotiation of the Subcontractor construction trade bid process, and the Consultant's recommendation for award.

1.1.2.2 Construction Phase - Construction Services for a Project Assignment will begin upon the completion of the Pre-Construction Phase and conclude with the issuance of a Certificate of Substantial Completion.

1.1.2.3 Post-Construction Phase - Post-Construction Services shall commence after the issuance of a Certificate of Substantial Completion for a Project Assignment and shall be completed upon the release of Retainage.

1.1.3 The Consultant shall provide administrative and management functions necessary to ensure the successful completion of each Project Assignment with respect to cost, schedule and quality. The Consultant shall provide engineering peer review, constructability review and cost estimating services, with special attention to integrate planned work at each project site with the existing conditions already in place and any projects completed during the duration of Services. In addition, the Consultant must ensure that public safety measures are implemented and closely adhered to by all Subcontractors. Controls to adhere to this standard will be developed, managed, and adhered to by the Consultant, dependent on the specific requirements of the Executed Project Assignment.

1.2 Time for Performance of Services/Term/Delays and Force Majeure.

1.2.1 This Contract shall commence promptly, or after the date in the Notice to Proceed for the Contract. The Consultant shall commence delivery of the Services in accordance with a Executed Project Assignment, upon or promptly after the date in the Notice to Proceed for the Project Assignment and shall complete the Services and each phase of the Services within the time or times stated for Final Completion as set forth in the Executed Project Assignment or as otherwise approved by the Corporation, unless this Contract is earlier terminated pursuant to Article 3 hereof.

1.2.2 This Contract shall be for the Term as set forth in Part I, Section 1.5 unless sooner terminated pursuant to Article 3 hereof.

1.2.3 Strict adherence to any schedule established in the Executed Project Assignment must be maintained.

1.2.4 If the Consultant has been delayed through no fault of the Consultant and as a result of such delay will be unable to complete performance fully and satisfactorily within the time fixed for such Services as established in an Executed Project Assignment, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant

was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the Corporation's discretion. The decision of the Corporation as to the granting of the extension and its length shall be binding upon the Consultant.

1.2.5 Subject to the Corporation's determination and approval, the Corporation may extend the time or times for performance of the Services as established in a Project Assignment where such performance has been substantially obstructed, hindered or delayed by reason of acts of Force Majeure. The Consultant shall have no claim against the Corporation or the City for any loss or damage sustained by the Consultant nor for any extra compensation in the form of an increase in the Maximum Project Assignment Price, or otherwise, through such delay, hindrance or obstruction.

1.2.6 At any time during the Consultant's performance of the Project Assignment, the Corporation may determine that the Consultant is unable to satisfactorily perform the work as per the Executed Project Assignment. In such occasion, the Corporation reserves the right to rescind or modify a Project Assignment, or reassign a portion of the Project Assignment to another consultant(s) as necessary.

1.3 Complete Work and Timing and Sequence/Meetings. It is the intent of the Parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the Services shall include all acts necessary to fully and finally complete the Work described in the Scope of Services (Appendix B**)**. For each Project Assignment, the Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge, and/or such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Corporation as often as necessary to effectively perform the Services, and as often as may be specified in the *Scope of Services* (Appendix B**)**.

1.4 Authority of Director/Performance of Services.

1.4.1 The Services to be performed by the Consultant shall always be subject to the review, direction and control of the Director, whose decision shall be final and binding upon the Consultant. The Director shall have the right to determine the amount, quality, acceptability and fitness of the Services. The Director's approval shall be a condition precedent to the right of the Consultant to receive any compensation under this Contract. The Director shall act reasonably in exercising the authority under this Contract. The Director or any other person or agent duly authorized to act for and on behalf of the Corporation shall not, by virtue of such authority or action, be liable in any manner to the Consultant.

1.4.2 The Consultant shall perform all Services in a prudent and professional manner and in accordance with standards and practices as are customary for such Services in the New York City Metropolitan Statistical Area for similar professionals performing similar Services.

1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes to the Services under this Contract or an Executed Project Assignment without prior authorization in writing from the Corporation. Without additional compensation or time extension the Consultant shall revise or correct any

Work Product submitted in accordance with this Contract until accepted by both the Corporation and all Agencies whose approval is required by law. Any rectifications to the performance of the Services or the Work Product which are necessary due to improper performance of the Services, a defect of design, unworkability of details or other fault or error of the Consultant shall be made by the Consultant, also without additional compensation or time extension.

1.5.2 The Corporation may alter the Executed Project Assignment's Services at its sole discretion. Should the Consultant believe that the Corporation's alteration of the Services is beyond the assigned Services and constitutes Additional Work or Extra Work, the Consultant shall so notify the Corporation within three (3) days of such directive. The Corporation shall determine whether such Services are (i) within the Executed Project Assignment's Services; or (ii) Additional Work that is substantially within the Executed Project Assignment's Services but may constitute an increase in Subcontractor's Costs, General Conditions costs, and/or Fixed Fee Profit, or (iii) Extra Work requiring an amendment to the Executed Project Assignment and/or Contract, requiring an increase in Subcontractor's Costs, General Conditions costs, and/or Fixed Fee Profit. The Corporation's determination shall be final, binding, and conclusive.

1.5.3 The Corporation reserves the right to reduce the Scope of Services under this Contract or any Project Assignment by Notice to the Consultant specifying the nature and extent of such reduction. The Consultant shall be compensated for all Services satisfactorily performed prior to the reduction, and for the reduced Services satisfactorily performed thereafter. If said reduction results in a credit for the Corporation, such credit shall be immediately due and owing to Corporation, and the Consultant shall either pay such credit to the Corporation or the Corporation may withhold the credit amount from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

1.5.4 If during the performance of a Project Assignment, prior to the successful completion of the Project Assignment, it appears to the Consultant that the Maximum Project Assignment Price will be exceeded; for any reason, whether due to the Corporation's approved changes in Scope, unexpected schedule delays, and/or an increase of material quantities/cost; the Consultant shall immediately inform the Corporation in writing. The Consultant will be at risk providing services that exceed the Maximum Project Assignment Price without the express written approval of the Corporation.

1.5.4.1 After review and negotiation, the Corporation may choose to amend the Maximum Project Assignment Price in order to complete the Project Assignment, or terminate the Project Assignment once the Maximum Project Assignment Price is reached.

1.6 Equipment.

1.6.1 The Consultant, at its own expense and pursuant to a Project Assignment, shall secure all supplies, materials and equipment required to perform and complete the Services. Any equipment purchased shall be tracked on a Project Assignment specific equipment tracker spreadsheet or appropriate tracking software (such as Asset Panda or equal) as directed by the Corporation. Field office equipment shall be treated as equipment of the Corporation.

1.6.2 The Consultant, at its sole cost and expense, shall bear the risk of loss for any supplies, materials and equipment used to perform the Services whether such loss arises by reason of fire, theft, vandalism, negligence or any other cause whatsoever. Consultant, at its sole cost and expense, shall promptly replace or repair all such lost, stolen or damaged supplies, materials and equipment.

1.6.3 The Consultant, at its sole cost and expense, shall maintain all supplies, materials and equipment in good working and serviceable order to enable the Consultant to perform the Services in a first-class and professional manner.

1.6.4 The Consultant, not the Corporation, shall be solely responsible for the means, methods, safety, and protection of all its Consultant Team Members and shall assume all liability for injuries, including death that may occur to such Consultant Team Members due to the act, omission, negligence, fault, or default of the Consultant.

1.7 Services Subject to City Contract, Indemnification and Third Party Beneficiary. This Contract is a subcontract under the City Contract. The Consultant acknowledges that it has reviewed the City Contract and agrees to comply with the City Contract with respect to the Services and shall not violate, or through its acts or failure to act, cause the Corporation to violate, the City Contract. To the fullest extent permitted by law, the Consultant agrees to defend, indemnify and hold harmless the Corporation from any claim, liability loss, cost, expense (including attorney's fees), or judgment to which the Corporation may be subject because of any such action or failure to act. The City shall be a third party beneficiary of this Contract and shall have a direct cause of action against the Consultant in the event that any claim be made or any cause of action be brought against the Corporation or City arising from this Contract, or if the Consultant breaches this Contract.

1.8 Acts to be Performed by the Corporation. The Corporation shall perform the following acts in connection with this Contract:

1.8.1 The Corporation shall make available to the Consultant all relevant technical data (subject to the provisions of Part II, Section 5.3 herein) in regard to the Contract and any Project Assignment which is in the possession of the Corporation.

1.8.2 The Corporation shall designate a Project Manager to serve as a liaison between the Corporation and the Consultant for each Project Assignment.

ARTICLE 2
COMPENSATION

2.1 Payments.

2.1.1 For each Project Assignment, the Corporation shall pay to the Consultant and the Consultant shall accept such payment as full consideration for the Services and for all expenses of the Consultant in connection therewith, including Fixed Fee Profit, Subcontractors' Costs and General Conditions, an amount not to exceed the Maximum Project Assignment Price, payable as provided for in this Section 2.1 and *Payments* (Appendix C).

2.1.2 Requisitions prepared by the Consultant for each Project Assignment shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition. The Corporation may reasonably require the following supporting documentation which includes, but is not limited to, invoices, receipts, certified payroll reports, vouchers, releases, and lien waivers from Subcontractors and suppliers, and, where applicable, summaries of hours spent for the reporting of the Project Assignment Team.

2.1.3 Requisitions must be submitted to the Corporation within sixty (60) days of when the Consultant incurred the expense for which it is requesting payment. The Consultant must request advanced approval from the Corporation to submit Requisitions for expenses that were incurred more than sixty (60) days prior to submission of the Requisition, and will need to include with the Requisition a memo explaining the delay in billing with certification from the Consultant's accountant that the expenses were not previously billed.

2.1.4 Each Requisition submitted to the Corporation by the Consultant shall constitute a representation that, except as specifically set forth in the Requisition, as of the date of the Requisition, all representations and warranties made by the Consultant in Article 7 are true, complete, and accurate as if made as of the date of the submission of the Requisition.

2.1.5 The Corporation shall review the Requisitions and the Consultant's Work Product in connection with the Requisition. If, in the Corporation's judgment, the Services have been satisfactorily performed in accordance with this Contract and the Executed Project Assignment, the Corporation will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.6 Subject to Section 3.5, Final Payment under any Project Assignment will be due only upon Final Completion of the Project Assignment.

2.1.7 The Consultant, with the Corporation's prior approval, may only exceed the Maximum Payment allocated to a particular portion of the Services for a specific Project Assignment if the Consultant by Notice determines that the Maximum Payment initially allocated to the portion is insufficient to adequately perform the portion of the Services and confirms that the Maximum Project Assignment Price will nevertheless not be exceeded, by demonstrating to the Corporation a savings with respect to another portion of the Services for the Project Assignment which is at least equal to the amount of such excess. Any resulting variance in actual costs, fees, or expense for the Consultant shall not entitle the Consultant to adjustment of the Maximum Project Assignment Price. Notwithstanding the above, in no event shall the Corporation pay the Consultant more than the Maximum Contract Price except pursuant to this Section.

2.2 Miscellaneous Payment Provisions.

2.2.1 In addition to its rights under Section 9.10, if the Corporation shall have reasonable grounds for believing that:

(i) the Consultant will be unable to perform the Services or any portion thereof fully and satisfactorily in accordance with any Progress Schedule for any Project Assignment, or

(ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract, then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder other than for Subcontractor's Costs which have been incurred to the date Consultant has been notified that payment will be so withheld. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

2.2.2 The Corporation shall not be deemed to have released the Consultant from any claim or liability, or to have waived any cause of action arising from any breach of this Contract by virtue of making payments to the Consultant.

2.2.3 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have fully released the Corporation and the City from any and all claims, demands and causes of action whatsoever which the Consultant has or may have against the Corporation or the City in connection with this Contract and, upon the request of the Corporation, shall execute a release to such effect.

2.2.4 All payments to the Consultant under this Contract shall be subject to all applicable Legal Requirements.

2.3 Electronic Funds Transfers. All payments due under this Contract shall be made by Electronic Funds Transfer ("EFT"). Upon execution of this Contract, and in no event later than its submission of its first Requisition, the Consultant shall complete and submit to the Corporation the "EFT Vendor Payment Enrollment Form" annexed to Appendix C. The Consultant shall update such information to the extent necessary for EFT payments to be made. The Corporation shall not be obligated to make any payment unless such information is provided, and shall be entitled to rely solely on the information provided by the Consultant. Payments to the Corporation shall be made by check unless the Corporation notifies the Consultant to make payments by EFT.

ARTICLE 3
SUSPENSION OR TERMINATION

3.1 Delay, Postponement or Suspension of Work.

3.1.1 The Corporation shall have the right to delay, postpone or suspend any part or all of the Services for any Project Assignment or the Contract immediately or upon a specified date, for a period of not more than ninety (90) days, upon Notice to the Consultant, for any reason deemed by the Corporation to be in its interest. The Consultant, Subconsultants, Subcontractors and Representatives shall cease all suspended Services either immediately or as of the date specified in the Notice.

3.1.2 Any such delays, postponements, or suspensions shall not give rise to any cause of action for damages against the Corporation or the City, but the Project Assignment and/or Contract Term specified in Part I of this Contract and the Consultant's time for performance of

the Services shall be extended for the period of the delay, postponement, or suspension, if determined by the Corporation to be necessary.

3.1.3 In the event of any delays, postponements, or suspensions, the Consultant shall resume the Services upon the date specified in the Notice by the Corporation or upon such other date as the Corporation may thereafter specify by Notice.

3.2 Termination for Convenience. The Corporation shall have the right to terminate the Services for the Contract, or any portion thereof, immediately or upon a specified date, upon Notice to the Consultant and for any reason deemed by the Corporation to be in its interest.

3.3 Defaults and Termination for Cause.

3.3.1 Should the Consultant commit an Event of Default, in addition to the Corporation's rights under this Contract, in law, or in equity, the Corporation shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving Notice to the Consultant of the termination, the cause of such termination, and the date of such termination.

3.3.2 An Event of Default shall be deemed to have occurred if any of the following events has occurred, each an "Event of Default":

(i) The Consultant fails to assign workers, order materials or enter into Subcontracts in a manner sufficient to permit completion of any or all the Services within the time limits of any Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;

(ii) The Consultant fails to complete any or all of the Services within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;

(iii) The Consultant violates any material term, covenant or provision of this Contract;

(iv) The Consultant fails to comply with any Applicable Requirements or any Applicable Agreements;

(v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;

(vi) The Consultant becomes insolvent, files for or is forced by creditor(s) into bankruptcy or is adjudged a debtor in possession;

(vii) The Consultant voluntarily or by operation of law assigns, transfers, conveys, or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;

(viii) The Consultant fails to comply with the M/WBE Requirements in Article 9; or

(ix) The Consultant or any of its officers, directors, partners, members, five percent (5%) shareholders, principals, or other persons substantially involved in its activities,

commits any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

3.4.1 The Contract shall terminate the Services of the Contract, as of the termination date set forth in the Notice given pursuant to Section 3.3.1, or immediately if no date is specified to the extent the termination of the Services is stated in the Corporation's Notice.

3.4.2 Upon receipt of a Notice of termination for cause or for convenience, the Consultant shall cease any or all Services, immediately or on the date specified, in accordance with the terms of the Notice.

3.4.3 Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against the Corporation or the City.

3.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to the Corporation all Work Product and any other materials related to this Contract requested by the Corporation including, without limitation, all materials, equipment, intellectual property to be delivered as part of the Services and supplies purchased by the Consultant on behalf of the Corporation in connection with this Contract.

3.5 Payment Upon Termination.

3.5.1 Upon termination of a Project Assignment or this Contract with or without cause, the Consultant shall promptly present to the Corporation a verified statement of all costs actually incurred prior to the date of termination, together with all documents in the Consultant's possession related thereto that the Corporation may demand in order to verify such statement of costs including, without limitation, canceled checks, Subcontracts, certified and actual payrolls, and paid receipts and bills from Subcontractors. The Corporation will review the statement of costs and review or audit any supporting documentation provided by or in the Consultant's possession. The Corporation will notify the Consultant of the results of such review or audit and the amount approved for payment.

3.5.2 If the termination was without cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Corporation, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation after consultation with the Consultant, subject to any rights of audit provided herein. Such payment will be processed by the Corporation after Consultant provides all information and documentation required hereunder. Such payment shall constitute full and Final Payment to the Consultant.

3.5.3 If the termination was for cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Corporation, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation, subject to any rights of audit provided herein, where such compensation shall be subject to set-off by the Corporation for any additional expenses the Corporation incurs to

complete any ongoing Project Assignment(s) satisfactorily including, but not limited to, the expenses of engaging another Consultant, attorney's fees the Corporation incurs as a result of or arising from such termination for cause, and the costs set forth in Section 9.9 (ii). The sum of (i) such additional expenses incurred by the Corporation for the completion of any ongoing Project Assignment(s), and (ii) payments made to the Consultant prior to the termination of the Contract shall hereafter be referred to as the "Contract Completion Costs"

3.5.3.1 If the Contract Completion Costs exceed the Maximum Contract Price, Consultant shall pay such difference to the Corporation, as described in Section 3.5.4 below.

3.5.3.2 If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

3.5.4 If the termination was for cause, the Corporation will, upon full completion of any ongoing Project Assignment(s), deliver a written notice to the Consultant advising the Consultant that any ongoing Project Assignment(s) have been completed and setting forth the Contract Completion Costs. If the Contract Completion Costs exceed the Maximum Contract Price, the Consultant shall promptly pay such difference to the Corporation upon receipt of such notice. If the Contract Completion Costs are less than the Maximum Contract Price, then, subject to (i) the Consultant's providing to the Corporation all information and documentation required by this Section, and (ii) any other applicable provisions of this Contract including, without limitation, Sections 3.5.5 and 3.5.6 hereof, the Corporation will pay the Consultant the amount described in Section 3.5.3(ii). Such payment shall constitute full and Final Payment to the Consultant.

3.5.5 The Corporation need not wait until the completion of the Services or any ongoing Project Assignment(s) to seek the enforcement of its rights against the Consultant if there has been a termination for cause, but no monies shall be due or payable to the Consultant terminated for cause until the Services are completed.

3.5.6 The provisions of this Section 3.5 shall be in addition to any other rights the Corporation may have under this Contract, any Applicable Statute, any Applicable Agreement, or otherwise, in law or in equity.

3.6 No Release. Termination of this Contract, whether by expiration of its Term or otherwise, shall not release the Consultant from any liability to the Corporation or from the Consultant's indemnification and other obligations under this Contract, except for those obligations that have been specifically terminated pursuant to this Article of the Contract.

ARTICLE 4
PERSONNEL AND SUBCONTRACTORS

4.1 Personnel.

4.1.1 For each Project Assignment, the Consultant shall at its own expense employ all personnel and retain all Subconsultants and Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction, compliance, and conduct during the performance of this Contract.

4.1.2 The personnel of the Consultant and any Subconsultant or Subcontractor shall cooperate fully with the personnel of the Corporation, and, in the event any personnel of the Consultant or any Subconsultant or Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

4.1.3 For each Project Assignment, the Consultant shall submit to the Corporation, prior to performance of Services by such personnel, resumes of the approved Project Assignment Team Members and any relevant Subcontractors who will perform the Services. The experience and training of the Project Assignment Team is a material inducement for the Corporation to enter into the Executed Project Assignment under this Contract and make payment for the Services. The Consultant represents that the resumes of Consultant and its Subconsultants and Subcontractors are materially accurate when submitted. The Consultant is expected to use the approved Project Assignment Team Members to perform the Services.

4.1.4 If the Consultant proposes to substitute any approved Project Assignment Team Members identified in an Executed Project Assignment, it shall assign persons with equivalent or better experience and training and shall submit the appropriate forms and resumes of such proposed substitute personnel to the Corporation and obtain the Corporation's approval of the substitution in writing, prior to the commencement of the substitute personnel's provision of Services. The Consultant shall not back charge for Services provided by unapproved personnel, and the Corporation will not pay for Services rendered by personnel who when providing Services under a Project Assignment, were not already approved to do so by the Corporation.

4.1.5 Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract shall be employees of the Consultant or approved Subconsultants and Subcontractors, not employees or subcontractors of the Corporation or the City.

4.1.6 Under no circumstance shall the Consultant request payment for a Project Assignment that exceeds the Maximum Hourly Rate for the corresponding Title listed in the *Cost Schedule* (Appendix C).

4.1.7 For each Project Assignment, the Consultant shall submit Notice to the Corporation indicating when anyone providing Services under the Project exceeds 40 hours per week. This Notice shall state whether the individual is one of the following:

(i) Non-exempt (an hourly employee who is eligible for overtime);

(ii) Compensated with straight-time for any hours worked over 40;

(iii) Compensated with compensatory time off – with a 1:1 ratio;

(iv) Compensated with an annual bonus that this equal to or is greater than the hourly rate for all overtime.

4.2 Subconsultants and Subcontractors.

4.2.1 For each Project Assignment, Consultant shall prepare, negotiate and procure Subcontracts to be entered into by the Consultant, with independent Subcontractors or Subconsultants, for all work, labor, services, materials, supplies and equipment necessary to. All Subcontracts are subject to the express written approval of the Corporation as to the Subconsultant or Subcontractor, the Scope of Services, compensation, and the Principal or other member(s) of the Consultant's staff responsible for supervising the performance of the Subconsultant or Subcontractor's activities, and shall contain all necessary provisions as required by this Contract. All procurement of Subcontracts shall be undertaken in accordance with the provisions of *Procurement* (Appendix D). The Consultant shall not enter into any Subcontract without first notifying and obtaining the approval of the Corporation, in writing, unless there is an immediate threat to public health, welfare, safety or property; provided, that the Consultant will make best efforts as may be reasonable under the circumstances to contact the Corporation prior to entering into any such Subcontract. The Consultant, and not the Corporation, is responsible for the Subconsultant or Subcontractor's work, acts and omissions.

4.2.2 The Consultant shall pay all Corporation-approved Subconsultants and Subcontractors for Work that has been satisfactorily performed no later than fifteen (15) days from the date of Consultant's receipt of payments from the Corporation.

4.2.3 The Consultant is solely responsible for the payments to Subconsultants and Subcontractors. Upon receipt of evidence of Consultant default regarding its payments obligations to its Subconsultants and/or Subcontractors, the Corporation upon three (3) calendar days prior Notice may, retain any money due to the Consultant in order to pay such Subconsultants and/or Subcontractors directly for labor, materials, equipment, Services and all other obligations of the Consultant, and may deduct the amount of any such direct payments from any payments or amounts then due or thereafter become due to the Consultant.

4.2.4 Consultant shall, without any delay, cause the discharge of any mechanic's lien against any property filed by any of its Subconsultants and/or Subcontractors and shall cause any such lien to be discharged of record within thirty (30) days after the notice of filing thereof by payment, deposit, bond, order by a court of competent jurisdiction or otherwise. The Consultant shall inform all Subconsultants and/or Subcontractors fully of the terms and conditions of this Contract. All Subcontracts shall provide that:

(i) there is no privity of contract between the Subconsultant and/or Subcontractor and the Corporation or the City;

(ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;

(iii) the Subconsultant and/or Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments, loss, cost, expense (including attorney's fees), or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subconsultant and/or Subcontractor, its agents, employees or their subcontractors or the breach of the Subconsultant and/or Subcontractor's obligations under the Subcontract;

(iv) the Subconsultant and/or Subcontractor's payment requisitions shall conform to the same requirements and include the representations, warranties, and agreements set forth in Sections 2.1.2 and 2.1.3;

(v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subconsultant and/or Subcontractor for cause;

(vi) the Subcontract may be assigned without the written consent of the Subconsultant and/or Subcontractor to the City, NYCEDC or any other corporation, agency or instrumentality having authority to accept the assignment; and

(vii) all work and services performed under the Subcontract shall strictly comply with the requirements of this Contract.

If the Consultant fails to include the provisions set forth in this Section 4.2.4 in any Subcontract, the Consultant shall indemnify, defend and hold harmless the Corporation and the City and their Representatives against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs, and/or fees incurred by or imposed upon the Corporation and the City and their Representatives, including reasonable fees, as a result of said failure.

4.2.5 The Consultant shall provide the Corporation with a list of all Subconsultants and/or Subcontractors employed for the performance of the Services whose Subcontract amount totals $25,000 or more. The Consultant will furnish each such Subconsultant and/or Subcontractor whose Subcontract amount totals less than $100,000 with the Corporation's internal qualification and background investigation forms. The Consultant will furnish each such Subconsultant and/or Subcontractor whose Subcontract amount totals $100,000 or more with the Mayor's Office of Contracts Investigations Forms. These forms will be provided by the

Corporation to the Consultant. The Consultant shall cause each such Subconsultant and/or Subcontractor to fill out and complete the forms in a timely fashion but in no event later than the commencement of the Services performed by such Subconsultant and/or Subcontractor pursuant to its Subcontract. The term Subcontractor and/or Subconsultant as used in this Section 4.2.5 shall include all subcontractor and subconsultant tiers when the Subcontractor and/or Subconsultant is providing demolition services for the Project.

4.3 Person in Charge.

4.3.1 For each Executed Project Assignment, the Consultant shall designate a Person-in-Charge who will have primary responsibility and authority to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the Corporation. Failure to make such person(s) available to the extent necessary to perform the Services skillfully and promptly shall be a material violation of the terms of this Contract.

4.4 Construction Subcontractor Labor Rates.

For each Project Assignment, the Consultant shall certify that all applicable labor laws are followed as part of Work completed under construction Subcontracts they have entered into on behalf of the Corporation. The Consultant shall ensure that base labor rates as well as all fringe benefit rates are appropriately computed and dispensed by all of its Subcontractors. In addition, when Change Order proposals are submitted by the Consultant to the Corporation for review and approval, the Consultant shall review and approve any labor rates that are included as part of the Change Order proposal's estimate. It is the Consultant's responsibility to ensure that proper rates are used. The Corporation reserves the right to audit any and all labor rates used by construction Subcontractors at any time.

4.5 Change Orders.

For each Project Assignment, if a Change Order approved by the Corporation adds or deletes the Subcontractor's Work, then the difference in the amount to be paid for said Change Order shall be determined in one or more of the following ways, as may be applicable:

4.5.1. If a Subcontractor and the Consultant agree upon a lump sum amount or an amount based on a unit price to increase or decrease the Subcontractor's price for the Change Order Work, which amount shall be stated in the Subcontractor's change order, the Maximum Project Assignment Price shall be changed by such amount; and/or

4.5.2. If the Project Assignment is already based upon or contains unit prices which are applicable to the type of work or services involved in the Change Order Work, then said unit prices shall be used to set the value of the increase or decrease to the Maximum Project Assignment Price for the Change Order Work; and/or

4.5.3. If the value of the Change Order Work for a Project Assignment cannot be determined pursuant to Section 4.5.1. or Section 4.5.2 prior to the performance of the Change

Order Work, then the Consultant shall be paid for the performance of such Change Order Work in an amount agreed upon with the Corporation, no greater than either of the following:

4.5.3.1 with respect to Change Order Work performed by a Subcontractor, the sum of:

4.5.3.1.1 Subcontractor's Actual Costs;
4.5.3.1.2 Subcontractor's Overhead; and
4.5.3.1.3 Subcontractor's Profit

4.5.3.2 with respect to Change Order Work performed by any 2nd Tier subcontractor, the sum of:

4.5.3.2.1 2nd Tier Subcontractor's Actual Costs;
4.5.3.2.2 2nd Tier Subcontractor's Overhead; and
4.5.3.2.3 2nd Tier Subcontractor's Profit and
4.5.3.2.4 Subcontractor's Second Tier Administrative Fee

provided that this amount Sections 4.5.3.2.2 – 4.5.3.2.4, shall not exceed twenty-six percent (26%) of the 2nd Tier Subcontractor's Actual Costs.

4.6 Construction Subcontractor Overruns

4.6.1 For any Project Assignment, if during the progress of the Work, the actual quantity of any unit price item required to complete the Work approaches the estimated quantity for that item, and for any reason it appears that the actual quantity of said unit price item necessary to complete the Work will exceed the estimated quantity for that item by twenty- five percent (25%), the Subcontractor shall immediately notify the Consultant of such anticipated Overrun, and the Consultant shall Notify the Corporation immediately. If an Overrun occurs for said unit price item, the Subcontractor will be paid at the unit price amount for any quantity up to one hundred twenty-five percent (125%) of the estimated quantity for that item set forth in the Subcontractor's bid schedule. The Subcontractor shall not be compensated for any quantity of a unit price item provided which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule without written authorization from the Consultant.

4.6.2 For any Project Assignment, if the actual quantity of any unit price item necessary to complete the Work will exceed one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the Subcontractor's bid schedule, the Consultant reserves the right and the Subcontractor agrees to negotiate a new unit price for such item. In no event shall such negotiated new unit price exceed the unit bid price. If the Consultant and Subcontractor cannot agree on a new unit price, then the Consultant shall order the Subcontractor and the Subcontractor agrees to provide additional quantities of the item on the basis of time and material records for the actual and reasonable cost as determined under section 4.5.2, but in no event at a unit price exceeding the Subcontractor's original unit price bid.

4.7 Sub-CO Provisions

4.7.1 For each Project Assignment, the Consultant shall follow the following procedures for the review and processing of Sub-CO:

4.7.1.1 Sub-CO Process

(i) Within five (5) Business Days of identifying the need for a Change Order, requiring a Sub-CO, the Consultant shall submit to the Corporation a Sub-CO Form for Phase I Approval describing the request.

4.7.1.1.i.1 Upon receiving the Corporation's Phase I Approval of the Sub-CO Form, the Consultant shall authorize a notice to proceed to the necessary Subcontractors for the Change Order Work.

(ii) Within thirty (30) Days of receiving Phase I Approval in writing from the Corporation, the Consultant shall compile and submit the following to the Corporation for its Phase II Approval:

4.7.1.1.ii.1 A cover letter with a detailed explanation of the Change Order including, if necessary, a discussion of the final cost if it exceeds the Consultant's Phase I Approval amount.

4.7.1.1.ii.2 All necessary backup documentation required for the Change Order, which may include:

4.7.1.1.ii.2.1 Detailed labor costs and rate sheets

4.7.1.1.ii.2.2 Detailed material costs

4.7.1.1.ii.2.3 Detailed equipment costs

4.7.1.1.ii.2.4 RFIs, design team directives, and drawings

4.7.1.1.ii.2.5 Final Change Order Amount, which represents the final amount of the Change Order, including Subcontractor's Actual Costs, Subcontractor's Overhead, and Subcontractor's Profit. If the Final Change Order Amount is more than the original estimate under Phase I Approval, a revised Sub-CO Form shall be completed and submitted to the Corporation for a revised Phase I Approval.

4.7.1.1.ii.3 Phase II Approval of the Sub-CO Form will be issued once the Corporation has reviewed the full Sub-CO package.

4.7.1.2 Sub-CO Process General Provisions

(i) The Consultant shall log and assess the Sub-CO and conduct impact assessment on cost, schedules, constructability, life-cycle-costs and other contracts in a Sub-CO Log.

(ii) If a Sub-CO proposes to alter the design or specifications of the construction Work, the Consultant shall advise the Corporation and the Design Team immediately. Requests for Change Orders that propose to significantly modify the design intent of a specific Project Assignment must be approved by the Corporation and, if approved, the Consultant shall be responsible to submit a redesign as necessary using the services of a licensed professional engineer or registered architect, for the Corporation and the Design Team to review, comment and approve. The cost associated with any redesign shall be the responsibility of the Consultant, unless otherwise approved in writing by the Corporation.

(iii) The Consultant shall review the estimated construction cost and assessment of schedule impact associated with each Sub-CO and if necessary, distribute the Sub-CO to all applicable parties.

4.7.1.3 Approvals of Sub-COs

(i) The Consultant shall evaluate, assess and coordinate comment resolution and make recommendations to the Corporation on all Sub-COs and Potential Sub-COs, and recommend Sub-COs to the Corporation for approval.

4.7.1.4 Record of Sub-COs Negotiations

(i) The Consultant shall review Subcontractor proposals for Sub-COs and track these potential Sub-COs in a Potential Sub-CO Log.

(ii) The Consultant shall record the result of all Sub-CO and potential Sub-CO negotiation proceedings. Such records, along with pricing analysis and schedule analysis, shall be included in the Sub-COs file.

4.7.1.5 Reporting. The Consultant shall maintain the Sub-CO Log and Potential Sub-CO Log to be an accurate and current record of the status of all Sub-COs and Potential Sub-COs and include them in the Monthly Progress Report, as each month a summary report on Sub-COs status shall be submitted to the Corporation.

ARTICLE 5
DOCUMENTS AND MATERIALS

5.1 Approval. All Work Product to be prepared or furnished by the Consultant pursuant to this Contract or publicizing the Work of the Consultant hereunder must be:

(i) approved in writing by the Corporation before any Work Product or publication as to the Work of the Consultant shall be considered accepted and before any distribution;

(ii) revised by the Consultant in accordance with the directions of the Corporation prior to approval; and

(iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

5.2.2 The Consultant shall not use, transmit, display, publish or otherwise license such Work Product without the Corporation's prior written consent.

5.2.3 The Work Product 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 Corporation is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to the Corporation, free and clear of any liens, claims, or other encumbrances. The Consultant shall retain no copyright or other intellectual property interest in the Work Product.

5.2.4 To the extent that the Work Product does not qualify as a "work-made-for hire", Consultant acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), and knowingly executes this Contract on the following terms: (i) this waiver applies to the Work Product and to any promotional materials connected with the Work Product; (ii) the Consultant hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. § 106A, or any other type of moral right or *droit moral*.

5.2.5 The Consultant represents and warrants that, except for material which is in the public domain and non-original material that meets the requirements of Section 5.2.6, the Work Product:

(i) shall be wholly original material not published elsewhere;

(ii) shall not violate any copyright, trademark or other applicable law; and

(iii) shall not, to the best of Consultant's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide the Corporation with copies of all necessary licenses, permissions, and/or clearances, in writing, for the use of such non-original material under this Contract. Since some licenses for materials may be for a limited duration, the Consultant shall provide and/or specify the following to the Corporation with respect to all non-original materials included in its Work Product:

(i) all information as to any durational limitations on use;

(ii) any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Consultant's license; and

(iii) a statement certified by the Principal verifying the foregoing in the *Form of Certified Statement Regarding Using of Non-Original Materials* (Appendix E).

The Consultant will update the foregoing information and promptly provide such updates to the Corporation during the Contract Term.

5.2.7 The Consultant acknowledges that the Corporation or the City may, in their sole discretion, register copyright in the Work Product with the U.S. Copyright Office or any other government agency authorized to grant registrations to copyright. The Consultant will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish such copyrighting.

5.2.8 The Consultant agrees that the Corporation and the City may use the Consultant's name and the names, biographies, and likenesses of its members, in advertising and promotion related to the Work Product, and in any and all ancillary products related to the Services regardless of the format in which such use occurs.

5.2.9 Prior to acceptance of any Work Product by the Corporation, upon the Corporation's request and within a reasonable time following delivery of the Work Product, the Consultant shall submit revised Work Product incorporating any revisions, changes, or alterations reasonably requested by the Corporation. If the original Work Product or the revised Work Product is not acceptable to the Corporation, the Corporation shall have the right to use the Work Product, to prepare or finalize the Work Product or to commission a third party to do so without further employment of or compensation to the Consultant.

5.2.10 The Consultant acknowledges that the decision to accept the Work Product for use, incorporation, transmission, display, or publication is within the sole discretion of the Corporation.

5.2.11 The Consultant agrees that it will cooperate in providing any other documentation necessary to effectuate the intent of this section of the Contract.

5.2.12 The Consultant shall not make any unauthorized use of copyrighted, trademarked, or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Corporation and the City and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Consultant's infringement or unauthorized use of any such material or property.

5.3 Confidential Information.

5.3.1 The Consultant shall hold all Confidential Information provided by the Corporation in the strictest confidence. Consultant agrees to:

(i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;

(ii) not disclose the Confidential Information outside of its Subconsultants and/or Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subconsultants and/or Subcontractors and employees who need this information in order to accomplish the Services;

(iii) execute and cause its Subconsultants and Subcontractors to execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents, or electronic files to Consultant or any of its Subconsultants and Subcontractors for use in performance of the Services; and

(iv) not disclose the Confidential Information for three (3) years following Final Completion.

5.3.2 Consultant represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized employees and Project Assignment Team Members as necessary for the performance of the Services. All Confidential Information provided to Consultant shall remain the property of the Corporation. The Corporation grants no license to use the Corporation's Confidential Information beyond that required for Consultant to complete the Services in accordance with this Contract.

5.3.3 Consultant agrees that money damages would not be a sufficient remedy in the event of any breach of this Section 5.3 and that, in addition to all other remedies which may be available to the Corporation under this Contract, in law, or in equity, the Corporation shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Consultant shall defend, hold harmless, and indemnify the Corporation for any and all claims, losses, expenses and/or damages arising out of breach of this Section 5.3 or unauthorized use of the Confidential Information, including attorney's fees.

ARTICLE 6
INDEMNIFICATION, CLAIMS AND INSURANCE

6.1 Indemnification of the Corporation and the City.

6.1.1 To the fullest extent permissible by law, the Consultant shall indemnify, defend and hold harmless the Corporation and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any negligence or any fault or default of the Consultant, its agents, employees, Subconsultants, or Subcontractors or the breach of the Consultant's obligations under the Contract and any Project Assignment.

6.1.2 The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under this Contract and any Project Assignment resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors, Subconsultants, or Subcontractors retained by the Consultant pursuant to this Contract any Project Assignment. The

Consultant agrees to indemnify, defend and hold the Corporation and the City harmless from any liability upon any and all claims for injuries to persons (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors, Subconsultants, and Subcontractors retained by the Consultant.

6.2 Claims or Actions Against the Corporation.

6.2.1 The Consultant shall look solely to the funds appropriated by the Corporation for this Contract for the satisfaction of any claim or cause of action the Consultant may have against the Corporation in connection with this Contract or the failure of the Corporation to perform any of its obligations hereunder. In no event shall the Corporation's aggregate liability, whether in contract, tort (including negligence), strict liability, warranty or any other theory, hereunder in connection herewith or related to the performance of the Services exceed the Maximum Contract Price.

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

6.2.3 No member, director, employee, servant, officer, agent, or other person authorized to act on behalf of the Corporation shall have any personal liability in connection with this Contract or any failure of the Corporation to perform its obligations hereunder.

6.2.4 No person or entity shall have any right against the Corporation or any member, director, employee, servant or officer, agent of the City or the Corporation or other person authorized to act on their behalf or any claim against the City or the Corporation by reason of the failure or refusal to withhold money pursuant to Section 2.2.1 hereof.

6.2.5 The Consultant agrees that no cause of action against the Corporation in connection with this Contract or the Services shall lie or be maintained by the Consultant, its successors or assigns unless such action is commenced within six (6) months after (i) the termination of this Contract, or (ii) the accrual of the cause of action, whichever is earlier.

6.2.6 If any claim is made or any action brought relating to this Contract or the Services, whether or not the Consultant is a party, the Consultant shall diligently render to the Corporation any and all assistance that the Corporation may require of the Consultant, without compensation.

6.2.7 In no event shall the Corporation or the City be liable to the Consultant or its Subconsultants and Subcontractors, whether in contract, tort (including negligence), warranty, strict liability or any other legal theory, for loss of anticipated profits or revenue or for any special, indirect, consequential, punitive or exemplary damages, such as, but not limited to, cost of capital, loss of use of resources or personnel, loss of reputation, or opportunity costs.

6.2.8 The provisions of this Section shall not waive, limit or in any way prejudice any other right of the Corporation or the City.

6.3 Insurance.

6.3.1 At all times during the performance of the Work or Services in connection with this Contract and as required under each Project Assignment, or for such other time periods as the Corporation may require, the Consultant, at its sole cost and expense shall purchase and maintain the insurance described in this Section 6.3, Appendix D. Part II. E. and Appendix F (collectively, the "Insurance Provisions"), as may be applicable to this Contract and as may be required by the Corporation on a Project Assignment basis, from time to time.

6.3.2 Consultant shall purchase and maintain insurance with insurance companies that:

(i) are acceptable to the Corporation;
(ii) are rated A:X or better by A.M. Best Company for the Consultant and are rated A:VII or better by A.M. Best Company for the Subcontractors, unless otherwise approved by the Corporation; and
(iii) are licensed to issue such insurance by the New York State Insurance Department.

6.3.3 The insurance policies purchased and maintained by the Consultant shall:

(i) be in form and substance satisfactory to the Corporation;

(ii) be in the minimum face policy amounts set forth in the Insurance Provisions, which amounts may be increased at Corporation's discretion, from time to time;

(iii) list all individuals and entities identified in the Insurance Provisions including, without limitation, their Representatives, as Additional Insureds except in the case of any workers' compensation, U.S. Harbor Workers' Long Shoremens' Compensation Act, automobile liability and professional liability policies required to be maintained hereunder;

(iv) include a waiver of the right of subrogation with respect to the Additional Insureds on (1) All policies that provide coverage to the Additional Insureds; and (2) the Workers' Compensation policy; and

(v) contain the provisions set forth in the Insurance Provisions.

6.3.4 Coverage for the individuals and entities identified in the Insurance Provisions as Additional Insureds shall be written into those policies set forth in Section 6.3.3(iii) above as an endorsement at least as broad as the most recently issued Insurance Services Office ("ISO") Forms CG 20 10 or GC 20 38 for ongoing operations and CG 20 37 for completed operations (or their equivalents). Subconsultants and Subcontractor may not use blanket additional insured endorsements to provide coverage to Additional Insureds "by written contract" if coverage requires a written or oral contract or agreement between the Additional Insureds and the

Subconsultant or Subcontractor. Consultant shall provide a copy of any endorsements to the Corporation.

6.3.5 The Consultant shall make and maintain timely premium payments for all policies required hereunder.

6.3.6 The Consultant shall require that each of its Subcontractors as part of Subcontractor costs, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to the Corporation or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in the Insurance Provisions. The Consultant hereby covenants and warrants that (1) its Subcontractors shall purchase and maintain the policies required by this Section in the amounts and for the periods required by this Section and (2) it shall contractually require its Subcontractors to add the Additional Insureds as set forth in this Article 6 and *Insurance Requirements* (Appendix F) and as specifically outlined in Section 6.3.4, and (3) it shall review and ensure that its Subcontractors are in compliance with the requirements in this Article 6 and *Insurance Requirements* (Appendix F) and provide the required documentation as needed to the Corporation evidencing such compliance. The cost of Subcontractor insurance shall be included in the Subcontractors' respective bids including, (as applicable) any asbestos or other toxic or hazardous material remediation, removal, storage, or disposal work in the type and limits described in *Insurance Requirements* (Appendix F).

6.3.7 As required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Consultant shall submit proof of worker's compensation insurance, disability benefits insurance, and the payment of family leave benefits (or proof of a legal exemption) to the Corporation 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:

(i) C-105.2 Certificate of Workers' Compensation Insurance;

(ii) U-26.3 – State Insurance Fund Certificate of Workers' Compensation Insurance;

(iii) SI-12, Certificate of Workers' Compensation Self-Insurance;

(iv) GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance;

(v) Form DB-120.1, Certificate of Disability Benefits Insurance;

(vi) Form DB-155, Certificate of Disability Benefits Self-Insurance; or

(vii) Form CE-200 - Affidavit of Exemption.

6.3.8 For each policy required under the Contract and each Project Assignment, except as outlined in Section 6.3.7, the Consultant shall, prior to the commencement of the Services, forward to the Corporation's Contract Administration and Procurement Department:

(i) A signed Contractor Insurance Cover Sheet as provided for in *Insurance Requirements* (Appendix F) and ACORD 855 as required in Section 6.3.10 (ii) for itself and its Subcontractors;

(ii) at least three (3) original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subconsultants and Subcontractors substantially as set forth in the Insurance Provisions. The Consultant shall provide a certificate of insurance dated subsequent to the Contract Date, defined in Part I Section 1.3, for each of the Additional Insureds. For such forms that include a place to designate the certificate holder, the certificate holder shall be listed as: New York City Economic Development Corporation, attn.: Contracts, One Liberty Plaza, New York, New York 10006;

(iii) Endorsements in the Consultant's Commercial General Liability policy which are applicable to the Additional Insureds;

(iv) A duly executed "Certification by Insurance Agent or Insurance Broker" in the form attached at *Insurance Requirements* (Appendix F) or copies of all policies referenced in the Certificate of Insurance; and

(v) A copy of any applicable Builder's Risk or installation floater policy as required in Article 6.3.10 (v) and a completed ACORD 28.

6.3.9 The Consultant shall provide the Corporation with updated documentation outlined in Section 6.3.9 confirming renewal of any policy required hereunder at least thirty (30) days prior to the expiration of any such policy.

6.3.10 Unless otherwise agreed to in writing by the Corporation, the types of insurance to be purchased and maintained by the Consultant and its Subconsultants and Subcontractors under the Contract and for each Project Assignment are as follows:

(i) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subconsultants and Subcontractors to purchase and maintain workers' compensation and disability benefits insurance in statutory amounts, and employer's liability insurance, for all of its employees engaged in the Services. The failure of the Consultant to comply with this Section 6.3.10(i) shall make this Contract voidable at the option of the Corporation.

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subconsultants and Subcontractors (if any) against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant (including, but not limited to, at-risk construction management services), and any work incidental thereto. The certificate of insurance must indicate that such insurance is on a "per occurrence" and a "per project" aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as the most recently issued ISO Form CG 00 01 in effect as of date hereof and shall not contain any modifications to the ISO CG 0001 severability of interests, contractual liability, and employer's liability coverages. Coverage must not exclude any claims under the Labor Law Sections 200, 240(1) or 241(6). The

liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation. When providing evidence of insurance, the Consultant and its Subconsultant and Subcontractor must include a satisfactory completed ACORD 855 NY form that meets the requirements of this Section 6.3.10(ii).

(iii) Automobile Liability Insurance. The Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles. If vehicles are used for transporting any Hazardous Substances, such Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (ISO Form endorsement CA 99 48 or its reasonable equivalent, if hauling outside of New York state) as well as proof of an MCS-90 endorsement or equivalent insurance shall be obtained by the entity retained to transport such Hazardous Substances. Both shall be furnished on a primary basis with limits of liability of at least $5,000,000 providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required by pursuant to any federal, state or local laws, rules and regulations. A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the $5,000,000 limits if required by Corporation.

(iv) Umbrella/Excess Liability Coverage. The Consultant shall purchase and maintain umbrella/excess liability insurance, specifically listing commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subconsultants and Subcontractors (if any) from any and all claims in excess of the underlying policy limits for such primary coverages and the policy shall be endorsed to provide primary and non-contributory coverage as respect to any other

insurance carried by the Additional Insureds on a vertical exhaustion basis so that (i) the additional insured protection afforded under the Consultant's policies shall be primary and not on an excess or contributing basis with any policies which may be available to the Corporation, and (ii) that the Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.10(iv) is on a "per occurrence" basis and an aggregate basis. Coverage shall be follow form to primary policies or as broad as the coverage required for the commercial general liability, automobile liability, and employer's liability policies in this Section 6.3.10.

(v) Builders Risk Insurance. The Consultant shall purchase and maintain (if the Services involve new construction or improvements to real property) builders "all risk" insurance (completed value none reporting form or installation floater, as applicable) as indicated in the Insurance Provisions. The builder's risk insurance shall be maintained until Substantial Completion, or unless otherwise required by the Corporation after Substantial Completion

(vi) Professional Liability/Errors & Omissions Insurance. The Consultant (including, at a minimum, the architect, engineer, interior designer, landscape architect, land surveyor, LEED consultant, and construction manager, and other parties involved in design and other Soft Cost activities or requiring a license to practice their profession) shall purchase and maintain professional liability/errors & omissions insurance, to the extent applicable to the work performed on the Project, covering the liability assumed by the Consultant and its Subcontractors and Subconsultants or anyone employed, including independent contractors, by the Consultant under this Contract arising out of the performance of professional services or caused by an error, omission, or negligent act, including any resulting bodily injury, property damage, and emotional distress, including coverage for (i) failure to render services or to perform the function intended and (ii) defamation, invasion of privacy, news-gathering torts, intellectual property violations (such as infringement of copyright /trademark, misappropriation, and plagiarism), and breach of license. Such policy shall provide coverage for settlement, fees, expenses, and defense costs. All Subconsultants and Subcontractors of the Consultant providing professional services under this Contract for which professional liability insurance/errors and omissions insurance is reasonably commercially available shall also maintain such insurance. The policy shall have a professional services definition that encompasses all work contemplated under this Contract, must not have exclusions for faulty workmanship, contractual liability and warranty/guaranty, and should include protective indemnity and rectification/mitigation coverages

with the same aforementioned professional services definition throughout. If policy is claims-made, it must meet the requirements of Section 6.3.15. If the Consultant, Subconsultant and Subcontractor is an architect or engineer, policy must include coverage for mold, asbestos, and pollution. Coverage and must be maintained for a period from prior to the start of Services until three (3) years or for the statute of limitations (whichever is longer) applicable to the Consultant's work after the completion of services under this Contract.

(vii) If applicable, the additional policies described in the Insurance Provisions.

6.3.11 As a condition precedent to payment of any amounts owing to the Consultant by the Corporation, the Consultant shall, unless otherwise expressly agreed to in writing by the Corporation, provide to the Corporation the original certificates of insurance and endorsements to policies applicable to the Additional Insureds required under this Contract and shall on demand provide true copies of policies and endorsements to policies showing compliance with the insurance requirements set forth in the Insurance Provisions.

6.3.12 The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in Section 6.3.3 (iii) above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Corporation, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same, but in no event later than 5 business days following knowledge of any claims, accidents and losses.

6.3.13 The Insurance Provisions shall be in addition to any rights that the Corporation, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.

6.3.14 All required policies, except Disability Benefits insurance, shall include a waiver of the right of subrogation, with respect to the Corporation, the City and any other Additional Insureds.

6.3.15 Claims-made coverage will be accepted for the Professional/Errors & Omissions policy subject to a retroactive date prior to the effective date of the Contract and must be maintained for a period from prior to the start of Services until three (3) years after the completion of services under this Contract. The Consultant shall purchase an extended reporting period coverage of not less than three (3) years or the applicable statute of limitations (whichever is longer) effective on cancellation or termination of such policy unless a new policy is secured with a retroactive coverage for full prior acts.

6.3.16 The limits of coverage for all types of insurance required under Exhibit F shall be the greater of (A) the minimum limits set forth in Exhibit F or (B) the limits provided to the

Consultant and its Subcontractors under all primary, excess and umbrella policies covering operations under this Contract.

6.3.17 There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article 6 unless approved in writing by the Corporation. Under no circumstances shall Corporation be responsible for the payment of any deductible or self-insured retention (or any other aspect of a self-insurance program). Further, Consultant shall ensure that any such self-insurance program provides Additional Insureds with all rights that would be provided by traditional insurance under this Article 6, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

6.3.18 Contractor Controlled Insurance Program Requirements : Provided that the terms and limits of coverage provided thereunder conform to the requirements of Part II, Article 6 of the Contract, the Corporation may agree to a Contractor Controlled Insurance Program ("CCIP") proposed by the Consultant that will provide Project Assignment specific workers' compensation, employer's liability, commercial general liability and excess liability insurance for the Consultant and enrolled parties. The CCIP shall be described in an Insurance Manual for the Project Assignment and may be incorporated into the Contract pursuant to an approval letter between the Corporation and the Consultant.

6.3.19 Corporation/Owner Controlled Insurance Program Requirements: Pursuant to Part II, Section 6.3.9 of the Contract, the Corporation may direct Consultant to enroll in an Owner Controlled Insurance Program ("OCIP") provided by the Corporation that will provide Project Assignment specific workers' compensation, employer's liability, commercial general liability, excess liability insurance, and/or builder's risk insurance for the Consultant and enrolled parties. The OCIP shall be described in an Insurance Manual for the Project Assignment and may be incorporated into the Contract pursuant to an approval letter between the Corporation and the Consultant.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract and any Project Assignment in accordance with its terms. The Consultant is authorized to do business in the City of New York and the State of New York.

7.2 The authorization, execution and delivery of this Contract and any Project Assignment, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or, to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

7.3 The Consultant has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract or any Project Assignment.

7.4 The Consultant has not employed any person to solicit or procure this Contract or any Project Assignment, and has not made and shall not make, except to full-time employees of the Consultant, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract and any Project Assignment.

7.5 The Consultant has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Services or any interest in any corporation, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Services. The Consultant further represents and covenants that in the performance of this Contract and any Project Assignment no person having any such conflicting interest shall be employed by the Consultant.

7.6 The Consultant is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

7.7 All questionnaires and/or disclosure forms delivered by the Consultant and its Representatives to the Corporation to date are, to the best of the Consultant's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Consultant, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed that would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

ARTICLE 8
APPLICABLE LAWS, RULES AND REGULATIONS

8.1 New York Law Governs; New York Courts. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the Corporation arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York. To affect this agreement and intent, the Consultant agrees as follows:

8.1.1 If the Corporation initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant in person, wherever the Consultant may be found, or by registered mail addressed to the Consultant at its address as

set forth in this Contract, or to such other address as the Consultant shall have provided to the Corporation in writing.

8.1.2 With respect to any action between the Corporation and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, and (ii) to move for a change of venue to a New York State Court outside New York County.

8.1.3 With respect to any action between the Corporation and the Consultant in Federal Court located in the City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

8.1.4 If the Consultant commences any action against the Corporation in a court located other than in the City and State of New York, then, upon request of the Corporation, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

8.2 Modification Required by Law. The Parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either Party, this Contract shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either Party.

8.3 Compliance with the Law. The Consultant agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all Legal Requirements, including without limitation, Applicable Requirements and Applicable Agreements. Failure by the Consultant to abide by such Legal Requirements shall be a material default under this Contract.

8.4 Equal Employment Opportunity/Employment Reports.

8.4.1 The Consultant shall comply with the applicable provisions of the Equal Employment and Affirmative Action Compliance for Non-Construction Contracts Addendum (the "Executive Order No. 50 (1980) Supply and Service Rider" or "E.O. 50") attached hereto as Appendix G and made a part hereof. Appendix G shall be attached to and made a part of any Subcontract entered into by the Consultant pursuant to this Contract which exceeds $100,000.

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to the Corporation which can be found at www.nycedc.com in the section identified in Appendix H.

8.4.3 The Consultant and any Subconsultants and Subcontractors that provide any on-site construction activity shall complete and submit the Payroll Report to the Corporation in the form annexed to this Contract as Appendix I.

8.4.4 The Consultant shall give consideration to employing New York City residents who are economically disadvantaged or are eligible under any applicable Legal Requirements including, without limitation, the Workforce Investment Act of 1998, and who have qualifications and skills commensurate with the requirements for the position available. To the greatest extent feasible, the Consultant shall give opportunities for training and employment to lower income persons in the Project area(s).

8.4.5 The provisions of this Section 8.4 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, and other applicable Legal Requirements.

8.5 Minimum Wages. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or any Subconsultants or Subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

8.6 No Tropical Hardwoods. Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be used in the performance of this Contract except as expressly permitted by the foregoing provision of law.

8.7 Sales and Use Tax.

8.7.1 The Consultant acknowledges that the Corporation and the City are exempt from sales and use taxes imposed by Article 28 of the New York State Tax Law for purchases of tangible personal property, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of real property. This exemption does not apply to tools, machinery, equipment or other property leased by the Corporation's Subconsultants and Subcontractors or to supplies, materials or other property that are consumed in the construction or for any reason not incorporated into real property.

8.7.2 The Consultant shall inform its Subconsultants and Subcontractors of this exemption and shall advise its Subcontractors to exclude sales and use taxes from their bids, as applicable.

8.8 Whistleblowers.

8.8.1 In accordance with Section 12-113 of the New York City Administrative Code (the "Administrative Code"),

8.8.1.1 The Consultant 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 of the Consultant or any of its Subcontractors or

Subconsultants to (i) the Corporation, (ii) the City's Department of Investigation, (iii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iv) the City Chief Procurement Officer, DSBS Agency Chief Contracting Officer ("DSBS ACCO") or DSBS Commissioner.

8.8.1.2 If any of the Consultant's officer or employees believes that s/he has been the subject of an adverse personnel action in violation of paragraph 8.8.1.1 above, s/he shall be entitled to bring a cause of action against the Consultant 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 continued retaliation, (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. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the Corporation of such action; provided however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the Corporation, the City, and any public agency or entity nor shall the Corporation, the City or any other public agency or entity be made a party to an action brought pursuant to this paragraph.

8.8.2 In accordance with Section 6-132. of the NYC Administrative Code, the Consultant shall post a notice in the form annexed hereto at Appendix O.

8.8.3 For purposes of this Section, "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 office or employee.

8.9 MacBride Principles. The Consultant stipulates and agrees to comply with the MacBride Principles.

8.10 Iran Divestment Act. The Contractor shall comply with Section 165-a of the New York State Finance Law.

8.11 Paid Sick Leave Law. The Consultant shall comply with Title 20, Chapter 8 of the New York City Administrative Code related to paid sick leave for the Consultant's employees.

8.12 Doing Business Data Form Requirements.

8.12.1 Local Law No. 34 of 2007 amended the City's Campaign Finance Law and required the City to establish a database containing the names of any "person" that has "business with the city", as such terms are defined in LL 34. The Consultant shall comply with all requirements of LL 34 applicable to this Contract.

8.12.2 The Consultant shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com in the section identified in Appendix N.

8.12.3 The Consultant's failure to complete and submit a Doing Business Data Form and/or its submission of a form that is not accurate or complete may result in appropriate sanctions.

ARTICLE 9
M/WBE REQUIREMENTS

9.1 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 a program for participation in City procurement by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs", together with "MBEs" collectively referred to as "M/WBEs"), certified in accordance with Section 1304 of the City Charter. As stated in the 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. Additionally, Section 6-129 stipulates that agencies shall examine their internal procurement policies, procedures, and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs and EBEs in city procurement. The Corporation endorses these goals and has adopted an M/WBE Program to further participation by MBEs and WBEs in the provision of the Services. All Consultants shall comply with all requirements of the Corporation's M/WBE Program applicable to this Contract.

9.2 Minority and Women -Owned Business Enterprises. M/WBE firms must be certified by the New York City Department of Small Business Services ("DSBS") to credit such firms' participation toward attainment of the Participation Goals and Diverse Utilization Goals. Such certification must occur prior to the firms' commencement of work.

9.3 Participation Goal and Diverse Utilization Goals.

9.3.1 The Participation Goal ("Participation Goals") for this Contract is set forth in Part I, Section 1.13. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding Subcontracts to firms certified with DSBS as MBEs or WBEs, and/or bycrediting the participation of the Consultant.

9.3.2 The Diverse Utilization Goals ("Diverse Utilization Goals") for this Contract will be established on a Project Assignment basis. The Diverse Utilization Goals represent the total Participation Goal, disaggregated into two or more targeted goals that may be achieved by awarding Subcontracts to entities certified with DSBS as MBEs or WBEs, and/or by crediting the participation of prime contractors and/or Qualified Joint Ventures as provided for in Section 4.3.4, below.

9.3.3 The Participation Goal and the Diverse Utilization Goals are material terms of the Contract and the Consultant shallbe subject to them.

A Consultant that is an M/WBE shall be permitted to count its own participation toward fulfillment of the Participation Goal, provided that the value of the Consultant's participation shall be determined by subtracting from the total value of the Contract any amountsthat the Consultant pays to direct Subconsultants and Subcontractors. The value of an M/WBE Consultant's participation shall be determined by subtracting from the total value of the Contract any amountsthat the Consultant pays to direct Subconsultants and Subcontractors. If the Consultant is not an M/WBE, it must meet the Participation Goal through the awarding of Subcontracts to firms certified with DSBS as MBEs or WBEs.

A Consultant that is an M/WBE and has a certification type specified in the Diverse Utilization Goal shall also be permitted to count its own participation toward fulfillment of the Diverse Utilization Goal, following the same process as set forth above for counting participation. If the Consultant's certification type is not listed in the Diverse Utilization Goal, it must meet the Diverse Utilization Goal through the awarding of subcontracts to M/WBE firms with such certification types.

A Consultant that is a Qualified Joint Venture shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of the Qualified Joint Venture's participation shall be determined by first subtracting from the total value of the Contract, any amounts that the Qualified Joint Venture will pay to direct Subconsultants and Subcontractors. Thereafter, the M/WBE percentage of the Qualified Joint Venture shall be applied to the remaining value of the Contract to determine the overall Participation Goal.

9.4 M/WBE Narrative, Capacity Building Training Program Commitment Form, and Participation Plan.

9.4.1 The M/WBE Narrative Form and Capacity Building Training Program Commitment Form and any applicable forms as needed for this Contract are attached hereto as **Appendix M**. The Consultant shall submit a Subcontractor Participation Plan on a Project Assignment basis as required.

9.4.2 In the event that the Corporation does not approve a Subconsultant or Subcontractor proposed by the Consultant, the Consultant shall have a reasonable time to propose alternate Subconsultants or Subcontractors.

9.5 Subcontractor Award and Payment Tracking.

9.5.1 NYCEDC requires Consultants to trackSubcontractor and Subconsultant award and payment information online through the Compliance Tracking System (CTS). Consultants are responsible for entering contact and award information on all Subconsultants and Subcontractors associated with each Project Assignment, and ensuring that any Subconsultants and Subcontractors do the same for second-tier subcontractors they are using on the Project Assignment.

9.5.2 CTS Payment Audit. When the Consultant receives payments from NYCEDC, it will receive a system- generated notification prompting them to access CTS and enter information on how much of that payment was retained and the amounts paid to each Subconsultant and Subcontractor, along with dates of payment.

9.5.3 The Consultant has seven (7) days from receipt of this notification to enter the required information in the CTS. In addition, any changes to Subconsultants and Subcontractors and award amounts must be tracked in this system. The compliance tracking system can be accessed by following this link:https://nycedc.mwdbe.com/

9.5.4 In addition to the foregoing, the Consultant shall submit a final, cumulative CTS Payment Audit to the Corporation. The Consultant shall set forth in such final report the information required by Section 9.5.3 in connection with all Services rendered by the Consultant and its Subconsultants and Subcontractors during the entire Contract Term.

Change Orders. If the Consultant requests a Change Order having a value that exceeds ten percent (10%) of the Contract, the Corporation will evaluate the added scope and may establish an M/WBE Participation Goal for the Work to be performed pursuant to the Change Order.

9.6 Modification of the Consultant's M/WBE Participation Plan.

9.6.1 The Consultant may request modification of its M/WBE Participation Plan after the award of the Contract and/or Project Assignment. The Corporation may grant such request if it determines that the Consultant has established, with appropriate documentary and other evidence, that the Consultant has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract and/or Project Assignment.

9.7 Good Faith Efforts. Good faith efforts should be documented by Consultant requesting a modification and such documentation provided to the Corporation upon the Corporation's request. In determining whether the Consultant has made all reasonable good faithefforts to meet the Participation Goal, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, conducted the following:

9.7.1 Solicitation/Advertisement Efforts: includes Consultant's efforts to solicit quotes, through all reasonable and available means, from a satisfactory number of certified Consultant who have the capability to perform the work of the contract:

9.7.1.1 The Consultant should ensure that the requests are made within sufficient time to allow M/W/DBE Certified Subcontractors ("M/W/DBE Sub") to respond.

9.7.1.2 The Consultant must report a list of outreach efforts, including attendance at industry M/W/DBE events, Project Assignment information sessions, and advertising in local media.

9.7.2 Negotiation Efforts: includes Consultant efforts to make a portion of the Project Assignment Work available consistent with the availability and capabilities of M/W/DBE Subs to facilitate M/W/DBE Sub participation.

9.7.2.1 Consultant are encouraged to break out contract work items into smaller economically feasible Subcontracts to ensure M/W/DBE Subs' participation.

9.7.2.2 As part of the Consultant negotiation, the Consultant should make plans/specifications available to the M/W/DBE Subs which have shown an interest in participating.

9.7.2.3 When negotiating with M/W/DBE Subs, Consultant should use good business judgment by considering price and capability as well as Project Assignment goals.

9.7.3 Assistance Efforts: includes Consultant efforts to assist M/W/DBE Subs in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other Project Assignment -related assistance.

9.7.3.1 Consultant are encouraged to assist M/W/DBE Subs with independently securing/obtaining these resources.

9.7.4 Miscellaneous Efforts: includes any additional efforts to utilize the services of M/W/DBE Subcontractors and local/state/federal business offices that assist with the recruitment and placement of M/W/DBE Subcontractors.

9.7.4.1 Consultant are strongly encouraged to utilize the services offered by NYCEDC for assistance with advertisement and recruitment efforts.

9.7.5 Management Efforts: Consultant should, as part of their project management responsibilities, be monitoring and forecasting M/W/DBE Sub-attainment throughout the life of the project.

9.7.5.1 If a Consultant needs to be notified by NYCEDC that it is in danger of not meeting M/W/DBE goals and it does not have a plan to remedy the shortfall or ready documentation showing Good Faith Efforts, this will count against the Consultant in the Good Faith Efforts assessment.

9.7.5.2 If the Consultant needs to substitute an M/W/DBE, the Consultant should identify portions of the Contract Work that could be substituted for portions originally designated for the participation by M/W/DBEs in the M/WBE Subcontractors Participation Plan. They must then reach out to M/W/DBEs that can provide those services for substitution.

9.7.6 Construction Manager Efforts: Significant efforts should be focused on ensuring that direct Subcontractors are hiring M/WBE and/or DBE Subs at the second-tier subcontracting level, especially since there is more opportunity for M/WBE and DBE Sub engagement at that level.

9.7.6.1 Consultant are required to pass down goals to direct subcontractors and must provide documentation.

9.8 Consultant are encouraged to place goals strategically, and required to bid exclusively to M/W/DBEs, on trades and scopes valued at $1.5 million or less (per NYC Executive Order 26), where there is strong availability of M/W/DBE Consultant. The Corporation’s M/WBE Director and Chief Contracting Officer will providewritten notice to the Consultant of the determination

on whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal.

9.9 Compliance Audits. This Contract may be audited by the Corporation, DSBS and the City Comptroller to determine the Consultant's compliance with the requirements of the Corporation's M/WBE Program and the Consultant's M/WBE Participation Plan.

9.10 Enforcement. In the event the Corporation determines that the Consultant or its Subcontractors have violated the requirements of the Corporation's M/WBE Program or the M/WBE Participation Plan including, without limitation, a determination that the Consultant has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Consultant's M/WBE Participation Plan (unless the Corporation has permitted the Consultant to modify the Consultant's M/WBE Participation Plan in accordance with Section 9.8), the Corporation may:

(i) terminate the Contract or Project Assignment;

(ii) assess actual and consequential damages for and/or exercise its right to setoff any additional expenses the Corporation incurs to complete the Project satisfactorily in accordance with the Corporation's M/WBE Program and in order to meet the Participation Goal including, without limitation, the actual and administrative costs of:

(a) meeting the Participation Goal through additional procurements;

(b) payments made to any other consultant retained to complete the Services; and

(c) investigation and enforcement; or

(iii) assert any other right or remedy it has under the Contract.

9.11 Liquidated Damages for Failure to Fulfill Approved Participation Goals. If the Consultant fails to fulfill its Participation Goals set forth in its M/WBE Participation Plan or the Participation Goals as modified by the Corporation pursuant to Section 9.8, the Corporation 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 M/WBEs to meet the Participation Goal and the dollar amount the Consultant actually awarded and paid to M/WBEs. In view of the difficulty of accurately ascertaining the loss which the Corporation will suffer by reason of the Consultant's failure to meet the Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the Corporation will suffer by reason of such failure, and not as a penalty. The Corporation 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 the liquidated damages suffered by the Corporation, the Consultant shall be liable to pay the difference.

Statements. Statements made in any document submitted to the Corporation in connection with the Corporation's M/WBE Program 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.

9.12 Evaluations. The Consultant's record in implementing its M/WBE Participation Plan shall be a factor in the evaluation of its performance.

ARTICLE 10
MISCELLANEOUS

10.1 Consultant as Independent Contractor. Notwithstanding anything contained herein to the contrary including, without limitation, the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Corporation or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

10.2 Assignment. This Contract is intended to secure the Services of the Consultant or a competent Representative or Representatives of the Consultant approved by the Corporation. The Consultant shall not assign, convey, subcontract, or transfer this Contract or the Consultant's rights hereunder without the written consent of the Director, which consent shall be manifested by Notice. The Corporation shall have the right to assign, convey, subcontract or transfer this Contract or the Corporation's rights hereunder without the written consent of the Consultant to the City or any other corporation, agency or instrumentality having authority to accept the assignment.

10.3 Right to Inspect. The Corporation, the City Comptroller, the Inspectors and any other individual or entity authorized under any Legal Requirement shall have the right on reasonable Notice to inspect the operations and records of the Consultant and its Subconsultants and Subcontractors relating to this Contract.

10.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services performed by it, its employees, and its Subconsultants and Subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by the Corporation, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable Notice. Said records shall be maintained for a period of six (6) years after termination of this Contract.

10.5 Modification in Writing. No modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the Party against whom the same is asserted.

10.6 Captions. The tables of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of the Contract or in any way affect this Contract.

10.7 Completeness. This Contract contains all the terms and conditions agreed upon by the Parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the Parties hereto.

10.8 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

10.9 Notices.

10.9.1 Each Notice, demand, request or other communication in connection with this Contract shall be either: (i) served in person, with delivery of service acknowledged in writing by the Party receiving the same; (ii) sent by nationally known overnight delivery service or telefax; or (iii) deposited in the U.S. mails, first class mail, postage prepaid, and addressed to the respective address herein set forth in Part I, Section 3 or to such other address as may be specified by Notice sent in accordance herewith.

10.9.2 Every Notice hereunder shall be deemed to have been given: (i) at the date of receipt by the respective Party in the case of personal delivery, overnight delivery or telefax and (ii) five (5) business days after the date of deposit in the first class U.S. mails.

10.10 Non-Waiver. Failure of the Corporation or its Representatives to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the Corporation and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the Corporation.

10.11 Refusal to Testify.

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

10.11.2 If:

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

(ii) any person refuses to testify for a reason other than the assertion of her or his 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 the Corporation, or any local development corporation within the City,

then the commissioner or agency head (each of which is hereinafter referred to as the "Commissioner") whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry 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.

10.11.3 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing or the Corporation may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subsection 10.11.5 below without the City or the Corporation incurring any penalty or damages for delay or otherwise.

10.11.4 The Corporation or the City may impose the following penalties after a final determination by the Commissioner that penalties should attach for the failure of a person to testify:

(i) the disqualification for a period not to exceed five (5) years from the date of an adverse determination of 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 or the Corporation, as the case may be; and/or

(ii) the cancellation or termination of any and all such existing City or Corporation contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or the Corporation 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 or the Corporation, as the case may be.

10.11.5 The Commissioner shall consider and address, in reaching the Commissioner's determination, and the Corporation and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in subparagraphs (i) and (ii) below. The Commissioner and the Corporation may also consider, if relevant and appropriate, the criteria established in subparagraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The entity'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.

(ii) 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.

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

(iv) 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 subsection 10.11.4 above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in subsection 10.11.2(2) 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.

10.11.6 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

10.11.7 The term "entity" as used herein shall mean any firm, partnership, corporation, association, Joint Venture or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

10.11.8 The term "member" as used herein shall mean any person associated with another person or entity as a partner, director, officer, principal or employee.

10.11.9 The term "person" as used herein shall mean any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

10.12 No Political Activity. The Consultant agrees that there shall be no political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSTRUCTION MANAGEMENT RETAINER
CONSULTANT CONTRACT
FOR THE PROVISION OF CONSTRUCTION MANAGEMENT AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 108200005
PROJECT CODE NO. 10820

PART III
APPENDICES

APPENDIX A	**DEFINITIONS**
APPENDIX B	**SCOPE OF SERVICES**
APPENDIX C	**PAYMENTS**
APPENDIX D	**PROCUREMENT**
APPENDIX E	**FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS**
APPENDIX F	**INSURANCE REQUIREMENTS**
APPENDIX G	**EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM**
APPENDIX H	**E.O. 50 EMPLOYMENT REPORT FORM**
APPENDIX I	**E.O. 50 PAYROLL REPORT FORM AND INSTRUCTIONS**
APPENDIX J	**APPLICABLE AGREEMENTS**
APPENDIX K	**APPLICABLE REQUIREMENTS**
APPENDIX L	**OUTSIDE FUNDING SOURCE PROVISIONS**
APPENDIX M	**M/WBE NARRATIVE**
APPENDIX N	**DOING BUSINESS DATA FORM**
APPENDIX O	**WHISTLEBLOWER POSTER**

APPENDIX A

DEFINITIONS

APPENDIX A

DEFINITIONS

The defined terms listed below shall have the following corresponding meanings in the Contract (as defined herein) unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate. The gender used in the Contract shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the persons being referred to may require.

Additional Insured(s)	All individuals and entities listed in *Insurance Provisions* (Appendix F)
Additional Work	Work that is substantially within the scope of the Consultant's Executed Project Assignment, that at the Corporation's determination, requires an increase in Subcontractor's Costs, General Conditions costs, and/or Fixed Fee Profit through an Amendment, as described in Part II, Section 1.5.2
ADA	Collectively refers to the Americans with Disabilities Act of 1990 as well as the Rehabilitation Act of 1973, the New York State Human Rights Law and the New York City Human Rights Law.
Agencies	Any other agencies, bureaus, departments, offices, or other discrete entities of The City of New York, the State of New York State or the United States that have jurisdiction over any activities carried out in respect of the Services and/or the Project, including but not limited to: LPC, PDC, DASNY, DCB, DCLA, DCP, DEP, DOB, DOT, DSBS, DSNY, FDNY, FHWA, FTA, NYCDPR, NYCTA, NYFD, NYPD, NYSDEC, NYSDOH, NYSDOS, NYSDOT, NYSHPO, OMB, PANYNJ, USDOT, USACOE. (all as hereinafter defined)
Applicable Agreements	Various governing agreements related to the funding of this Contract and any Project Assignments, including, without limitation, any specific "Applicable Agreements" identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the

	Funds or a Project Assignment, including, without limitation, any specific "Applicable Requirements" identified in Part I
Billing Period	The period in time for which the Consultant requests payment from the Corporation for Services and Work rendered under this Contract for any Project Assignment, as submitted in a Requisition
Change Order	A significant alteration to the construction trade Subcontractor's Work or Services that the Consultant has been directed to deliver by the Corporation as described in Part II, Section 4.5
Change Order Work	Any Work required by the Consultant and any of its Subcontractors as a result of an approved Change Order
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 2023 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2023, as applicable, as each may be amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or designee
Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4
Community Groups	Any group of persons, whether or not a legally organized entity under the laws of New York State or any other sovereign state, and whether or not organized on a formal or informal basis, that may assert an interest in a specific project, as defined in Appendix B and any Project Assignment.

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by NYCEDC and/or the City or any of its agencies to the Consultant or developed by Consultant in the performance of Consultant's duties hereunder, except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a non-confidential basis from a source other than NYCEDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from NYCEDC, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3; the Construction Manager
Consultant Team	The named employees of the Consultant and any relevant Subconsultants that will provide construction management Services under this Contract, as approved and included in the *Cost Schedule* (Appendix C3)
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Part II, Section 3.5.3
Contract Date	The date of this Contract, as stated in Part I, Section 1.3
Corporation	New York City Economic Development Corporation, a local development corporation organized pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, ("NPCL") or any successor organized pursuant to Section 1411 of the NPCL
Cost Schedule	As included in Appendix C3, the Maximum Allowable Hourly Rates that may be charged for Consultant Team

	Members, with applicable Overhead Rate(s) that will provide Services under this Contract. A Project Assignment specific Cost Schedule shall also be included in each Executed Project Assignment
CPL	Contractor Pollution Liability Insurance
DBEs	Disadvantaged Business Enterprises
Director	The Executive Vice President of Capital Program
Disability Benefit	A type of insurance to be purchased and maintained by the Consultant and its Subconsultants and Subcontractors, in statutory amounts, for all of its employees engaged in the Services
DCAS	New York City Department of Citywide Administrative Services
DCP	New York City Department of City Planning
DEP	New York City Department of Environmental Protection
Division	Division of Labor Services of DSBS
Doing Business Data Form	The form described in Appendix N to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
DOB	New York City Department of Buildings
DOT	New York City Department of Transportation
DPR	New York City Department of Parks and Recreation
DSBS	New York City Department of Small Business Services
DSNY	New York City Department of Sanitation
Electronic Funds Transfer (EFT)	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorized a financial institution to debit or credit an account
E.O.50	Executive Order No. 50 (1980), as amended or revised from time to time

Employment Reports	The reports required by Executive Order 50, these reports are to be completed and submitted to the Corporation in the form annexed as Appendix H
Event of Default	As described in Part II, Section 3.3.2
Executed Project Assignment	A memorialization in writing between the Corporation and the Consultant, of the agreed upon specific terms of the Project Assignment, including but not limited to: the assigned Scope of Services, schedule, Project Assignment Team, M/WBE Participation Goals, a not-to-exceed Maximum Project Assignment Price, and any additional requirements relating to the Project Assignment. The Executed Project Assignment may be revised from time to time, as necessary, with written confirmation by both the Corporation and the Consultant.
Extra Work	An alteration to the work or Services, not within the Scope of Work originally assigned to the Consultant through this Contract and/or an Executed Project Assignment, that the Consultant has been directed to perform by the Corporation through an Amendment, as described in Part II, Section 1.5.2
Event of Default	As described in Part II, Section 3.3.2
FDNY	New York City Fire Department
Federal Courts	United States Federal Courts located in New York City
FHWA	United States Federal Highway Administration
Final Completion	The performance of all Services contemplated in any Project Assignment and/or Contract to the satisfaction of the Corporation.
Final Payment	The last payment by the Corporation to the Consultant upon Final Completion of any Project Assignment and/or Contract, or as provided in Part II, Sections 3.5, subject to any Retainage
Fixed Fee Profit	The Consultant’s profit, not including any amounts due as part of the Consultant’s Overhead Rate, for delivering each Project Assignment, as memorialized in an Executed Project Assignment.

Force Majeure	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within five (5) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
FTA	United States Federal Transit Administration
Funding Agencies	All federal, State or local agencies or entities that are the source of the Funds including, without limitation, any specific "Funding Agencies" identified in Part I, Section 4.2
Funds	All funds from the federal, State or local sources to be applied to payments for Services under this Contract for each Project Assignment, including, without limitation, any specific "Funds" identified in Part I, Section 4.1.
General Conditions	Costs incurred by the Consultant to implement the Project, including equipment, supplies, and Consultant's Union labor force, but not including actual construction. For each Project Assignment, the Consultant shall submit to the Corporation for its approval, a list of General Conditions expenses. These may include, without limitation: Consultant and Corporation field office costs including fixtures and furnishings, field office temporary facilities (water, toilets, electric heat, shanties, etc.), site security, progress photographs, portable chemical toilets, messenger services, field office equipment (to be tracked with the Corporation's equipment tracking system and returned to Corporation at completion of Project), miscellaneous field office supplies, field office reproduction services, field office equipment and telephones, field office cleaning service, field communications systems, wireless telephones, out-of-office printing, special mailings (such as overnight delivery and messenger services), mailings from the site office, approved in advance by the Corporation, on a direct cost basis (with no additional provisions for overhead or fee).

	General Conditions shall **not include** those costs considered to be overhead such as: 1) normal mailing, local telephone and facsimile charges from the home office, home office in-house copying, or home office graphic supplies; 2) travel to and from the home office and the Project Site (as defined in each Project Assignment) and travel within the City; 3) software licensing fees for either proprietary or third party software programs exclusively utilized by the Consultant's main office. All costs not considered General Conditions must be included in the Consultant's Overhead Rate. (See Appendix C for complete details on Payments)
Guarantee Period	A period of specified duration, as defined in an Executed Project Assignment, following Final Completion for which the Consultant is responsible to promptly repair, replace, restore, rectify, or rebuild, as the Corporation may determine, any finished Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects.
Insurance Provisions	As defined in Part II, Section 6.3.1 of the Contract
Insurer	Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2
Joint Venture	An association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.
Landmarks Preservation Commission (LPC)	New York City Landmarks Preservation Commission
Legal Requirements	All applicable laws, rules, regulations, statutes, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract, as amended from time to time,

	including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.8
Maximum Payment	The maximum amount payable to the Consultant for each portion of the Services during a given Billing Period
Maximum Project Assignment Price	The maximum amount that may be paid for a Project Assignment as stated in the Executed Project Assignment
Monthly Progress Report(s)	Report(s) which Consultant is obligated to prepare each month that show the status of the Services and Work in accordance with the Progress Schedule of each Project Assignment
MBEs	Minority-owned Business Enterprises, certified by DSBS
M/WBEs	MBEs and WBEs, collectively
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract and/or Project Assignment to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9
Notice to Proceed	Written notice from the Corporation to the Consultant to proceed with the Services or any portion thereof, as defined in the Contract for the Contract or a Project Assignment.
NYSDEC	New York State Department of Environmental Conservation

NYCEDC	The Corporation; New York City Economic Development Corporation
NYCTA	New York City Transit Authority
NYPD	New York City Police Department
NYSDOH	New York State Department of Health
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
NYSHPO	New York State Historic Preservation Office
Overhead Rate	A specific multiplier used when calculating the Consultant's overhead cost of operating under this Contract and/or a Project Assignment, not inclusive of Consultant's Fixed Fee Profit, as found in *Cost Schedule* (Appendix C3). The Overhead Rate may vary if the Work is provided by Subconsultants to the Consultant.
Overrun	For construction Subcontract Work, when the quantity of a unit price item is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the Subcontractor's bid schedule and Subcontract with the Consultant
OMB	New York City Office of Management and Budget
Outside Funding	Funding for a Project Assignment provided by an entity other than the City or Corporation. If applicable, the Consultant must comply with all requirements of the Outside Funding as set forth in the Contract and each Project Assignment
PANYNJ	The Port Authority of New York and New Jersey
Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.3.
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete in the form annexed to this Contract in Appendix I
Percentage of Completion	An amount equal to the percentage of completion of each portion of the Services

Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services for the Contract and each Project Assignment.
PLL	Pollution Legal Liability Insurance Policy
Principal	The most senior officer, or member of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Schedule	Any schedule, created in MS Project or other software, created by the Consultant for each Project Assignment, and approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.6, and described in further detail in Appendix B of this Contract
Project Assignment	A specific Project for which the Consultant will be responsible to deliver the construction management services for a construction project as outlined in Appendix B and in accordance with any Executed Project Assignment
Project Assignment Proposal	A formal response the Consultant submits to the Corporation in response to a Project Assignment Solicitation
Project Assignment Solicitation	A formal request by the Corporation with a summary of the Project Assignment and the Corporation's specific requirements for the delivery of the Services, requesting from the Consultant, a Project Assignment Proposal for a new Project Assignment
Project Assignment Team	The named employees of the Consultant and any relevant Subconsultants that will provide construction management Services for a specific Project Assignment, as approved in an Executed Project Assignment
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant for each Project Assignment
Project Site	The location of the Project as identified in Part I, Section 1.7 and described in detail in each Project Assignment

Public Design Commission (PDC)	New York City Public Design Commission (formerly, the Art Commission)
Qualified Joint Venture (JV)	A Joint Venture between one or more MBEs and/or WBEs and another person or entity, in which the percentage of profit to which the certified firm or firms is entitled for participation in the Contract, as set forth in the joint venture agreement, is at least 25% of the total profit.
RAP	Remedial Action Plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment for a specific Project Assignment, to be submitted by Consultant to the Corporation not more than once per month, or as approved by the Corporation, setting forth in detail, for the Billing Period for which partial payment is requested, the amount requested and Services performed during the Billing Period
Retainage	Any sum withheld from any payment to the Consultant for a Project Assignment including, without limitation, any set percentage identified in Part I, Section 1.12, subject to the provisions of Part II, Article 2 and Part III, Appendix C, released upon Consultant's Request at the end of the Guarantee Period
Retainage Payment Date	The date by which any Retainage identified in Part I, Section 1.13 will be paid to the Consultant subject to the provisions of Part II, Article 2 and Part III, Appendix C
Scope of Services	All of the Services to be provided by the Consultant to the Corporation pursuant to the Contract, as described in greater detail in Appendix B, and specifically enumerated for each specific Project Assignment
Second Tier Subcontractor, or 2nd Tier Subcontractor	When calculating a Change Order, a 2nd Tier Subcontractor is any subcontractor to the Consultant's Subcontractor
Second Tier Subcontractor's Actual Costs	When calculating a Change Order performed by a Second Tier Subcontractor, Second Tier Subcontractor's Actual Costs are the base wages paid to Second Tier Subcontractors performing the construction trade work, including all insurance, welfare and other fringe benefits

	and payments to labor organizations; the cost of materials and equipment purchased, including transportation costs and credit for all discounts; the actual cost of additional insurance necessitated by the Change Order Work; the cost of installation, dismantling maintenance and operation of plant and equipment necessitated by the Change Order Work, (including transportation to and from the Site) and the rental cost thereof (or rental value of Second Tier Subcontractor owned plant and equipment, but not tools; all as documented to the Corporation's reasonable satisfaction.
Second Tier Subcontractor's Overhead	When calculating a Change Order performed by a Second Tier Subcontractor, Second Tier Subcontractor's Overhead will be calculated at an amount not to exceed ten percent (10%) of the Second Tier Subcontractor's Actual Costs. As compensation for all other costs related to Change Order Work, including, without limitation, field and home office overhead costs. Second Tier Subcontractor's Overhead shall not include costs for tools, field and home office equipment, insurance, payroll taxes, the premium portion of overtime pay, or on sales and property taxes.
Second Tier Subcontractor's Profit	When calculating a Change Order performed by a Second Tier Subcontractor, Second Tier Subcontractor's Profit will be calculated at an amount not to exceed ten percent (10%) of the sum of the Second Tier Subcontractor's Actual Costs and Second Tier Subcontractor's Overhead
Service(s)	Specific service(s) to be provided by the Consultant to the Corporation pursuant to the Contract, as described in greater detail in Appendix B, and specifically enumerated for each specific Project Assignment
Special Inspection	Inspection of selected materials, equipment, installation, fabrication, erection or placement of components and connections, to ensure compliance with Construction Documents and referenced standards as required by Chapter 17 of the 2008 NYC Building Code and the DOB Special Inspections Rules, as specified in Section 101-06 of the Rules of the City of New York, Title 1, Subchapter A of Chapter 100 on Special Inspectors and Special Inspection Agencies.

Special Inspector	A qualified individual employed by a certified Special Inspection Agency retained by the Corporation to provide Special Inspection services for the Project Assignment.
Specific Terms and Conditions	Part I of this Contract
State	State of New York
Subconsultant	A consultant retained directly by the Consultant to serve on the Consultant Team and/or Project Assignment Team for expertise or support for purposes of providing specialized construction management services, performing no construction trade scope in accordance with the Contract and any Project Assignment.
Subcontract	Any agreement entered into by the Consultant with any Subconsultant or Subcontractor (as defined herein) to perform Services or Work in accordance with the Contract and any Project Assignment
Subcontractor	Any person or entity including, without limitation, contractors, consultants, vendors and subcontractors of such persons or entities directly retained by the Consultant in accordance with the Contract and any Project Assignment to provide any labor, work, materials, equipment or supplies in connection with the Services
Sub-CO, or Subcontractor Change Order	A Subcontractor-initiated request to the Consultant for a change order to the Subcontractor's Subcontract due to a significant alteration to the construction trade Subcontractor's Work or Services that the Consultant will submit to the Corporation for approval
Sub-CO Form	A form that Consultant will submit to the Corporation when requesting a Sub-CO that shall describe the following: **A.** a complete description of the reason for the proposed change order, the work that is to be done, **B.** a cost estimate of the proposed change order, that includes material, equipment, and labor costs, how the work will be paid for, i.e. time and materials, negotiated, contract unit price, etc.; **C.** scope and impact to cost, schedule, and technically of a proposed Change Order that shall include all plans, specifications, estimates, contracts or other

	documents that have been established as baseline; and any additional information that will help the Corporation assess the change order request.
Subcontractors' Costs	The compensation payable by the Consultant to any Subcontractor pursuant to a Subcontract entered into pursuant to Part II, Section 4.2
Subcontractor's Actual Costs	When calculating a Change Order, Subcontractor's Actual Costs are the base wages paid to Subcontractors performing the construction trade work, including all insurance, welfare and other fringe benefits and payments to labor organizations; the cost of materials and equipment purchased, including transportation costs and credit for all discounts; the actual cost of additional insurance necessitated by the Change Order Work; the cost of installation, dismantling maintenance and operation of plant and equipment necessitated by the Change Order Work, (including transportation to and from the Site) and the rental cost thereof (or rental value of Subcontractor owned plant and equipment, but not tools; all as documented to the Corporation's reasonable satisfaction.
Subcontractor's Overhead	When calculating a Change Order, Subcontractor's Overhead will be calculated at an amount not to exceed ten percent (10%) of the Subcontractor's Actual Costs. As compensation for all other costs related to Change Order work, including, without limitation, field and home office overhead costs. Subcontractor's Overhead shall not include costs for tools, field and home office equipment, insurance, payroll taxes, the premium portion of overtime pay, or on sales and property taxes.
Subcontractor's Profit	When calculating a Change Order, Subcontractor's Profit will be calculated at an amount not to exceed ten percent (10%) of the Subcontractor's Actual Costs
Subcontractor's Second Tier Administrative Cost	When calculating a Change Order performed by a Second Tier Subcontractor, the Subcontractor's Second Tier Administrative Cost will be an amount not to exceed five percent (5%) of the total sum of the 2nd Tier Subcontractor's Actual Costs, 2nd Tier Subcontractor's Overhead, and 2nd Tier Subcontractor's Profit

Term	The time period of this Contract, as stated in Part I, Section 1.5.The term of each Project Assignment will be established in each Executed Project Assignment
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
Utilities	Any and all private or public utilities affected by or otherwise interested in the Project or each Project Assignment.
WBEs	Women-owned Business Enterprises, as certified by DSBS
Work	Any or all Services and labor required to be performed by the Consultant and/or its Subconsultants and Subcontractors under this Contract in accordance with a Project Assignment
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Work-Made-For-Hire	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101
Work Product	All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, provided however that Work Product shall not include any Consultant's Underlying Intellectual Property

APPENDIX B

SCOPE OF SERVICES

APPENDIX B

SCOPE OF SERVICES

DEFINITIONS

A. IN GENERAL

All capitalized terms defined in Appendix A of the Contract to which this Appendix B is attached shall have the same meaning herein unless otherwise defined or the context otherwise requires.

B. ADDITIONAL DEFINITIONS

ADA	Collectively refers to the Americans with Disabilities Act of 1990 as well as the Rehabilitation Act of 1973, the New York State Human Rights Law and the New York City Human Rights Law.
Agency, or Agencies	Public Design Commission, Landmarks Preservation Commission, DCLA, DASNY, DCP, DEP, DOB, DPR, DOT, DSBS, FDNY, NYPD, OMB, NYSDEC (all as defined in Appendix A or herein below), and/or any other agencies, bureaus, departments, offices, or other discrete entities of the City of New York, the State of New York or the United States of America that have jurisdiction over any activities or Services carried out under this Contract.
Anticipated Cost Report, or ACR	A set of accounting documents (including, but not limited to, a list of the schedule of values, contracted budget, pending costs to be invoiced, potential costs based on Work already performed but not yet submitted, and any pending Change Orders pending EDC approval or submission to EDC, and the balance to date) for a specific Project Assignment, generally prepared by or obtained by the Consultant.
Approvals	Any and all approvals to be obtained by the Consultant or its Subconsultants and Subcontractors from all applicable Agencies, Utilities and Interested Parties in connection with and required for proper completion of the Services including, without limitation, written evidence of the receipt thereof.
As-Built Records	A set of documents (including, but not limited to, drawings, specifications, generally prepared by or obtained by the Consultant, which include any revisions to the Contract Documents, to indicate how the Work was actually constructed. As-Built Records must be signed and sealed per applicable NYC

	Agency requirements.
BIM	Building Information Modelling
Budget	Overall estimate of the total cost of delivering a Project or Project Assignment as allocated and determined by the Corporation
Certificate to Proceed, or CP	A specific approval from OMB certifying that funding for a specific Project is in place
Client, or Client Agency	Entity for which the Corporation is managing, implementing, and/or constructing the specific Project, as defined in each Project Assignment
CM Inspectors	The Consultant's inspection staff as identified in the Construction Phase services section of the specific services of this Appendix B
Contract Documents	Any contracts for labor, materials, or other project related services held by the Consultant for the Project Assignment, together with any related drawings, specifications, schematics or other documents created by the Design Consultant(s), the Consultant and/or NYCEDC including but not limited to the following documents: 1. this Contract and any amendments; 2. the Executed Project Assignment; 3. all plans and drawings; 4. all specifications; 5. all procurement documents; 6. all addenda issued prior to the receipt of bids and/or proposals; 7. forms for the notice of awards, and the bid, performance and payment bonds;
Design Documents	Any documentation created during the design and construction phases of a specific project by the Design Team, including design modifications during the construction phase which include, but are not limited to: 1. Conceptual Design Documents 2. Schematic Design Documents 3. Preliminary Design Documents

4. Final Design Documents, and/or Construction Documents
5. Contract Document Modifications

Design Review	A thorough evaluation of the Design Documents as further defined under the Project Review Section of the Specific services within the scope of this Appendix B
Design Team	Collectively, the design consultant, defined in the Executed Project Assignment and any of its subconsultants hired by NYCEDC to furnish the Design Documents.
Envision	A sustainable infrastructure framework and rating system administered by the Institute for Sustainable Infrastructure (ISI)
Environmental Designation, or E-Designation	An environmental designation issued by the NYC Office of Environmental Remediation in which a property may have environmental requirements relating to air, noise or hazardous materials that must be investigated and addressed before building permits are issued
Interested Parties	All parties identified by the Corporation in an Executed Project Assignment, including but not limited to Community Groups and/or all other individuals and entities that use, reside, or work near, or may be directly affected by the Project Assignment
ISI	Institute for Sustainable Infrastructure
Joint Bid	An agreement between EDC and/or the City and Utilities, including but not limited to the Consolidated Edison Company of New York, Inc. ("Con Edison"), Charter Communications ("Charter"), and Verizon New York Inc., ("Verizon"), in which the parties engage in a mutual process to procure the materials, negotiate the unit prices, and collaborate on a shared timeline to cost share a certain percentage cost of the proposed public utility work.
LEED	Leadership in Energy and Environmental Design, a sustainable building rating system administered by the US Green Building Council
LL86, /LL31/LL32	Local Law 86 of 2005 and Local Laws 31/32 of 2016 require some capital projects to have energy consumption reduction measures and obtain LEED certification as defined by the USGBC. Reference LL86, LL31, and LL32 for specific details.

LL92/94	Local Laws 92 and 94 of 2019, as it may be amended or superseded.
LL96	Local Law 96 of 2013 describes the City's adoption of the best available flood maps.
Post-Construction Services	Services to be performed by the Consultant after Substantial Completion (to be determined by the Corporation) of a specific construction project. Tasks under Post-Construction Services may include, but are not limited to: Project close-out, filing for close-out permits, approvals, financial closeout of contracts, and/or LEED certifications and delivery of appropriate of the close out documents to the Corporation and/or Client Agency.
Pre-Construction Services	Services to be performed during the design processes which shall include but are not limited to support of the constructability review, estimating, and other services during the completion of Conceptual Design, Schematic Design, Design Development, Construction Document/Bid Package Preparation, Bid Release and Subcontract Award.
Project	For the purposes of this Appendix B, Project will refer to a specific Project Assignment or Executed Project Assignment
Project Executive	As identified in an Executed Project Assignment, Consultant's representative serving as liaison on contract issues related to the Project Assignment, who has the authority to negotiate cost proposals and assign personnel on behalf of the Consultant
Project Team	As identified in an Executed Project Assignment, the parties with a special interest and/or responsibility for the Project Assignment
Quality Assurance/Quality Control ("QA/QC")	A program developed and maintained by the Consultant and throughout the Construction Phase where the Consultant provides uniform cost-effective controls consistent with the complexity, criticality and safety aspects or the task being performed. To the extent feasible, such program shall aim to prevent conditions adverse to quality, assure prompt detection and analysis of actual and potential deficiencies that may contribute to marginal quality, and provide for timely and effective corrective action. The program is coordinated with the Design Team and the Consultant to implement a high-quality project.
Restrictive Declaration	A covenant running with the land that binds the present and future owners of a given property. Restrictive declarations are used to implement the conditions of a land use approval or

	ensure implementation of environmental mitigations and components.
RFI	Requests for Information
Risk Management	The identification and mitigation of potential events and/or activities to prevent negative impacts and enhance positive impacts to the Project Assignment.
Shop Drawings	Diagrams, fabrication drawings, illustrations, test product/performance data, catalog cuts and product data submitted by the Consultant to the Design Team for approval to illustrate a specific portion of the Work.
Substantial Completion	The stage in the progress of the Work when the Work, or a portion thereof, is sufficiently complete in accordance with the Contract Documents with minimal punch list work remaining, as determined by NYCEDC, to enable the Corporation (and/or Client to occupy or utilize the Work for its intended use.
Surveys	Technical Survey drawings, technical surveys (as hereinafter defined), maps and analyses of existing conditions within the Project Site, as identified by the Project Assignment, and designated nearby areas
Sustainability Management Plan (SMP)	The Sustainability Management Plan (SMP) includes Project Scope, Sustainability Goals, Leadership Roles and Responsibilities, Sustainability Implementation Plan, and Project Phase Actions (Design, Construction, and Operations)
Task(s)	Each portion of these Scope of Services to be provided to the NYCEDC by the Consultant pursuant to this Contract, and specifically assigned to the Consultant through an Executed Project Assignment.
USGBC	US Green Building Council
Utilities	Any and all private or public utility companies having legal rights to maintain or operate equipment and infrastructure within the Site.
Value Engineering ("VE") Studies	Value Engineering studies that may be required by OMB at the end of Schematic Design and/or Preliminary Design phases.

SCOPE OF SERVICES

A. Overall Contract Objectives

a. The Consultant will lead the Consultant Team and will be responsible for providing these

Services.

b. The Consultant will coordinate with the Design Team during the pre-construction phases for Tasks, including, but not limited to: cost estimating and value engineering services; constructability review; and review of staging, phasing, construction documents and specifications. The Consultant will provide independent oversight and review of the Design Team's work and will assist NYCEDC in project controls, preparing bid packages for the construction trades and ultimately, managing and overseeing construction.
c. The Consultant shall review with the Project Team the schedule, bidding and construction decisions through regularly scheduled meetings.
d. The Consultant shall provide electronic files to the Design Team and its Subconsultants upon request by NYCEDC, to facilitate the development of mock-ups and submittals for coordination by the Subcontractors.
e. The Consultant shall provide administrative and management functions necessary to ensure the successful completion of the Project with respect to cost, schedule and quality. The Consultant shall provide engineering peer review, constructability review and cost estimating services, with special attention to integrate planned work at the Project with the existing conditions already in place and during the duration of services. In addition, the Consultant must ensure that public safety measures are implemented and closely adhered to by all Subcontractors. Controls to adhere to this standard will be developed, managed, and adhered to by the Consultant, dependent on the specific requirements of each Project and its Project Site.
f. Services are anticipated to include pre-construction services ("Pre-Construction Services"), construction services ("Construction Services") and post-construction services ("Post- Construction Services"). Pre-Construction Services will commence from NTP. Construction Services will begin upon the completion of the Pre-Construction Services and conclude with the issuance of a Certificate of Substantial Completion. Post-Construction Services shall commence after the issuance of a Certificate of Substantial Completion and shall be completed upon any required issuance of a final and/or amended final Certificate of Occupancy, if required, and completion of all punch list items and completion of all warranty periods. The Corporation may choose to award only a portion of the above mentioned services based on the specific needs of the Project.

B. GENERAL ADMINISTRATIVE REQUIREMENTS APPLICABLE TO ALL PROJECT ASSIGNMENTS

1. The Services shall be performed expeditiously to assure the orderly progress of every Project Assignment in a prudent and professional manner and in accordance with standards and practices as are customary for such Services in the New York City Metropolitan Statistical Area for similar professionals performing similar Services.

2. The Consultant shall coordinate its efforts with the NYCEDC, Agencies, Utilities, the Design Team, and other Interested Parties, as identified by NYCEDC for each Project Assignment during each of the pre-construction, construction, and post-construction phase Services.

3. The Consultant shall provide the Services in accordance with all applicable Legal Requirements for each Project Assignment, the Consultant shall prepare, coordinate approval and distribute all reports, minutes of meetings, correspondence, and related materials, as required in the performance of the Services or as directed by the NYCEDC. The minutes of meetings are to be formatted with the inclusion of columns labeled "Action required by" and "Due Date," noting the firm/agency and person required to perform an action and the date that the action must be performed by for each item listed. The draft minutes are to be submitted to the NYCEDC for review no later than two (2) business days after each meeting. The NYCEDC's comments are to be incorporated into the draft minutes, and within two (2) days of receiving NYCEDC's comments, these comments must be incorporated into the final minutes and distributed by the Consultant to all meeting attendees.

4. The Consultant shall assist the NYCEDC in coordinating the activities of all engineers, inspectors, commissioning authorities, consultants or advisors engaged by the NYCEDC to perform any Work or provide any Services.

5. The Consultant, in collaboration with the Design Team, shall utilize BIM data in a 3D modeling format for the coordination during pre-construction as well as coordination of the proposed construction scope of work with the Subcontractors throughout the construction phase. 3D BIM data shall also be utilized for the preparing of submittals, including, but not limited to, surveys, geotechnical borings, shop drawings, coordination drawings, as-builts and any other appropriate application for the benefit of the project. The Consultant shall use commonly available BIM software such as Autodesk Revit, Navisworks, Autodesk Civil 3D or similar software platforms, as applicable to the project scope of work.

6. The Consultant shall be responsible for procuring and holding all construction Subcontracts in the execution of the Services, in accordance with this Agreement.

7. The Consultant shall coordinate and schedule the Subcontractors to ensure the sequencing of work is efficient and logical. The Consultant shall update NYCEDC on scheduling efforts, identify schedule concerns, including any activities which are delayed or have the potential to be delayed, and propose strategies to mitigate schedule impacts and/or provide recovery schedules.

8. The Consultant shall not be responsible, beyond that of public safety, for construction means, methods, techniques, sequences and procedures employed by Subcontractors in the performance of their work, but shall be responsible for reviewing same and shall verify that the Subcontractors carry out work in accordance with the Contract Documents and with all prevailing codes, regulations and laws. The Consultant shall immediately advise the NYCEDC if the construction means, methods, techniques, sequences, and procedures employed by Subcontractors are dangerous or, in the opinion of the Consultant, are not in the best interests of the Project or the NYCEDC. The Consultant shall immediately advise NYCEDC of any work that is in non-conformance with the Contract Documents and all Legal Requirements, and identify corrective action required for the work to be compliant and in confirmation with the Contract Documents and all Legal Requirements.

9. The Consultant shall ensure all Subcontractors including M/W/DBEs (as applicable) self-

perform at least 51% of the scope of work awarded to them by the Consultant.

10. The Consultant shall evaluate the performance of each Subcontractor on the Project. These evaluations shall be performed on a quarterly basis, shall be included in the Progress Report to the Corporation.

11. The Consultant shall receive requests for payments from the Subcontractors. The Consultant shall review these requests for accuracy and completeness and shall require backup documentation and shall certify these requests before forwarding the same to the NYCEDC. As part of all recommendations for payments made to the NYCEDC, the Consultant shall comply with the retainage provisions in the Contract.

12. The Consultant shall arrange meetings and presentations as requested by the NYCEDC, and shall provide to the NYCEDC necessary data for these meetings. The Consultant shall initiate, and function as coordinator for, all meetings required in the performance of the Services and shall provide necessary data and prepare appropriate presentations for such meetings. The Consultant shall be available to meet with the NYCEDC as often as necessary to effectively perform the Services.

13. The Consultant shall prepare and make any submissions (exclusive of those for which the Design Team is responsible) necessary or desirable to properly provide the Services to the NYCEDC, any Interested Parties as identified by NYCEDC, Agencies and Utilities as may be directed by the NYCEDC. The number of copies of each submission shall be as required by the Project Team.

14. The Services shall be performed to minimize conflicts and inefficiencies of any kind with Subcontractors or other parties engaged in the Project Assignment. The Consultant shall verify that the Subcontractors shall correct or modify promptly any work that is determined by the Consultant, the Corporation and/or the Design Team to be not in accordance with the Contract Documents.

15. The Consultant shall provide all Services, including monitoring, inspecting (except for Special Inspections required by DSBS and/or DOB, which will be performed under direct contract with the NYCEDC), accepting and approving of all Work and Services provided by the Subcontractors for conformance to the Contract Documents; the integration and coordination of Utilities and other public or private sector work efforts with that of the Subcontractors; monitoring of Subcontractor project schedules; and the development and management of the overall construction schedule.

16. The Consultant shall be responsible for establishing and implementing procedures to maintain daily inspection records and quality control documentation, construction costs, schedule preparation, and contract administration, including preparation of Change Order documentation and the review and acceptance of such Work, identifying and implementing claims and avoidance tasks, providing prompt responses to RFIs, and procurement of long-lead construction items and construction management facilities and supplies. The Consultant shall be responsible for overall strategy, think and plan strategically for resolution content questions in RFIs, Submittals, and similar materials, and providing clear and efficient document control services.

17. Technical services shall be provided by the Consultant shall be responsible for coordination with the Design Team and the NYCEDC. This Consultant shall provide control of technical data required for construction, including coordination and assistance in Shop Drawing reviews when required, and assistance in resolving technical field problems. The Consultant shall prepare technical reports and assist with the resolution of construction-oriented field problems and prepare cost estimates for construction changes.

18. The Consultant shall work with EDC, the Client, and the Design Team on sustainability efforts including, as applicable:

    a) Providing materials as needed and ensuring the construction meets the requirements for LL86/LL31/LL32, LL92/94, and any other such local laws and codes applicable to the project;

    b) Providing construction submittals, certifications and other materials necessary to support the project obtaining a minimum of LEED Gold certification;

    c) Providing construction submittals, certifications and other materials necessary to support the project obtaining a minimum of Envision Gold certification;

    d) Providing construction submittals, certifications and other materials necessary to support the project obtaining a WEDG verification;

    e) Working with EDC and DCAS 80x50 program representatives to maximize NYC energy saving goals. During construction phase, the Consultant shall be responsible for providing control of technical sustainability data required for Construction and will coordinate with Subcontractors in providing sustainability reviews and construction-oriented field solutions and cost estimates of any construction changes related to the sustainability laws and codes.

    f) The Project must refer to and implement the NYCEDC's Clean and Circular: Design & Construction Guidelines (which can be found at edc.nyc/circular-design-construction-guidelines) . Further guidance will be provided to the selected Consultant, including but not limited to: details of goals, format of deliverables, and implementation strategies. Circular design and construction practices aim to eliminate the concept of waste by rethinking the way the industry uses resources. The overall goal of circular design and construction is to design out waste from a project when possible and keep remaining materials circulating at their highest and best uses. The Consultant shall evaluate NYCEDC goals and set project-specific goals for material reduction and reuse, to be approved by NYCEDC. The Consultant shall source more sustainable materials, track performance of project goals, and use circular design and construction strategies, cutting significantly into the output of embodied carbon. The goals of this task are identified as:

        i. Divert Construction and Deconstruction Material from Disposal

            a. 75% of construction & deconstruction materials (by weight or

volume) that are not reused in the project must be either reused or recycled.

b. 75% of construction & deconstruction materials generated during deconstruction / renovation / rehabilitation must be diverted from landfill for other uses, either repurposing, reusing, or recycling

ii. Reuse and Recycle Concrete and Soil Material

a. Reuse and/or recycle a minimum of 95% of the discarded concrete and soil materials generated by the project.

iii. Use Sustainable Building Materials with Low or No Embodied Carbon Content

a. A minimum of 25% of all materials used on a project must be sustainable and/or contain low embodied carbon. Target reductions in embodied carbon per material are: 14-33% for concrete; 4-10% for rebar; 16% for insulation; 3% for glazing; and 5% for finish materials.

g) The Consultant team shall approach deconstruction and construction in alignment with the NYCEDC's Circular Design and Construction Guidelines and make all efforts for deconstruction of the existing buildings in a way that diverts materials from landfills.

19. The Consultant shall coordinate and provide all documents required for funding source compliance including documents required from Subcontractors. These documents may be related to, without limitation, procurement and award processes, payment Requisitions, Monthly Progress Reports and closeout.

20. If assigned by the Corporation, the Consultant shall be required to participate in the community consultation and public outreach efforts as directed by the NYCEDC. The Consultant shall conduct community site briefings and brainstorming sessions to address community concerns. The Consultant shall schedule and hold such sessions as required and as directed by the NYCEDC.

21. The Consultant, its Subconsultants and Subcontractors shall not engage directly with the public, press, and/or elected officials without direction from NYCEDC.

22. The Consultant shall obtain all pertinent specifications, laws, rules, regulations, ordinances, standards and constraints mandated for the Project by any Agency, Utilities or other Interested Parties. All plans and specifications prepared as part of the Services shall conform to the latest standards and maximize the use of the latest standard specifications of Agencies and Utilities including but not limited to DOB, FDNY, LPC, DEP, and DOT.

23. If applicable, the Consultant shall coordinate with NYCEDC to define the terms of NYCEDC's Joint Bid Agreement with the Utility company for such Public Utility Work and will coordinate with the Design Team and Subcontractor to jointly bid the Public Utility Work. The Consultant will also coordinate scope items with the relevant utilities when the Project Assignment falls under Section U and will ensure inference work is

included in bid packages for information purposes, when necessary.

24. The Consultant shall prepare, submit, assemble, and reproduce any and all documents as needed during construction to perform the Project as reasonably required by the NYCEDC. If requested by the NYCEDC, the Consultant shall prepare reports with respect to its findings, including but not limited to, evaluation reports that provide analysis of existing conditions, issues and recommendations and cost estimates for the implementation of recommendations.

25. The Consultant and Subcontractors as required, shall work with the Design Team in collecting and compiling the necessary information for submissions to meet USGBC, LEED certification, ISI Envision certification and LL86/LL31/LL32 requirements.

26. The Consultant shall establish a system to monitor costs that is consistent with the NYCEDC requirements immediately following the Notice-to-Proceed.

27. Throughout the Project, the Consultant shall perform periodic Risk Management services. This includes interviews with stakeholders and reviews of the Project as a whole to develop an overall risk register with the best-case and worst-case scenarios, which shall be updated and maintained monthly/bi-monthly/quarterly, as required by the Corporation, and must be included in the project Monthly Progress Report. The Consultant shall be familiar with and cognizant of the Project Schedule and employ all necessary tools to assist in maintaining such so that it accurately describes all activities related to Final Completion, including, but not limited to, the preparation of Risk Logs, updating and maintaining schedules (including a resource-loaded schedule, if requested), developing a Construction Completion Plan and consulting workshops and/or meetings as necessary in order to agreed-upon date for achieving Project Completion.

C . STANDARD CONSTRUCTION MANAGEMENT SERVICES

As directed in each Project Assignment, the Consultant will provide the following standard construction management services ("Standard Construction Management Services), as required by the Corporation, in accordance with the following phases:

a. Pre-Construction Phase Services
b. Construction Phase Services
c. Post-Construction Phase Services

A. PRE-CONSTRUCTION PHASE SERVICES

1. Communications and Coordination

a. Upon receipt of a Notice to Proceed from the NYCEDC, the Consultant shall participate in a kick-off meeting with key members of the Project Assignment Team, the NYCEDC, and the Design Team. This meeting shall serve to formalize the plans and establish lines of communication among the parties.

b. The Consultant shall attend and actively participate in the Design Team's bi-weekly design progress meetings (or as often as otherwise necessary) when

requested by the NYCEDC and shall provide continuous constructability and value management support throughout the Project Assignment.

c. The Consultant shall attend meetings as required by the NYCEDC. Anticipated meetings include, but are not limited to: monthly schedule review, monthly principals meeting, coordination meetings, and meetings with environmental and regulatory Agencies, and other Interested Parties.

d. The Consultant shall participate in any necessary sustainability workshops with NYCEDC, the Client, and the Design Team, as applicable.

e. The Consultant shall prepare a community relations program to minimize concerns related to the Project Assignment and adjacent communities at the direction of NYCEDC.

2. Project Review

a. Compliance Review

i. The Consultant shall coordinate with the Design Team to perform a thorough document review to become familiar with the guidelines, requirements and procedures governing the Project Assignment. The Consultant shall thoroughly review the plans and specifications, including all available design information relevant to the Project Assignment. The Consultant shall review the plans and specifications throughout the duration of the design and construction work, as an ongoing effort, to identify and address potential problems or conflicts and to ensure compliance with all applicable guidelines, requirements and procedures governing the Project (the "**Compliance Review**"). The Compliance Review report shall be submitted to the Corporation upon its completion.

ii. The Consultant shall coordinate and meet with the Design Team to review and update the Regulatory Approvals and Permits Matrix created by the Design Team. The Consultant shall be responsible for identifying Approvals critical to maintaining the overall Project Assignment Schedule, defined hereinafter. The log should be of sufficient detail to describe activities related to obtaining permits and activities related to final acceptance, approval and close- out. Such detail shall include a description of the type of permit and/or approval needed, the regulatory entity responsible for issuance and contact information, what documents are required in order to obtain and subsequently close the permits/approval, the identity and responsibility of the party to obtain and subsequently close the approval, the anticipated duration required for activities, the expiration date of the permit/approval, if applicable, and interdependencies between activities. On a monthly basis (subject to the Project Assignment's cost and complexity), the Consultant will review and update the log to anticipate any potential risks to the Project Assignment and prepare mitigation strategies.

b. Constructability Review

i. The Consultant shall assist the Corporation during the Pre-Construction

phase of the Project Assignment by reviewing the proposed design for constructability, suitability of materials, and cost impact of various alternatives (the "**Constructability Review**"). This report shall be submitted to the Corporation for review.

ii. The Constructability Review shall be at a design review standard. The review shall include multiple meetings between the Consultant and the Design Team that involve a thorough evaluation of construction means, methods, sequencing, design specifications, material and system capacity assessment, strength and weakness assessment of the Design Team's concepts, ensuring design satisfies Interested Parties requirements and standards, ensures designs are integrated with utilities immediately outside of project boundary, assess staging and constructability impact to nearby utilities, and post-construction systems testing for Interested Parties required to achieve the overall Project Schedule. The Consultant shall involve the Sr. Project Manager/Project Executive throughout the Design Review to provide proper diligence and hold the Consultant accountable. The Constructability Review report shall be submitted to the Corporation upon completion.

iii. The Consultant's Constructability Review methodologies in coordination with the Design Team shall include a blend of page turnings and a matrix to track Constructability Review progress and constructability risks by Project component, including:

1. Staging
2. Phasing
3. Sequencing
4. Risk level if a delay were to occur and its effect on the overall project timeline.
5. Long-lead items (stated in months) based on the current knowledge of the material supply chains and global market prices.
6. Level of supervision required by the Consultant
7. Personnel accountable for the construction of the Project component

iv. The Consultant shall investigate the Project Site and subsurface conditions based on available record drawings, utility surveys, soil boring information and actual visual inspection of the Project Site.

v. The Consultant shall update the overall Project budget and make recommendations to the NYCEDC as to the course of action to be taken to keep the construction costs under budget.

vi. The Consultant shall track comments and responses between the Design Team using a reporting system or matrix so that the Consultant is responsible for proactively identifying design risks ahead of procuring a Subcontractor.

vii. The Consultant shall provide value management advice to the NYCEDC,

and the Design Team as more specifically described herein.

c. Operations and Maintenance Review

i. The Consultant shall review the Design Documents for maintenance requirements for operation of the relevant structures and infrastructure and make recommendations to NYCEDC as to any adjustments to the design and/or specifications to keep maintenance costs and requirements within the Project Assignment requirements. Establish cleaning and maintenance procedures for all systems and materials specified for scheduled upkeep and proper commissioning as appropriate.

d. Sustainability Reviews

i. The Consultant shall review and provide comments on the Sustainability Management Plan (SMP) developed by the Design Team. The SMP will include Project Scope, Sustainability Goals, Leadership Roles and Responsibilities, Sustainability Implementation Plan, and Project Phase Actions (Design, Construction, and Operations). The SMP shall be used throughout all project phases as a reference and guiding document and updated as necessary to reflect project changes.

ii. The Consultant shall review the Circularity Audit results prepared by the Design Team.

iii. The Consultant shall review and provide comments on the Circular Design and Construction Plan ("CDCP") developed by the Design Team. The CDCP will:

1. Identify which circular construction strategies will be used as part of the design;

2. Identify expected material use in design of infrastructure (quantities) and set targets for waste reuse and recycling (Materials Management and Waste Minimization Plan) and use of sustainable materials;

3. Identify how and when the information will be reported; and

4. Identify who on the project team will be responsible for collecting and tracking the information.

e. The Compliance Review, Constructability Review, Operations and Maintenance Review, and Sustainability Review shall be performed to ensure the following:

i. The drawings and specifications are complete, covering all construction and demolition work and coordinated among various disciplines without conflicts and ambiguities.

ii. All required work is included in the Contract Documents.

iii. The Contract Documents are coordinated by consulting with the NYCEDC and the Design Team regarding drawings and specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, the estimated cost of construction or the

Project Schedule, defined hereinafter;

iv. The materials and equipment specified are cost effective selections based on first cost and life cycle costs and are available through U.S. manufacturers;

v. Selected building systems and construction details are viable and workable;

vi. The construction staging and phasing is adequately shown with respect to constructability, construction access, pedestrian/cyclist safety and detours, vehicular safety, utilities access, transit (bus and subway) operations, facility operations; storage and logistics;

vii. Continued functioning of operations including, but not limited to, adjacent residences and businesses, Client facilities, traffic (including pedestrians and cyclists), and government agencies;

viii. The Contract Documents adequately represent the existing Project Site conditions with respect to utilities, underground structures and conditions that may affect demolition, site preparation, and/or construction activities;

ix. Steps for the control, witnessing and surveillance of tests must be established before any bid document is issued with all requests for bids and bid proposals to be reviewed to incorporate any necessary additional test provisions;

x. The bid options and unit prices are current and that items with impact on cost and schedule (long lead items) are identified; and

xi. Contract Documents are reviewed for claims prevention, duplications, errors, omissions, life safety requirements, poor construction practices, and conflicts with or misrepresentations of existing known conditions; and recommend appropriate changes.

f. The Compliance Review, Constructability Review and Operations and Maintenance Review, and Sustainability Review are to be completed at completion of the preliminary design phases and twice during preparation of final design.

g. The Consultant shall prepare, review and recommend suitable phasing of construction schedule to minimize interference with existing operations, adjacent facilities and other conflicts while maximizing construction efficiency and safety without inconvenience to the users, including, without limitation, the review of and recommendations to the construction phasing plans developed by the Design Team, including analysis of alternatives with emphasis on pedestrian and bicycle movement, vehicular including but not limited to delivery vans, garbage trucks, parks maintenance vehicles, buses, cars and taxi) movement, construction areas, access routes, parking spaces, construction trailers, material storage, salvage material storage and staging, Utilities and debris removal plans.

h. The Consultant shall prepare a master plan showing construction area, access routes, entrance/exits, parking, Subcontractor(s) accommodation(s), staging and storage areas, security, temporary utilities, debris removal and other key construction site features. The Consultant shall coordinate the Services with members of the neighboring community and any other related stakeholders.

i. The Consultant shall provide recommendations and information to the NYCEDC and the Design Team regarding the assignment of responsibilities for the following:
    i. Safety precautions and programs with respect to activities undertaken at the Project Site;
    ii. Temporary Project facilities; and
    iii. Equipment, materials, and services provided for the common use of the Subcontractors.
    iv. The Consultant shall also verify that the foregoing necessary requirements and assignment of responsibilities are included in the proposed Contract Documents and Subcontracts.

j. Prior to issuing Construction Documents for bids, the Consultant shall prepare a certification (the "CM Pre-construction Certification"), in writing, certifying the following:
    i. That the Consultant has reviewed the Project and all the documents and has found the Project to be constructible within the preset parameters;
    ii. That the necessary requirements identified in [Section III, Part A of this Appendix B] and the assignment of responsibilities are included in the proposed Contract Documents and any construction Subcontracts and consulting Subcontracts.

3. Project Procedures Manual

a) A Project procedures manual ("**Project Procedures Manual**") shall be developed by the Consultant to establish procedures that will be used in managing the Project, as well as roles and responsibilities of each party participating in the Project. This Project Procedure Manual shall be based on existing construction supervision and inspection procedures and shall be tailored specifically to the Project, including Federal, State and local funding requirements if any. Procedures shall be reviewed with the NYCEDC prior to their implementation to ensure that each party understands the roles, responsibilities and expectations of the Consultant. The Project Procedures Manual shall include, without limitation, the following:

i. Purpose and scope of construction management services;
ii. Identification of appropriate entities involved in the Project;
iii. Project description and Project Site plan;
iv. Project organization;
v. Contract agreements;
vi. Contract administration, including responsibilities of the relevant parties, reporting, communications, Project files and document control;
vii. Routing of correspondence and submittals;
viii. Project controls;
ix. Schedule Control;

x. Quality control;

xi. Risk Management Log

xii. Commissioning;

xiii. Special Inspections;

xiv. Use of Building Information Modeling ("**BIM**");

xv. Plan for sustainability practices including compliance with LL86/31/32 and LL 96;

xvi. Environmental procedures including construction waste management and Remedial Action Plans ("**RAP**"), and Construction Health and Safety Plan ("**CHASP**");

xvii. Financial control including quantity measurement, progress payments, retention and progress reports;

xviii. Change order and claims control;

xix. Safety;

xx. Data presentation, including media, format, level of detail, timing, and distribution;

xxi. Environmental procedures, including construction waste management and remedial action plans (RAP); and

xxii. Mockup procedures, both before and during construction.

b) The Consultant shall have a thorough understanding of the Project Site and interventions/procedures like the Remedial Action Plan ("RAP"), the Contractor's Health and Safety Plan ("CHASP") that may be required for environmental and permitting issues, as well as storm water management practices and other such environmental matters involved with the Project.

c) Prior to commencement of physical remediation of a Project Site, if necessary, the Consultant shall investigate whether there are any environmental restrictions on site, including, but not limited to: the site being a current or former NYSDEC Voluntary Cleanup Program site or a NYSDEC Brownfield Cleanup Program site, or whether there are existing NYSDEC Orders of Consent, Environmental Designations or Restrictive Declarations. The Consultant will need to strictly adhere to these restrictions and/or designations, which include coordination with Corporation's staff. If necessary, Consultant shall produce site-specific environmental due diligence and documentation, including but not limited to RAPs and CHASPs as necessary.

d) The Consultant shall have a clear understanding of the work at hand and the procedures to be employed and shall promote a positive team approach to accomplish the Project objectives.

e) The Project Procedures Manual shall be provided to NYCEDC at the completion of the schematic design and preliminary design, and during preparation of final design. It shall continue to be updated as needed through Construction and Post-construction.

4. Coordination with Agencies

a) The Consultant shall assist the NYCEDC in obtaining construction permits from applicable Agencies. The Consultant shall designate a permit expeditor who is familiar with Agency procedures to coordinate submissions, ensure all required permits are obtained in a timely manner and to prevent unnecessary delays to the Project.

b) The necessary permits and approvals shall be reported in a matrix (the "**Approvals Matrix**") document detailing the approval Agency, the specific approval sought, status of submittal, next steps, and resolution of the approval. The Consultant shall update the Approvals Matrix monthly and submit to the NYCEDC as part of the Progress Report (as described below in the Specific Services, Pre-construction services – Project Report section of this Appendix).

c) The Consultant shall coordinate all construction activities with the Project Team, Design Team, Subcontractors, adjacent owners, Utilities, and all other Agencies and Interested Parties that may be affected by the construction activities.

d) The Project Procedures Manual and kick-off meeting shall formalize the Consultant's plans and establish lines of communication with the relevant entities referenced above. Special coordination procedures shall be established for adjacent property owners and affected parties in the surrounding community.

e) The Consultant shall coordinate the Subcontractor's activities with the activities of other parties on the Project. The basic tools to be used in this effort are the Subcontractors' construction schedules and the Project Schedule (defined below). The Consultant shall ensure that these documents are properly prepared, properly updated and that they accurately reflect the Subcontractors' plans and are in line with the overall Project Schedule. The Consultant shall work with the NYCEDC to provide the long-range information required for Project coordination efforts.

5. Subsurface Investigations

a) The Consultant may be required to retain a Subcontractor to perform geotechnical engineering and other subsurface investigations/services to provide additional information concerning subsurface characteristics for design. Based upon the anticipated improvements and the anticipated location of the proposed improvements, subsurface issues requiring resolution may include, but are not limited to, the following:

i. Review of any available existing geotechnical reports;
ii. Soil bearing capacity analysis including borings and test pit programs;
iii. Depth to competent rock and bearing capacity of the rock for support of foundations;
iv. Settlement of soils beneath the footprint due to the addition of fill materials;
v. Support of building structures including lateral stability loading analysis of the soils;
vi. Engineering characteristics of existing fill materials;

vii. Coordination with the Design Team regarding location of any new underground utilities and other structures and relocation of any such existing structures;
viii. Exploratory boring programs in compliance with regulatory requirements for any adjacent building foundations;
ix. Perform geotechnical laboratory tests for the above tasks as necessary. Geotechnical laboratory tests shall include, but not be limited to, consolidation tests, direct shear tests, water content tests, liquid limit and plastic limit tests, grain-size analysis and unconfined compressive strength of rock;
x. Prepare a final report summarizing the results of the geotechnical engineering investigation. The report will include design recommendations and a summary of the subsurface conditions;
xi. Exploratory soil borings for environmental characterization required by RAP/HASP for possible disposal; and
xii. Test pits required to determine locations and conditions of existing structures and facilities.

b) As part of this work, the Consultant shall:

i. Prepare a plan for the purposes of procurement, project control and coordination of all necessary subsurface investigations. This plan shall utilize the results of a plotted topographic survey as a base and shall indicate the required investigation. The plan shall be presented to required Agencies and the NYCEDC for approval as appropriate. The Consultant shall contact all appropriate Agencies, Interested Parties and Utilities in order to determine that the plan does not interfere with any existing facilities, such as sewers and other underground elements.
ii. Obtain all approvals and make all necessary arrangements to retain qualified Subcontractors to complete the required investigation.
iii. Administer, coordinate and continuously supervise the work of any Subcontractors that provides these Services. The Consultant shall assign a qualified CM Inspector who shall be present at the Project Site at all times while the investigation is being completed. All results of the investigation shall become the property of the NYCEDC.
iv. Prepare a final report (the "**Subsurface Investigation Report**") summarizing the results of the investigation. The report will include design recommendations and a summary of the subsurface conditions.

6. Pre-construction Schedules

a) Project Schedule

i. The Consultant shall prepare a Project schedule ("**Project Schedule**") which shall be an overall schedule for all phases of the Project from design to construction completion. All activities of the Project Schedule are to be based on a computer-generated resource loaded critical path method ("**Resource Loaded CPM**") precedence network, as required

by the City. The Project Schedule shall support the overall goals of the Project and include summary permit activities, procurement activities for major equipment and materials, installation activities and milestones in accordance with the work breakdown structure. The scheduling shall comply with the various limits imposed by the scope of work and completion dates. The degree of detail shall be to the satisfaction of the NYCEDC.

ii. The Project Schedule shall be updated monthly based on the use of the Resource Loaded CPM network. The Project Schedule shall be developed immediately upon award and updated through Post Construction. The Project Summary Schedule shall include a narrative of schedule changes from prior reporting period, including strategies to maintain schedule when it is anticipated that there are potential delays. If there is a delay or change in the schedule, the Consultant will be required to submit a revised schedule to be approved by EDC which must include actions to recover any lost time, updated critical path tasks and justifications of a new timeline, when necessary.

iii. The Consultant shall prepare a construction milestone schedule that establishes a schedule of key milestones for the demolition and construction associated with the Project.

b) Construction Staging and Phasing Plans

i. From the Project Schedule, the Consultant shall develop construction staging and phasing plans ("Construction Staging and Phasing Plans"), which shall incorporate all aspects of the Project and Project options, as the same are approved by the NYCEDC.

ii. The Construction Staging and Phasing Plans shall be developed based on approved phasing plans developed during the design phase from the Design Team and (if identified) and the Commissioning Authority with attention to coordinating all of the Project elements and ensuring that the flow and sequence of work items is logical and coordinated with all Project participants. These Construction Staging and Phasing Plans shall be submitted to the NYCEDC for preliminary approval and finalized incorporating any comments from the Corporation.

iii. The Consultant shall prepare, review and recommend any suitable scheduling/phasing of construction to maintain the Project Site in operation and minimize interference with any adjacent facilities and projects. The Consultant shall maximize construction efficiency and safety with minimal inconvenience to the users and as directed by the NYCEDC. This shall include, without limitation, the review of and recommendations to the construction phasing plans developed by the Design Team, including analysis of alternatives.

iv. The Construction Staging and Phasing Plans shall maintain an emphasis on emergency vehicles' circulation, pedestrian and bicycle movements, and vehicular (i.e. buses, cars and taxi) movements, and

identify construction areas, access routes, parking spaces, Subcontractor's accommodations, storage areas, security areas, temporary utilities, debris removal, construction trailers, material storage, utilities, debris removal plans and other factors.

v. The Construction Staging and Phasing Plans shall be maintained by the Consultant throughout the Project.

vi. The Construction Staging and Phasing Plans shall be coordinated, reviewed and approved by the Project Team, as directed by NYCEDC. Any changes to the Construction Staging and Phasing Plans shall be submitted to NYCEDC for approval prior to implementation.

vii. The initial Construction Staging and Phasing Plans shall be developed during Schematic design and updated as needed throughout the Pre-Construction, Construction and Post-Construction Phases.

7. Project Reports

a) Schedule Control Report

i. The Consultant shall conduct a bi-weekly analysis of all schedules with particular attention to labor and resource allocation and work conflicts changes in comparison with the original schedule. The monthly schedule analysis shall be focused on the critical and near critical paths.

ii. The results of the above analysis are to be set forth in the Progress Reports (as hereinafter defined), submitted to the NYCEDC, which reports shall, at a minimum, include:

a. Tabulation of all current significant schedule activities, such as delay factors, identification of all parties responsible to resolve each issue, and when, where and how issues should be resolved;

b. Special actions that are recommended or are to be implemented to maintain schedule;

c. Outlook for activities to be started or finished during the coming month; and

d. Narrative highlights of significant events and any important changes over the status of the previous month, including, without limitation, graphical presentations of planned versus actual physical progress, and planned versus actual manpower.

b) Monthly Progress Report

The Consultant shall submit monthly progress reports for each Project Assignment, and any supporting documentation (the "Monthly Progress Report") to the Corporation. Thirty Days after the Commencement Date, and every month during the Term of the Contract (each such month period being referred to hereinafter as a "Monthly Reporting Period"), the Consultant shall analyze the Project's progress as it relates to the approved work plan and shall file with the Corporation a Monthly Progress Report for each Project Assignment based on this analysis. Consultant is required to send monthly progress reports to the Project Management team at NYCEDC. These reports should be titled "**Progress Report – Reporting Period MM/DD/YYYY- MM/DD/YYYY**" and sent starting thirty (30) days from the commencement date, and then every thirty (30) days thereafter, aligning with the invoice billing period submitted to Capital Payments.

The Monthly Progress Report shall be submitted to NYCEDC no later than thirty working days after the invoice is sent for the corresponding billing period, and it should be sent with the invoice for the next billing period. For example, the March 2024 Monthly Progress Report will be submitted with the April 2024 Invoice.

The progress report shall follow the following format:

- 1.0 Executive Summary
- 2.0 Project Status
- 3.0 Prime and Subcontractor Payment Documentation
- 4.0 Construction Document Tracking
- 5.0 Selection of Project Photographs.

1.0 Executive Summary

- Consultant to provide a summary analysis of ongoing on-site work, highlighting any necessary schedule adjustments, labor changes, or material reallocations. This analysis should focus on critical aspects of the construction project, including activities requiring decision or action by NYCEDC and other groups or Agencies shall be clearly indicated.

2.0 Project Status

- Project Progress Update Details
  - A detailed summary of the Consultant's Services performed during the reporting period for the specific project assignment, including tasks completed by subconsultants and subcontractors
  - A narrative description of the services projected for the next reporting period.
- Project Organization Chart and Staffing Adjustments (if any)
- Budget Analysis
  - 2..1 Anticipated Cost Report
  - 2..2 Cashflow Projection
- Schedule Analysis
  - Work undertaken during the month
  - Six Week Look-Ahead Schedule
  - Anticipated Completion Date
    - Highlight changes from previous reports

    - Explanations for schedule loss, if any
    - Strategies to correct any schedule loss
  - An updated Project schedule reflecting the Project's overall completion date as of the reporting period's end.
  - Risk Register
  - Historical recording of milestone Project activities

3.0 Consultant and Subcontractor Payment Documentation for the Reporting Period

- CM G702/703 for the monthly reporting period
- M/WBE Worksheet
- CM Staffing Summary and Individual Timesheets
- CM Davis Bacon Prevailing Wage Certification
- Certified Payroll for all trades included in the CM's G702/703
- Asset Panda, or equivalent, for equipment
- EDC Release, Waiver, and Affidavit of Payments for each Subcontractor

4.0 Construction Document Tracking

- Permit Approvals Matrix
- RFI Log
- Project Safety Manual Log
- Safety strategies and issues, and incident reports
- Submittal Log
- Award Letter Log
- Priority Award Letters needing review and approval
- Change Order and Potential Change Order Log, with an emphasis on priority Award Letters and Change Orders.
- Priority Change Orders needing review and approval.
- Filtered logs showing only the outstanding items for the various logs.
- M/WBE Worksheet including updates on M/WBE attainment, contractors solicited, contractors hired, strategies for solicitation to address disparities, and best efforts.
- Bid Tracking Worksheet including estimated budgets and actual awards for each trade, estimated and actual MWBE percentages and costs, and union affiliation, if any. (A template will be provided.)

5.0 Project Photos

- Monthly digital photo record of the on-site construction or such other size photos as approved by the Corporation. The photo documentation shall be recorded and logged and be readily retrieved for progress analysis and/or proof of existing conditions, or used as evidence should claims for damages be pursued by impacted parties, and shall include, but not limited to:
  - Preservation of existing Project Site conditions prior to construction.
  - Photo documentation of Project progress.
- Documentation of specific work deficiencies along with corrective action.

c) Standard Submittals

i. The Consultant shall review shop drawings and submittals for completeness and accuracy prior to transmittal to the Design Team. Upon review and comment from the Design Team, the Consultant shall ensure responses are received from the Subcontractor within fourteen (14) calendar days;

ii. RFIs from the Corporation or Client Agency, must be responded to by the Consultant within five (5) business days;

iii. RFIs shall be issued for topics needing resolution with the Design Team, Corporation, or client (City agency or private entity) within five (5) business days of identification.

d) Schedule Control

i. The Consultant shall submit for the NYCEDC's approval detailed planning, scheduling, and schedule monitoring and control procedures, which shall form a part of the Project Procedures Manual for the Project. At a minimum, procedures to be provided by the Consultant shall include:

a. The Consultant's planning, scheduling and schedule control organization and its relationship to the Project organization;

b. A description of the duties of each individual assigned;

c. The methods to be used for measuring physical progress for each work activity/discipline, and a description of the review cycles within the organization;

d. Monitoring and control methods to determine whether overall progress is within schedule requirements. Schedule procedures for the Subcontractor to develop and present plans for correction for any deviation and recovery of the Project Schedule;

e. A description of the schedule review meetings and the frequency and timing of each; and

f. A description of all reports to be produced and the frequency and timing of each.

8. Cost Review

a) The Consultant shall provide an evaluation of the Project with respect to the Project budget requirements. The Consultant shall provide an independent estimate for the construction cost based on all aspects of the Project and any additional quantities confirmed by NYCEDC related to the Project. The Consultant and NYCEDC will review and agree on a methodology for the calculation and reporting of soft costs, design, contingencies, escalation, force accounts, allowances, etc, but are not limited to the following Project milestone document issuances:

i. Completion of schematic design (30% Contract Documents);

ii. Completion of preliminary design (50% Contract Documents);
iii. Two (2) estimates during final design (approximately 75% and 95% Contract Documents); and
iv. Bid Documents

b) The Consultant and the Design Team shall submit cost estimates to be reviewed together with NYCEDC at each design submission.

c) Prior to soliciting bids for each trade, the Consultant shall translate the most recent cost estimate into the bid sheet format for the respective trade to allow for the orderly comparison of the costs bid to the costs estimated.

d) In the event that there are discrepancies between the Consultant's estimated costs and the estimated costs prepared by the Design Team, the Consultant shall work with the Design Team to define the areas where these discrepancies exist, and to reconcile the estimates. The Consultant shall provide cost evaluations of alternative materials and systems.

e) The Consultant shall review, analyze and assess each cost estimate submitted by the Design Team and reconcile the Design and Consultant's estimates, as determined by the NYCEDC.s. Such cost review shall determine whether:

i. Unit costs are reasonable;
ii. Quantity takeoffs are accurate;
iii. All design elements are included;
iv. Level of detail is appropriate to design stage;
v. Formats are correct;
vi. Cost escalation factors are properly applied;
vii. Balance of costs among building systems are acceptable;
viii. Up-to-date scope modifications are reflected; and
ix. Overall Project costs are within the Project budget.

f) The Consultant shall (i) present for the NYCEDC's review and approval updates of the estimated cost developed by using estimating techniques that anticipate the various elements of the Project based on the level of design completed to date; (ii) further update and refine the estimated cost periodically as the Design Team progresses the design and as other aspects of the construction costs are clarified or revised; and (iii) advise the NYCEDC and the Design Team if it appears that the estimated cost may exceed the Project budget and make recommendations for corrective action.

9. Value Management

a) The Consultant and the relevant Project Team will engage in value management efforts during all phases of the Project. The Consultant will perform the following value management Services throughout the Project:

i. Analyze Project objectives to identify functions, goals, and criteria;

ii. Explore new or innovative developments in product or technology that would produce savings in time and/or money while maintaining or improving Project quality and/or functionality;

iii. Review adaptability and risk to staged construction to minimize effects on operation, environment and the adjacent community; and

iv. Evaluate construction feasibility, efficiency, and speed; identify and/or recommend early contracts for the purchase and fabrication of long lead and early-start items; and recommend appropriate time or labor saving, off-site fabrication and preassembly of systems.

b) The Consultant shall attend value management activities as determined by NYCEDC.

i. The Consultant shall lead value engineering activities as determined by the Corporation.

ii. The Consultant shall lead the estimate reconciliation exercise with the Design Team to reconcile the estimates with any relevant Value Estimator.

iii. The Consultant shall assist the relevant Project Team with the preparation, transmission and presentation of required material including but not limited to, background information, applicable reports and progress document to support the VE Studies.

c) The Consultant shall work with the Design Team with modifications to the Design Documents based upon the adopted value management proposals.

10. Alternative Project Delivery

a) If requested by the Consultant shall perform analysis on the relative benefits of various project delivery methods for a Project Assignment.

11. Bidding and Procurement Processes

a) The Consultant shall be responsible for bidding and procurement of the Project's Subcontracts. The bidding and procurement of all Subcontracts shall comply with the requirements of the Contract including, but not limited to Appendix D and the Corporation's Master Contract with the City. The Consultant shall hold all Subcontracts unless otherwise directed by the NYCEDC.

b) The Consultant shall refer to Appendix D and the Master Contract for the different types of procurements permitted, as they may be updated from time to time. The Consultant shall follow NYCEDC's Approval Letter Templates.

c) The Consultant shall prepare all bid documents for bidders.

d) The Consultant shall lead the pre-bid meetings, perform bid analyses, and make recommendations for award of Subcontracts.

e) The Consultant shall advise the relevant Project Team of the Project's categorization into Subcontracts for various categories of work; advise on the

potential opportunities to “Fast Track” certain Project components; advise on the method to be used for selecting Subcontractors and awarding Subcontracts; review the drawings and specifications and make recommendations as required to provide that:

i. the work of the Subcontractors is coordinated;
ii. all requirements for the Project have been incorporated into the appropriate Subcontracts;
iii. the likelihood of jurisdictional disputes has been minimized; and
iv. proper coordination has been provided for phased construction.

f) The Consultant shall provide an analysis of the types and quantities of labor required for the Project; review the availability of appropriate categories of labor required for critical phases; and make recommendations for actions designed to minimize adverse effects of labor shortages.

g) The Consultant shall prepare bid analyses and make recommendations to the NYCEDC for award of Subcontracts or for rejection of bids (with assistance of the Design Team, as required by NYCEDC).

h) The Consultant shall conduct pre-award conferences with successful bidders; prepare Subcontracts and advise the relevant Project Team on the acceptability of Subcontractors and material suppliers proposed by such Subcontractors, with the assistance of the Design Team as may be required by the NYCEDC.

12. Archeological Investigation

a) The Consultant, at the direction of NYCEDC in consultation with the relevant Project Team, may be required to retain a Subcontractor to work with the Design Team to perform an archaeological investigation (the "Archaeological Investigation") limited to areas where the Project foundations and excavation will newly disturb subsurface soil identified to have archeological importance. The Consultant and the Subcontractor shall work with the Design Team to technical reports of an appropriate format and drawings required by NYCEDC, the Landmarks Preservation Commission, and the State Historic Preservation Office. In connection therewith the Consultant shall:

i. Administer, coordinate and continuously supervise the work of the Subcontractor that provides the services. The Consultant shall assign a qualified inspector who shall be present at the Project Site at all times while the Archaeological Investigation is being completed. All results of the Investigation shall become the property of NYCEDC.

B. **CONSTRUCTION SERVICES**

1. General The Consultant shall provide the necessary administrative and management functions to ensure successful completion of the Project in compliance with the agreed upon cost, schedule and quality. The Consultant shall provide personnel and management to carry out the following:

a) Establish organization and lines of communication among the NYCEDC, the Consultant, the Design Team and the Subcontractors;

b) Maintain Project logs and files for correspondence, RFIs, reports, submittals, pending issues, Contract Documents (including addenda and change orders), Project data, shop drawings, material samples, operating manuals, purchase orders and survey data; and use a computer software program for this purpose (the Consultant shall propose a software for approval by NYCEDC);

c) Create a manual for the Project (the "**Project Manual**") which shall contain:

   i. Filtered logs of pending requests for information, non-conformance reports, shop drawing submissions, catalog cut submissions, material samples, change orders and major issues;
   ii. The latest Schedule Analysis Report; and be updated consistently in order to reflect the current status of the Project;

d) Prior to the start of construction, the Consultant shall prepare a Close-Out Management Plan ("COMP") and conduct a Project close-out meeting to review the overall project, to highlight significant milestones within the project schedule and review the Regulatory Approvals and Permits Matrix. The COMP shall include, at minimum, a narrative on the Project Team coordination, the Project Schedule, Regulatory Approvals and Permits Matrix, Project deliverables, and subsequent meetings. Thereafter, The Consultant shall conduct regularly scheduled close-out meetings to review Project progress, discuss changes and prioritize actions/activities which will have the least impact to the Project Schedule. The anticipated date for achieving Substantial Completion shall remain current.
e) Maintain and provide to NYCEDC on request with daily log of person-hours spent and materials used, daily activities and work completed, incident reports, weather conditions and construction problems and solutions proposed;
f) Expedite required applications to appropriate Agencies with amendments as needed and obtain approvals as needed;
g) Schedule and conduct construction and progress meetings with all relevant parties;
h) Make recommendations for and arrange Special Inspection and testing and other professional services; Review at Project commencement the Special Inspections requirements related to the Work and ensure that long lead item inspections are coordinated with sufficient notice (e.g., FDNY fire alarm testing) so as not to delay Project closeout. Review inspection daily reports and sign off as owner's on-site representative that inspection activity took place. Review non-conformance reports and notify NYCEDC of any issues of non-conformance and provide summary of corrective action and timeline for corrections. Refer to Appendix C Payments for costs associated with cancelled or deficient inspections;
i) Verify that the construction complies with Contract Documents;
j) Update the Resource Loaded CPM network and costs incurred as well as anticipated and reported Project delays and cost escalations, if any, to the

NYCEDC;

k) Conduct regularly scheduled Risk Management workshops to identify, analyze and develop responses to project risks which have the potential to impact the project
l) Notify the Design Team and NYCEDC of any RFIs identified by the Subcontractors within five (5) business days of receipt; record approved design changes; and arrange for timely submission and approval of shop drawings, product data and samples;
m) Monitor Subcontractors performance and advise the NYCEDC of nonperformance with recommendations to improve performance;
n) Receive valid certificates of insurance and other required compliance materials from Subcontractors and review safety programs developed by the same;
o) Arrange invoicing and payment for Subcontractors' completed work and submit monthly during construction;
p) Review Subcontractors' applications for schedule extensions and reasons for delays and assist the NYCEDC in settlement of claims;
q) Confirm work is being performed in a safe manner;
r) Identify hazardous conditions/work operations and issue stop work orders when appropriate;
s) Monitor Subcontractors' compliance with prevailing wage requirements, including Davis Bacon or other federal wage rates if applicable and notify Corporation if requirement are not met;
t) Ensure all required permits are secured and renewed when required;
u) Upon Substantial Completion, formulate and monitor the timely completion of the punch list items;
v) Coordinate the work of the various Subcontractors to maintain operations and safety in accordance with Construction Staging and Phasing plans;
w) Coordinate the work of the various Subcontractors and other Interested Parties such as Utilities to expedite the work; and
x) Coordinate commissioning requirements including both specified commissioning per the Contract Documents as well as any third-party commissioning required. Facilitate scheduling of commissioning required in advance of turnover, and support inspection and testing services related to commissioning requirements.

2. Project Files

a) The Consultant shall monitor all items transmitted to the Design Team for approval and all construction tasks to be completed during the course of construction. Each of these items shall be monitored to determine the potential impact to the cost, schedule, or quality of the work and shall be carefully documented. These items shall be easily accessible and retrievable in order to assist the NYCEDC and the Consultant to research records for information and to resolve conflicts.

b) The Consultant shall maintain accurate, up-to-date and thorough records of all documentation and correspondence associated with the Project. The Consultant shall provide a record keeping system which shall record and track

both incoming and outgoing correspondence as well as Project documentation such as inspection reports and testing. The Project files shall include all documents necessary to fully record all construction activities.

c) The following is a listing of the major filing categories required for the Project under this Contract:

i. Subcontract Administration;
ii. Submittals;
iii. Subcontract Changes;
iv. General Correspondence;
v. Budget/Cost;
vi. Schedule/Status;
vii. Engineering;
viii. Materials;
ix. Reports;
x. Quality Assurance/Quality Control;
xi. Risk Assessment Logs;
xii. Regulatory Approvals and Permits Matrix;
xiii. Safety;
xiv. Agencies;
xv. Change Orders; and
xvi. Payment Requisitions.

3. Construction Progress Meetings

a) Consultant shall organize and facilitate bi-weekly construction progress meetings ("Construction Progress Meetings"), which shall serve to formalize informal discussions that may take place at the Project Site or a location determined by the NYCEDC. Such meetings shall also serve to:

i. review work progress, schedules, costs and problems;
ii. identify any overdue or critical outstanding issues including, but not limited to, RFIs, change orders, shop drawings and approvals; and
iii. establish due dates for these issues. The Consultant shall promote, to the extent possible, non-adversarial relations with Subcontractors and vendors.

b) The Construction Progress Meetings shall be conducted by the Consultant. Standard agenda items shall include:

i. Review of the minutes of the previous meeting;
ii. Review of the filtered logs of outstanding items (RFIs, change orders, non-conformance reports, shop drawings and submittals, major issues, claims, problems, etc.);
iii. Construction progress;
iv. Look ahead schedule;
v. Schedule status;
vi. Change order status;
vii. Upcoming work activities;

viii. Coordination requirements;
ix. Safety and quality issues, if any;
x. Status update on permits and approvals;
xi. Close out;
xii. Subcontractors' agendas; and,
xiii. The Consultant's agenda.

c) The Consultant shall distribute the meeting notice, minutes of the previous meeting, filtered logs, look ahead schedule, and meeting agenda to all participants for comments at least five (5) working days in advance of the date of the Construction Progress Meetings.

d) The Consultant shall confer with the Subcontractors, the NYCEDC and the Design Team the day before each Construction Progress Meeting and add specific agenda items requested by any party. Outstanding items from previous meetings shall be automatic agenda items at the following meeting. Preparation and distribution of meeting minutes shall be a top priority with the goal of issuing minutes the next working day following the meeting. All action items shall be identified along with the party responsible for initiating the response.

4. Additional Meetings

a) Additional meetings may be required for the successful management and/or completion of the Project, as directed by the Corporation. The Consultant shall adjust the schedule and purpose of Project meetings at the request of the NYCEDC. Other meetings anticipated are monthly schedule review/coordination meetings, Risk Management meetings (to be conducted quarterly as a minimum) and meetings with environmental and/or other Agencies as required by the Project.

5. Construction Schedules

a) Project Schedule

i. The Consultant shall prepare a project schedule ("**Project Schedule**") for the duration of the Construction and Post-Construction Phases which shall be an overall schedule for all future phases of the Project from construction start to post-completion and for all participants in the Project including the NYCEDC, the Consultant, the Design Team and the construction Subcontractors. The Project Schedule shall conform to same guidelines herein described under the Pre-Construction Phase (Specific Services, Pre-construction services – pre-construction section of this Appendix)

ii. The Consultant shall anticipate that portions of the proposed construction may be governed by §101 of the New York General Municipal Law (the "Wick's Law") requiring award of multiple prime Subcontracts. The Project Schedule must include dates for Subcontractors' selection, orientation meetings, anticipated

cost/benefit studies to be submitted and completion dates for the Project phases, and shall indicate the latest acceptable date for each activity to be completed and the party responsible for accomplishing that activity. The Consultant shall review and make recommendations for revisions that the Consultant determines will improve the overall Project Schedule.

iii. The Project Schedule shall be directly informed by Resource Loaded CPM network diagrams. The Consultant shall secure preliminary and final Resource Loaded CPM network diagrams from each construction Subcontractor within the appropriate time frame. The Consultant shall review the Resource Loaded CPM network to verify its compliance with the established NYCEDC requirements and overall project goals. The effects of each Subcontractor's work on other Subcontracts shall be evaluated in detail. Changes shall be recommended by the Consultant when necessary. The final approved schedule shall then be incorporated into the Project Schedule.

iv. The Project Schedule shall have sufficient detail to provide coordination of all Agency personnel and equipment, requests for permits, procurement and delivery of equipment, construction, testing, commissioning, and turnover efforts.

v. All schedules shall be based on MS Project (or equivalent software approved by the NYCEDC) and time-scaled to show calendar dates. Contract milestones and critical paths shall be highlighted and flagged. Schedule reports, Gantt chart plots, and logic diagrams shall be produced at the required level of detail.

vi. The Project Schedule shall be maintained by the Consultant throughout the Project and updated monthly throughout Construction. If there is a delay or change in the Project Schedule, the Consultant will be required to submit a revised schedule to be approved by EDC which must include actions to recover any lost time, updated critical path tasks and justifications of a new timeline, when necessary.

b) Four-Week Look Ahead Schedule

i. A four-week "look ahead" schedule ("**Four-Week Look Ahead Schedule**") shall be prepared by the Consultant and marked on a weekly basis in support of the Project Schedule. This schedule shall provide a daily control tool for prioritizing work by work area, determining critical path, interfacing among Subcontractors and NYCEDC personnel as well as identifying equipment, tool and shift work requirements. This schedule shall be reviewed during the construction progress meetings that focus on timely resolution of potential concerns.

ii. During the construction phase, the Four-Week Look Ahead Schedule shall be reviewed and updated by the Consultant weekly to ensure that

the schedules are met. On a monthly basis, the Four-Week Look Ahead shall be updated by the construction Subcontractors and submitted to the Consultant. The Consultant shall review the Four-Week Look Ahead Schedule to verify that all progress and approved changes to the construction sequence are accurately shown. The Project Schedule shall be updated to reflect the Four-Week Look Ahead. Deviations from critical paths, if any, shall be identified and reviewed by the Consultant with the Subcontractors in order to develop recovery plans. A narrative shall accompany the Four-Week Look Ahead Schedule which shall include progress reporting, identification of any schedule slippages and problem areas with recommended corrective action.

6. Project Reports

a) Monthly Progress Report

The Consultant shall submit monthly progress reports for each Project Assignment, and any supporting documentation (the "Monthly Progress Report") to the Corporation. Thirty Days after the NTP of the Project Assignment, and every month through Project Assignment Completion (each such month period being referred to hereinafter as a "Monthly Reporting Period"), the Consultant shall analyze the Project's progress as it relates to the approved work plan and shall file with the Corporation a Monthly Progress Report for each Project Assignment based on this analysis. Consultant is required to send monthly progress reports to the Project Management team at NYCEDC. These reports should be titled "**Progress Report – Reporting Period MM/DD/YYYY- MM/DD/YYYY**" and sent starting thirty (30) days from the NTP of the Project Assignment, and then every thirty (30) days thereafter, aligning with the invoice billing period submitted to Capital Payments.

The Monthly Progress Report shall be submitted to NYCEDC no later than thirty working days after the invoice is sent for the corresponding billing period, and it should be sent with the invoice for the next billing period. For example, the March 2024 Monthly Progress Report will be submitted with the April 2024 Invoice.
The progress report shall follow the following format:

- 1.0 Executive Summary
- 2.0 Project Status
- 3.0 Prime and Subcontractor Payment Documentation
- 4.0 Construction Document Tracking
- 5.0 Selection of Project Photographs.

1.0 Executive Summary

- Consultant to provide a summary analysis of ongoing on-site work, highlighting any necessary schedule adjustments, labor changes, or material reallocations. This analysis should focus on critical aspects of the construction project, including activities requiring decision or action by NYCEDC and other groups or Agencies shall be clearly indicated.

2.0 Project Status

- Project Progress Update Details
- A detailed summary of the Consultant's Services performed during the reporting period for the specific project assignment, including tasks completed by subconsultants and subcontractors
- A narrative description of the services projected for the next reporting period.
  - Project Organization Chart and Staffing Adjustments (if any)
  - Budget Analysis

2..1 Anticipated Cost Report

2..2 Cashflow Projection

- Schedule Analysis
- Work undertaken during the month
- Six Week Look-Ahead Schedule
- Anticipated Completion Date
- Highlight changes from previous reports
- Explanations for schedule loss, if any
- Strategies to correct any schedule loss
- An updated Project schedule reflecting the Project's overall completion date as of the reporting period's end
- Risk Register
- Historical recording of milestone Project activities

3.0 Consultant and Subcontractor Payment Documentation for the Reporting Period

- CM G702/703 for the monthly reporting period
- M/WBE Worksheet
- CM Staffing Summary and Individual Timesheets
- CM Davis Bacon Prevailing Wage Certification
- Certified Payroll for all trades included in the CM’s G702/703
- Asset Panda, or equivalent, for equipment
- EDC Release, Waiver, and Affidavit of Payments for each Subcontractor

4.0 Construction Document Tracking

- Permit Approvals Matrix
- RFI Log
- Project Safety Manual Log
- Safety strategies and issues, and incident reports
- Submittal Log
- Award Letter Log
- Priority Award Letters needing review and approval
  Change Order and Potential Change Order Log, with an emphasis on priority Award Letters and Change Orders.
- Priority Change Orders needing review and approval.
- Filtered logs showing only the outstanding items for the various logs.
- M/WBE Worksheet including updates on M/WBE attainment, contractors solicited, contractors hired, strategies for solicitation to address disparities, and best efforts.

- Bid Tracking Worksheet including estimated budgets and actual awards for each trade, estimated and actual MWBE percentages and costs, and union affiliation, if any. (A template will be provided.)

5.0 Project Photos

- Monthly digital photo record of the on-site construction or such other size photos as approved by the Corporation. The photo documentation shall be recorded and logged and be readily retrieved for progress analysis and/or proof of existing conditions, or used as evidence should claims for damages be pursued by impacted parties, and shall include, but not limited to:
- Preservation of existing Project Site conditions prior to construction.
- Photo documentation of Project progress.
- Documentation of specific work deficiencies along with corrective action.

7. Schedule Control

1. During Construction, the Consultant shall update the schedule control procedures developed during Pre-construction. The updated schedule control procedures shall be submitted to NYCEDC for approval and then included in an updated Project Procedures Manual.

8. Field Inspections

a) The Consultant shall be responsible for development of inspection and test plans, guidelines, procedures and forms for all types of procurement, installation, and construction activities which shall be delineated by the Consultant through a quality assurance/quality control program (see [subsection 16] below). The plans, guidelines, procedures and forms shall be developed during Pre-construction services.

b) The primary responsibility of the inspectors on **CM Inspectors** is to be thoroughly familiar with pertinent plans and specifications and to verify that the work is in compliance with the Contract Documents. CM Inspectors shall perform or arrange the performance of inspections and tests required by the Project. CM Inspectors shall cooperate with inspection personnel from City, State and Federal Agencies. If a CM Inspector notices an obvious unsafe situation, the problems shall be discussed with the Consultant and infractions shall be reported to the NYCEDC. The CM Inspectors shall work under the technical direction of the Consultant.

c) Technical modifications in the nature of field changes that do not involve changes in specifications, cost, construction time, or design intent, may be made by the Consultant with prior notification to the NYCEDC. The CM Inspectors shall detect, record, and report any deviation from the Contract Documents, including:

i. Calling any deficient item to the attention of the Consultant and/or the NYCEDC.
ii. Reporting noncompliance by the Subcontractors to the Consultant.

iii. Verifying resolution by the Consultant, of non-conforming items.

d) CM Inspectors shall exercise good judgment and tactful control in carrying out inspection duties. The Consultant shall make recommendations and decisions through the use of good technical knowledge and practicability.

e) CM Inspectors shall keep accurate and detailed records of Subcontractors' performance and progress, delivery of materials, and other pertinent matters, including:

i. Daily inspection reports and applicable inspection lists. These reports are to be reviewed and signed by the Consultant, or as approved otherwise by the NYCEDC;
ii. Other specific reports as required by the NYCEDC (i.e., changed conditions encountered or complaints from third parties); and,
iii. Daily reports on labor, equipment and material.

f) CM Inspectors shall ensure that the field office and the Subcontractors always have the latest approved drawings and shall assist the Consultant in ascertaining quantities of work performed and materials used for progress payment.

g) In the event of a dispute regarding Subcontract requirements that cannot be resolved in the field, a detailed report shall be made by the Consultant.

h) CM Inspectors shall document still photographs and, if necessary, videotapes of procedures and "as built" conditions shall be taken for review and acceptance/discussion by the Corporation

i) The Consultant shall monitor Subcontractors delivery schedules for designated materials to the Project Site; prepare receipt inspection checklists coordinated with any prior in-plant inspection findings; schedule qualified inspectors to ensure contract compliance of material received and its warehousing/storage; and document and report results. Materials and test certifications shall be reviewed for compliance with the Contract Documents.

j) The Consultant shall verify compliance of a supplier's written quality assurance/quality control plan and procedures with Project requirements, and shall physically inspect materials supplied by the same. The Consultant shall develop a plan and schedule of in-plant inspections for designated material; determine whether certification or witnessing of tests is appropriate; monitor the supplier's in-house quality program; inspect material and witness tests; and document and report results.

k) The Consultant's quality assurance/quality control staff shall approve supplier processes per Project requirements prior to mixing or fabrication to avoid delays; monitor supplier workmanship against normal industry standards or special contract requirements; verify calibration controls at the plant and in the field, as appropriate; conduct inspections per approved plan using approved State or City inspectors when applicable; and document and report results.

l) The Consultant shall ensure that the Subcontractors' and suppliers' quality

assurance/quality control plans incorporate required testing. The Consultant shall establish hold points during the construction and manufacturing processes at which tests shall be conducted. The Consultant shall prepare inspection and test plans, and approve Subcontractors' and suppliers' plans, qualify and approve all test laboratories, approve personnel qualifications, verify test equipment calibration, monitor the progress of the Project, and schedule tests and witnessing inspectors. The Consultant shall also approve test procedures to ensure that they are properly executed and documented.

m) The CM Inspectors shall monitor work operations and ensure that all operations are performed in a safe and efficient manner. The CM Inspectors shall report any unsafe incident to the Corporation and advise if a stop work order should be issued.

n) The CM Inspectors shall monitor work operations activities and ensure compliance with the Remedial Action Plan and Contractor Health and Safety Plan, and:

1. Manage excavated soil and dewatered groundwater;
2. Monitor clean soil cover requirements;
3. Control potential sub-grade soil gas impacts;
4. Ensure trade contractor compliance with site-specific training;
5. Ensure trade contractor compliance with personnel protection;
6. Conduct air monitoring/sampling; and
7. Confirm compliance with the "Community Air Monitoring Program" requirements.

9. Materials Testing

a) The Consultant shall provide a comprehensive system of testing for materials and workmanship of the construction Subcontractors; develop a detailed work plan for testing equipment; maintain a complete record of each test, as well as take recorded photographs of construction work in progress to support test records; and shall also ensure that all warranties and guarantees are received from the construction Subcontractors.

b) Field tests shall be performed under the supervision of the Consultant. For tests requiring laboratory analysis or specialized expertise and equipment, an independent testing laboratory shall be retained by the Consultant, with the exception of controlled inspections required by DOB which will be completed by NYCEDC.

c) Testing performed by any construction Subcontractor shall be witnessed by the CM Inspectors. Any non-conformance shall be logged and the construction Subcontractor directed to remedy the non-conformance.

i. The Consultant shall retain the services of an independent testing laboratory or a certified independent laboratory, as the case may be, to conduct tests requiring laboratory analysis and testing.
ii. Materials or systems shall be tested when required by the specifications, or when the Consultant deems it necessary due to

potential non-conformance. Samples shall be furnished by the construction Subcontractors' or representative samples shall be taken by CM Inspectors from delivered materials and sent to an independent testing laboratory. The number or quantity of samples or size of sample system shall be sufficient to permit adequate testing. Complete records shall be retained of each test, and specimens retained, as deemed applicable by the Consultant, to prove or disprove the passing of specified tests.

iii. Test results, as documented by the test laboratory, shall be held in the Project file and distributed to NYCEDC and, if directed by NYCEDC, the Design Team. The test discrepancy list shall be provided to the appropriate construction Subcontractor for corrective action and subsequent re-inspection or testing.

d) Test Reports

The Consultant shall secure and retain complete and accurate reports of tests performed to verify specification requirements. No related work item may proceed until the required test results are secured, reviewed and found to be acceptable. The items to be shown on such report shall include, without limitation:

i. Subcontract number and description of Subcontract work;
ii. Type of test and specification reference;
iii. Test procedure referenced or included in the report;
iv. Person/company performing the test, location, date and equipment used;
v. Sample source and date secured;
vi. Narrative description of test performed;
vii. Results of tests, given in units required by specifications and, as appropriate, units of recognized standards, with a comparison to the minimum requirements;
viii. Signature of responsible person controlling the testing work;
ix. Recommendation as to acceptance or rejection, or approval or rejection by the Consultant as appropriate; and
x. Any other information required by the Contract Documents or requested by the Design Team.

e) Commissioning, Equipment Testing and Initial Start-Up Plans

i. The Consultant shall prepare detailed work plans for testing all equipment prior to acceptance. The plans shall be closely coordinated with the equipment operators in preparing initial start-up plans and work closely with them to resolve initial operating problems. The Consultant shall ensure, when required by the specification, that the equipment manufacturers provide installation engineering and the services of a start-up engineer supplied by the manufacturer.

ii. Equipment test plans shall include manufacturer information on each item of equipment to be tested. In addition, the work plan shall describe the various notes, conditions, and sequences of operation. Each plan shall contain a checklist that shall include all elements of the equipment test. Such checklist shall be the primary guide used by test personnel in conducting the test.

iii. Equipment testing and initial start-up plans shall be coordinated with the NYCEDC, the Client, the commissioning authority and the Design Team.

iv. When each item of equipment and other components of the Project systems are ready for use, the Consultant shall advise the NYCEDC in a comprehensive report.

v. The Consultant shall coordinate, advise and/or manage necessary commissioning and processing services related to the USGBC LEED, ISI Envision, and LL86/LL31/LL32 requirements.

f) Warranty/Guarantee Procedures

i. The Consultant shall maintain a Warranty/Guarantee register of all required warranties and guarantees for each construction contract, and verify that all documentation for warranties and guarantees is provided by Subcontractors. This register shall include copies of each warranty. At the conclusion of the Project, all Warranty/Guarantee files shall be provided to the NYCEDC including schedules for start of pertinent Retainage in accordance with the Contract.

10. Construction Staging and Work Plans

a) During Construction Phase Services, the Consultant shall continue to maintain and develop a Project Site specific "**Construction Staging and Work Plan"** in accordance with requirements as stated during Pre-Construction Phase Services. The Staging and Work Plan shall include consideration and identification of items previously stated in addition to the following:

i. Identification of adequate temporary construction facilities;
ii. Adequate ingress/egress of construction equipment, material and personnel;
iii. Adequate construction easements;
iv. Adequate Subcontractor lay down areas;
v. Construction material disposal plan;
vi. Necessity for off-Project Site mobilization, storage areas and parking;
vii. Temporary construction fencing and/or barricades to protect pedestrians and vehicles;
viii. Adequate signage and security; and
ix. Coordination with construction work at adjacent stakeholder project.

b) The Construction Staging and Work Plan shall cover Consultant coordination of Project Site management interfaces and responsibilities regarding territorial overlaps and points of access.

c) The Construction Staging and Work Plan shall be discussed and explained to bidders at the pre-bid meeting. The Consultant shall prepare any questions about the Construction Staging and Work Plan that may arise from the pre-bid meeting and distribute the information to all attendees. The Construction Staging and Work Plan shall be discussed in greater detail at the Pre-construction meeting after a Subcontract has been awarded. The plans shall be Project Site-specific and shall be detailed enough to clearly state anticipated problems and appropriate solutions.

d) The Construction Staging and Work Plan shall also include the monitoring requirements and sequence that shall be used to verify compliance with the Contract Documents.

e) The Consultant shall define the areas available for use by the Subcontractors, including the area needed for temporary office facilities, temporary lay down areas and parking of employees' vehicles. Common areas such as temporary parking lots shall be defined and the Subcontractors informed as to the procedures for joint use.

f) The Consultant shall provide temporary directional signs, as needed and as directed by the NYCEDC, to minimize inconvenience during construction. The Consultant shall produce printed notices, as directed by the NYCEDC, to be distributed to inform adjacent facilities of the schedule and progress of the Project, as well as of any disruption to the normal operation of adjacent facilities.

g) All staging areas and work areas in the Project Site are to be properly maintained. All debris and litter are to be removed on a regular basis and/or as directed by the NYCEDC.

11. Community Relations (CR)

a) The Consultant shall work closely with the NYCEDC to keep all Interested Parties informed of the current Project status and to assist in keeping the local community informed of the same. The Consultant shall identify potentially disruptive construction techniques that may be perceived to have an effect on the local community, and where feasible, shall recommend construction techniques that are less disruptive. The Consultant shall keep the NYCEDC up-to-date on potentially disruptive construction techniques so that appropriate intervention measures may be planned and taken.

b) The Consultant shall be available to assist the NYCEDC in keeping the local communities and government Agencies informed of the status of the Project and in preparing graphics, reports, and presentations to Interested Parties as may be required.

c) The Consultant, if instructed by the Corporation in writing, shall as part of its personnel for the Project, provide a community construction liaison (“CCL”), who shall prepare a CR Program. The Corporation may require the Consultant to provide CCL resumes, a writing sample, and any other information as requested by the NYCEDC, prior to approving the CCL.

d) The Consultant shall provide its CCL with photo identification, clearly indicting the Project Name/Number, Consultant name/number, field office address and phone/fax numbers, which shall correspond with the anticipated contract duration plus three (3) months.

e) The Consultant shall provide the CCL with business cards, which shall include the same Project information.

f) The Consultant shall provide a designated email address for use by the CCL. The CCL shall monitor this email address and respond in accordance with direction from the NYCEDC.

g) The Consultant shall print necessary community notification materials (posters, brochures, buttons, and newsletters) in accordance with the CR program.

h) If the Project involves any interruption to utility service, the CCL shall distribute and post notices and shall provide translations of notices/flyers if so required.

i) The CCL shall keep field office records regarding community interaction, including without limitation, complaints received and all correspondence, and meetings.

j) The CR Program Requirements shall be as follows:

   i. Include a database/mailing list that will include the following: owner/tenant name, address, telephone number or contact number, Tax Block and Lot. The database mailing list shall be maintained in electronic format and be capable of sorting the list, generating mailing labels, personalizing letters and tracking of contacts. The database/mailing list shall be updated on a weekly basis;
   ii. Advise the owners/tenants of up-coming work and Project status, and initiate the coordination and scheduling of the work;
   iii. Schedule meetings with the Community Board and adjacent property owners as directed by NYCEDC;
   iv. Include graphics, reports, and presentations to interested groups as may be reasonably required;
   v. Include a door to door survey of each commercial/residential property within the Project area that could be impacted by Project activities and/or utility service interruption.
   vi. Include a current calendar of significant community events, such as Ethnic/Religious Festivals, Street Fairs, Marathons, Parades, Play Street Closing and Block Parties/Celebrations;
   vii. Note the persons, businesses, and properties that may require additional planning and coordination to minimize utility service interruption impacts; and
   viii. Foster ongoing communication and coordination through regular updates, telephone contacts, and field visits with the local community and Agencies.

12. Construction Subcontractor Submittals, including Shop Drawings and Material Approval, and RFIs

a) The Consultant shall develop a Procore-based (or other software approved by the NYCEDC) system to track all submissions and responses to Project RFIs.
b) Subcontractor submittals, including shop drawings, samples and RFIs, shall be received and logged in by the Consultant. Copies of shop drawings, sepias, prints, catalog cuts and samples shall be sent through the Consultant to the Design Team for review with notification to the NYCEDC. After review, the Design Team shall return copies, sepias, and prints, with comments to the Consultant for return to the Subcontractors. Record copies of approved shop drawings shall be submitted to NYCEDC.
c) The Consultant shall ensure that the Design Team returns all submittals to the Subcontractors with appropriate directions within a reasonable period of time to ensure issued project schedule is met.
d) The Consultant shall create and maintain a document control database of shop drawings, sepias, prints and samples with, at a minimum, the following information:
    i. Vendor;
    ii. Discipline;
    iii. Date received;
    iv. Submittal number;
    v. Date forwarded to the Consultant;
    vi. Latest return date from the Consultant;
    vii. Date submitted to the Design Team
    viii. Date returned to the Subcontractor; and,
    ix. Status: approved, approved as noted, not approved.

e) Copies of all drawings, samples and catalog cuts shall be maintained in the appropriate files. A drawing log shall be kept up-to-date at all times.
f) The Consultant shall review all construction Subcontractors' submittals for compliance with the submittal requirements of the Contract Documents. All non-compliant submittals, incomplete submittals and/or submittals that deviate from the intent of Contract Documents shall be returned to the Subcontractor for corrective action prior to forwarding to the Design Team. Working drawings shall be reviewed for compliance with applicable City, State and Federal codes. If the shop and working drawings are not acceptable, they shall be marked and returned to the Subcontractor with comments.
g) Copies of all submittals shall be forwarded to the appropriate contract file, and a copy shall be retained in the Project files for reference and use by field personnel.
h) The Consultant shall generate and provide NYCEDC and the Design Team with a list of all anticipated Subcontractor submittals and an anticipated schedule for review. The Consultant shall establish a naming convention across all trades and for all submittals to ensure legibility for all reviewing parties. This list and schedule shall be periodically updated and reissued.

7. Change Orders

a) The Consultant shall follow NYCEDC's change order procedures as set forth in the Part II of this Agreement, General Terms and Conditions for the review and processing of Subcontract Change Orders.

8. Cost Control

a) The Consultant shall establish a system to monitor costs consistent with NYCEDC's project budget immediately following the Notice to Proceed. The Consultant shall establish time-phased budgets for each Project element to provide a benchmark for measurement of cost performance. Cost data shall be collected and analyzed using Procore, Prolog or equivalent software as approved by NYCEDC.

b) In addition to monitoring costs, the Consultant shall provide monthly progress reports to the NYCEDC detailing cost of work constructed to date, cost projections of cost for each contract/work element, and include a monthly cash flow estimate shall be made for the entire Project. This estimate shall be based on the latest Project Schedule and the schedules of each Subcontractor, the estimated/actual costs for each element, and delivery dates for equipment and other large dollar items. The NYCEDC shall be advised promptly of potential cost increases or other problems.

c) Every reasonable effort shall be made by the Consultant to prevent construction claims. The Consultant shall provide active participation in pre-bid and bid activities, effective and prompt communication with and response to Subcontractors' requirements and requests. In addition, the Consultant shall provide complete and effective documentation of all construction contract-related activities to aid in the prevention of claims.

d) The Consultant shall implement procedures for reviewing Subcontractors' invoices and for processing monthly progress payments. The Consultant shall work closely with the Subcontractors to establish an equitable schedule of values of the various Contract work elements so that payments are an accurate reflection of the value of work performed. The Consultant shall verify quantities or percentages of work claimed as complete or due for payment on each Subcontractor's partial payment invoice and shall recommend to the NYCEDC whether to approve, amend or reject said invoices appropriately.

e) The Consultant shall not recommend that progress payments be made to any Subcontractor unless and until the Consultant receives an acceptable schedule update.

9. Document Control

a) The Consultant shall establish an efficient document control system that permits immediate access to documents essential for the management and control of all Project documents ("**Project Documents**"). Consistent with existing NYCEDC policies and procedures, the Consultant shall implement a Project Document control procedure as follows:

i. The Consultant shall develop a document preparation and distribution matrix for the Project.

ii. The Consultant shall implement a document data base that will identify each received or created document by the document index number, originator, addressee, subject, reference, document date, date received, distribution, document type, action date (if any), date action taken, and remarks. Additional data shall be maintained, as may be required, to identify and track particular subject matters identified during the course of the Project.

iii. The Consultant shall maintain a separate drawing log, which shall include the drawing number, title, revision, and revision date.

iv. The Consultant shall identify each document by a unique index number. Documents shall be filed in numerical order according to the index number. As may be required, special subject files shall be created. Typical special files shall be minutes of meetings, change orders, Subcontractor submittals, and the like.

v. The Consultant shall track documents that contain a specific action date tracked utilizing the document database. Tracking reports shall be issued weekly identifying the action required, the responsible party and date the action is required.

b) Copies of all documents shall be maintained at the Project field office and shall be transmitted to the NYCEDC periodically or upon request with a copy of the current Project log.

c) The Consultant shall establish Subcontract files containing sufficient documentation to constitute a complete history of all contract transactions related to each Subcontract.

d) The Consultant shall maintain daily job diaries recording in detail work accomplished, number of workers, and type and quantity of equipment on Project Site, material deliverables, and other items relevant to the particular construction contract. In addition, the Consultant shall monitor the prevailing wage rates. Accurate documentation of such items shall be maintained at the Project Site.

e) The Consultant shall maintain complete and up-to-date copies of all Subcontracts, drawings, specifications, addenda, change orders and other modifications at the Project site. Additionally, copies of shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, other related documents and revisions that arise out of the Subcontracts or work shall also be available. The Consultant shall maintain records, in duplicate, of structures and key Project Site elevations certified by a qualified surveyor.

f) Such records shall be made readily available for use by the NYCEDC and the Design Team, and shall be the property of the NYCEDC. At the end of the Project, such records (both electronic and hard copies) shall be transferred to the NYCEDC, the Client, and any additional parties as directed by NYCEDC.

g) The Consultant shall mark-up construction drawings on a daily basis to be reviewed by the Consultant and staff to verify that all changes, revisions, additions and/or deletions are recorded on a full-size set of contract drawings. Upon completion of the Subcontract work, the "mark-up" documents shall be used as the basis for comparison of the Subcontractors' "as-built" drawings. This shall be accomplished during the Subcontract closeout phase of the Project and transmitted to NYCEDC prior to its final completion of the Subcontract work.

10. Quality Assurance and Quality Control

a) The QA/QC shall be documented in a program manual ("**QA/QC Manual**") and provided to the NYCEDC. The QA/QC Manual shall specify quality assurance/quality control organization and responsibilities and shall establish procedures for verification and documentation of quality. All Consultant personnel shall perform their duties in accordance with the QA/QC Manual. Such duties shall include:

i. Participating in bid document reviews;
ii. Preparing inspection schedules, plans and checklists for the Consultant and Subcontractor, Project site and procurement work, and identifying any necessary witness points well in advance of reaching such time in the construction or manufacturing process;
iii. Reviewing and approving each construction Subcontractor's quality assurance/quality control plans;
iv. Approving Subcontractor-proposed testing laboratories;
v. Training and certifying inspectors, providing direct support where appropriate;
vi. Performing or witnessing inspections both on the Project site and at supplier plants per Project inspection and test plans;
vii. Providing guidance and assistance on quality assurance and quality control related matters;
viii. Maintaining quality assurance and quality control documentation and records;
ix. Interfacing with other construction management entities to coordinate inspection and quality control activities; and,
x. Signing-off concurrence on all change orders

b) The QA/QC Manual shall provide a uniform system throughout the Project life for record keeping and document control. It shall identify the records to be developed, their form, method of identification and validation, receipt requirements and control, dissemination requirements and filing/storage requirements, all considering the need for ready retrieval. Such records shall include, without limitation:

i. Procedures and manuals;
ii. Results of reviews, i.e., design, construction/procurement/ installation bid documents, program plans, tests, shop drawings, etc.;
iii. Audit plans, results and follow-up documentation;

iv. Calibration records;
v. Nonconformance reports and their resolution;
vi. As-built drawings and specifications;
vii. Test reports, including material analyses and certifications;
viii. Surveillance records of work performed, including daily inspection report;
ix. Training records;
x. Change control records; and
xi. Inspection checklists and records.

c) The Consultant shall perform audits in accordance with procedures and checklists incorporated in the QA/QC Manual. The Consultant shall schedule audits, conduct pre-audit and post-audit meetings, record the results of audits and recommend corrective actions as required, follow-up on corrective measures by informal surveillance or formal re-audits, and maintain records of all audit correspondence, checklists, worksheets, findings, recommendations and follow-up actions.

d) The Consultant shall provide Quality Assurance and Quality Control review documentation upon the request of the Corporation.

11. Project Safety

a) The Consultant shall review each Subcontractors' safety program for compliance with Occupational Safety and Health Act ("OSHA and amendments thereto, and other Legal Requirements that may be applicable.

b) The Consultant shall routinely advise the NYCEDC of all safety matters, as well as furnish copies of safety-related correspondence.

c) The Consultant shall verify that the Subcontractors' safety programs include the following:

i. New Hires Safety Orientation Program. Each Subcontractor shall allot sufficient time for new hire safety orientation. The Subcontractor's safety requirements program shall be covered, and further, the Subcontractors shall make sure that each of its new employees is familiar with the Subcontractor's individual program and requirements.
ii. The Consultant Tool Box Safety Meetings. Each Subcontractor shall ensure that toolbox safety meetings are conducted. Each Subcontractor shall provide important/useful safety information. Each person shall be required to sign an attendance roster acknowledging receipt of the information.
iii. Foreman's Safety Orientation. Each Subcontractor shall assure that the foreman is familiar with the Subcontractor's safety program, the Project safety plan, and their supervisory safety responsibilities by conducting a safety orientation with each foreman upon promotion or hire.
iv. Supervisors' Safety Meetings. Each Subcontractor shall send

designated safety representatives to a weekly safety meeting with the Consultant.

v. Project Safety Inspection Program.

- Each Subcontractor shall be responsible for conducting an inspection of its work areas to ensure compliance with its safety program daily. The Consultant shall verify that these daily inspections are conducted by each Subcontractor.
- Each Subcontractor's safety program shall contain procedures for accomplishing these inspections. A safety meeting shall be conducted weekly with the results documented and forwarded to the Consultant.

vi. Project Regulations.

- In addition to the requirements stipulated by the Consultant, the Subcontractors shall comply with 29 CFR 1926 OSHA Regulations for Construction and applicable standard of 29 CFR 1910 OSHA. A hazard communication program by each Subcontractor for any toxic materials introduced to the Project Site shall also be required.
- The Consultant shall coordinate with the NYCEDC and its Subcontractors regarding any and all necessary Health and Safety Plans, spill response requirements and related environmental regulations and procedures as required by any Agency having such jurisdiction over this Project.

vii. Transmissive Disease Requirements

- The Consultant understands that the Project will be subject to compliance with all rules and guidelines set forth by all applicable government Agencies in relation to COVID-19 or other infectious diseases. Current guidance that the site intends to comply with comes from the OSHA, Center for Disease Control (CDC) New York State Department of Health (NYSDOH) and the City of New York. The Consultant may establish any Project guidance in relation to COVID-19 or other infectious diseases, as necessary, with approval from the Corporation.

viii. Safety Responsibility. Consultant shall ensure that each Subcontractor appoint at least one person to be responsible for coordinating their safety program. This person shall interface with the Consultant.

ix. Record Keeping Requirements. Each Subcontractor shall be responsible for keeping the required records and OSHA forms up-to-date and available at the Project Site. Each Subcontractor shall furnish all information concerning the safety of their operations, as may be required by the Consultant, including records of accidents to

employees, exposure hours of employees, lost time due to accidents and liability incidents.

x. Job Project Site Safety/Audit Deficiencies

- Each Subcontractor's safety representative shall conduct job Project Site safety audits and shall monitor activities for safe work practices, use of personal protective equipment, fire protection devices, safety devices, housekeeping and effectiveness of the Subcontractor's safety program. Deficiencies found during audits shall be noted on a Project Site safety audit form, and a copy of the safety audit form shall be kept on file.
- The Consultant shall inspect, review and verify the file of safety audit forms.

xi. Accident / Incident Notification. The Consultant shall notify the NYCEDC, within twenty-four (24) hours of any safety-related accident or incident related to the Project.

xii. Accident Investigation and Reporting. The Consultant shall investigate and review any accident investigation reports it receives from Subcontractors to determine facts related to the cause of any accident involving injuries, lost work days, or property damage. The Consultant shall prepare a report of the investigation and shall submit to and review such report with the NYCEDC.

12. Operational and Maintenance Requirements

a) The Consultant shall coordinate all commissioning and training activities with the NYCEDC and the Project Team.

b) The Consultant shall compile all operational and maintenance requirements including operating manuals and similar instructions for all systems and submit the same to the NYCEDC.

c) The Consultant shall assist the NYCEDC in evaluating systems performance during "break-in" periods.

d) The Consultant shall organize and direct the education of all applicable personnel in the operational and maintenance requirements of the Project. The Consultant shall provide training/demonstration of the systems for the facilities' maintenance and operations staff.

e) If applicable, the Consultant shall organize and assemble cleaning and maintenance procedures for all building systems and materials specified for scheduled upkeep and proper commissioning as appropriate.

f) The Consultant shall assist in developing a preventive maintenance plan for all building systems.

g) The Consultant shall work with the Design Team in collecting and compiling the necessary information for submissions to meet USGBC LEED and/or ISI Envision certification, LL86/LL31/LL32, and/or LL92/94 requirements.

13. "As Built" Documents

a) The Consultant shall expedite the Subcontractors' preparation of "As Built" documents of the entire Project and verify the completeness in accordance with the Contract Documents and forward the same to the NYCEDC and the Design Team for review and comment. The final "As-Built" documents shall be produced in compliance with the maintaining Client's requirements (i.e. DEP, DPR, DOT, NYSDOT, DCLA, etc.) and forwarded to NYCEDC.

14. Specialized Engineering Services

a) The Consultant's engineering support staff shall perform specialized engineering services as required by NYCEDC.

15. Project Approval and Closeout

a) The Consultant shall work with NYCEDC and the Design Team in obtaining building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the Subcontractors, and assist in obtaining approvals from Agencies. The Consultant shall also assist in the performance of Subcontractors' obligations to obtain all permits, licenses and certificates, and verify that these are obtained as required under the Subcontracts.

b) If applicable, the Consultant shall retain a qualified expediter to file applications to DOB, DSBS, DOT and other Agencies for a temporary and permanent Certificate of Occupancy and/or Certificate of Completion. Such services shall include filing amendments as needed, checking on the progress of applications and other items necessary to the expediter for those tasks.

c) Preparation for contract closeout shall begin when the Subcontract is awarded. The daily construction, procurement and test monitoring, together with the routine assembling of Project documentation, are integral parts of this process. The Consultant shall prepare a Subcontract closeout checklist, which shall outline the final steps in the process. A checklist shall be maintained for each Subcontract.

d) Approximately three (3) months prior to the preliminary walkthrough inspection of the Subcontract work or upon completion of seventy-five (75%) percent of the Subcontract work, the Consultant shall conduct a quality assurance audit shall be conducted and submitted to NYCEDC for approval of the Project records. The purpose of such an audit is to verify that complete records have been compiled while there is sufficient time to rectify any deficiencies.

e) The Consultant shall work with NYCEDC, the Design Team and the Subcontractors in their obligations to close all permits, licenses and certificates, and verify that these are closed as required by the various permitting Agencies.

16. Substantial Completion

a) At approximately 80% contract completion of the Project (or no later than 60 days prior to an anticipated Substantial Completion date), the Consultant shall conduct a Pre-Close-out conference to review the close-out requirements and confirm the date(s) for achieving Substantial Completion. The Consultant shall ensure that the relevant Project Team members are invited and attendance is confirmed and documented. Thereafter, the Consultant shall regularly, as necessary, conduct close-out meetings to track essential activities required in order to maintain a current project schedule.

b) The Consultant is responsible to review the Project requirements to obtain Substantial Completion in coordination with the Project Team, as may be required. The requirements may vary per Project, but generally, the following are required in order to obtain Substantial Completion:

i. The punch list is prepared and dates for completion have been agreed to;
ii. Draft 'As-Built' drawings have been submitted to the Consultant for review in the correct form/format as specified by the Corporation;
iii. Testing and inspections have been completed and results/reports have been transmitted to the Consultant;
iv. The Warranty/Guarantee Register is complete and warranties have been transferred to the entities as specified by the Corporation;
v. Operations and Maintenance manuals/plans have been provided to the Owner, including catalog data sheets for equipment and repair/service company contact information. The manual should include a section related to on-going regulatory agency inspections and approvals, including but not limited to, Energy Reports, LL11 reports, sprinkler/boiler reports and elevator inspections;
vi. All training and demonstrations for Client's staff related to equipment and systems is complete and attendance of those training and demonstrations is documented;
vii. All change orders have been identified;
viii. Attic stock, if applicable, has been provided to the Owner and transmittal form of material has been recorded with the Owner's signature;
ix. The value of remaining work has been quantified/agreed to; and
x. A Contract Completion Date has been established/agreed to.

c) The Consultant shall confirm dates for punch-list inspections to be coordinated with the relevant Project Team at least 30 days in advance of the Substantial Completion inspection. Depending on the scope and complexity of the project, the number of subcontractors and/or interested parties, it may be necessary to have multiple dates to complete the inspections; the Consultant will provide a standardized format for Subcontractors to record corrective items and list incomplete work items.

d) Within ten (10) days after the preliminary walk-through inspection, the Consultant shall issue a list of items on the punch list to the Subcontractors (the "Punch List") to be completed prior to the Substantial Completion inspection. A schedule for the completion of such preliminary Punch List items shall be negotiated and agreed upon by the Consultant and the Subcontractors.

e) The Substantial Completion inspection shall be scheduled upon resolution of the preliminary Punch List. Unless otherwise directed by NYCEDC, no less than ten (10) days prior to such inspection, the Consultant shall notify in writing the appropriate representatives of NYCEDC and relevant Agencies, of the scheduled date, time and assembly location of the inspection.

f) Not less than four (4) days prior to the scheduled Substantial Completion inspection, the Consultant shall provide each of the CM Inspectors with a copy of the preliminary Punch List.

g) Upon completion of the Substantial Completion inspection, all members of the relevant Project Team shall meet to agree on the acceptance status of the work and any remaining Punch List items. If the Project Team finds that the work is substantially complete and that the requirements of Substantial Completion have been met, then the Consultant may recommend that NYCEDC declare Substantial Completion and issue a Certificate of Substantial Completion.

h) Issuance of the Substantial Completion Certificate will conclude the Construction Phase of the Services. The work remaining after Substantial Completion to complete the Services shall be known as the "Remaining Work". Within ten (10) days of the Substantial Completion inspection, the Consultant shall issue a Remaining Work list and will submit a schedule for the completion of the Remaining Work to NYCEDC. The Remaining Work shall be limited to punch list work, except NYCEDC may, in its sole discretion, include the following types of work as Remaining Work:

   i. Street restoration, permanent pavement, painting or planting work which cannot be completed because of seasonal impediments such as cold weather (provided that sufficient temporary measures are completed);
   ii. Work that cannot be completed until NYCEDC, Agencies, or third persons perform other work that is not the Consultant's responsibility under the Contract, or the responsibility of the Design Team under the Contract Documents, or the responsibility of the Subcontractors under the Subcontracts;
   iii. New work as requested by the Corporation that has been agreed to in writing and procurement, if necessary, has been approved.

i) The Remaining Work shall be completed no later than ninety (90) days from the issuance of the Certificate of Substantial Completion unless a longer timeline is approved by the Corporation.

j) Public Design Commission Photographs

   i. If applicable, the Consultant, in consultation with NYCEDC's Design

Commission liaison, shall provide NYCEDC with appropriate number of high resolution electronic image files; and

ii. 8.5" x 11" color archival-quality photographs of the completed Project with representation of the site elements approved in the PDC final submission package.

k) The Consultant shall keep and maintain complete and accurate reports of tests performed to verify Project specification requirements. Among the items to be shown on the report are:

i. Subcontract number and description of Subcontract work;
ii. Type of test and Subcontract specification reference;
iii. Person/Company performing the test, location, date and equipment used;
iv. Narrative description of tests performed;
v. Results of tests, given in unit required by specifications and, as appropriate, unit of recognized standards;
vi. Recommendations as to acceptance or rejection; and
vii. Signature of responsible person controlling the testing work.

17. Final Completion

a) The Consultant shall prepare all change orders from its Subcontractors and submit to NYCEDC for processing, including, as necessary, a final over-run/under-run change order. Generally, all Change Orders shall be identified and negotiated concurrently with Substantial Completion to avoid funding overruns.

b) Construction Completion

i. The Consultant shall review the Project for final completion of the Remaining Work. Upon confirming that the Remaining Work has been satisfactorily completed, the Consultant shall schedule an acceptance inspection with the Project Team, Agencies (if required) and the Subcontractors.

ii. Before recommending the Subcontractor achieve Final Completion, the Consultant shall verify that all documents relevant to the Project have been completed and processed by the applicable Subcontractors and submitted to NYCEDC, including without limitation:

a) Any certificates of completion required by DPR, DSBS, DOB, NYSDEC and/or USACOE.
b) Electrical certificate of inspection;
c) FDNY final inspection report;
d) Certificate of Completion; and
e) Permanent Certificate of Occupancy.

iii. All affidavits, final releases, bonds and waivers required under the Subcontracts shall be submitted to NYCEDC prior to declaring Final

Completion. The Consultant shall obtain such items from each applicable Subcontractor and record such items in a register.

iv. The Consultant shall review the Project for completion of the Remaining Work. Upon confirming that the Remaining Work has been satisfactorily completed, the Consultant shall schedule an acceptance inspection with the NYCEDC and other Agencies (if required) and the Subcontractors.

v. All warranties and guarantees, as required in the Contract Documents, must be submitted and accepted by the NYCEDC before final completion can be declared ("Final Completion"). The Consultant shall list on a "Warranty / Guarantee Register" each individual item of equipment and follow up with the Subcontractors to verify that all required warranties and guarantees have been provided by the time of Final Completion. All warranties and guarantees shall be appropriately assigned to the users as directed by the NYCEDC.

vi. As each warranty or guarantee is received, the Warranty and Guarantee Register shall be completed to show:

a. Manufacturer's identification and description;
b. Model number and serial number;
c. Date that the warranty or guarantee was received;
d. Period covered;
e. By whom; and
f. Company Contact (including, but not limited to, telephone numbers and email address of the specific senior point of contact.)

vii. All affidavits, releases, bonds and waivers required under the Subcontracts shall be submitted to the NYCEDC prior to declaring Final Completion. The Consultant shall obtain such items from each Subcontractor, as required and shall record such items in a register, a copy of which shall also be transmitted to the NYCEDC with such items.

viii. Before recommending the issuance of a certificate of Final Completion ("**Certificate of Final Completion**") the Consultant shall verify that all documents relevant to the Post Construction Phase have been completed and processed by the applicable Subcontractors and submitted to the NYCEDC within a reasonable time frame, including, without limitation:

a. Any certificates of completion, approvals, certifications and signoffs required by DOT, LPC, PDC, DCLA, DPR, SBS, DOB, FDNY, NYSDEC and/or any other Agency or Interested Party.
b. Electrical certificate of inspection;
c. FDNY final inspection report;
d. Certifications of systems and equipment by appropriate authority or Agency; and
e. Permanent Certificate of Occupancy.

ix. Before recommending the issuance of a Certificate of Final Completion, the Consultant shall submit to the NYCEDC final "As-Built" drawings, as approved by the Design Team and the maintaining Agency, and as acknowledged by NYCEDC;

x. Before recommending the issuance of a Certificate of Final Completion, the Consultant shall initiate a determination of final quantities once a Substantial Completion date has been established. This effort shall be completed upon the acceptance of all Subcontract work.

a. The schedule of values shall be updated to replace all "estimated" quantities with "actual" quantities based on field measurements or take-offs from Contract Documents. All adjustments shall be documented and associated drawings referenced. Quantities associated with outstanding Subcontract modifications shall be included.
b. The final quantity determination shall be verified by the Consultant. This verification shall include a detailed item-by-item check of quantity book entries and calculations. Conflict or discrepancies shall be resolved by the Consultant.
c. The Consultant shall send a tabulation of the checked final quantities, including associated dollar amounts, to the Subcontractors requesting the Subcontractors' concurrence within two (2) weeks.

xi. Upon Final Completion and satisfactory fulfillment of all the above-listed requirements including, without limitation, receipt by the NYCEDC of all warranties, guarantees, record drawings, manuals, releases, bonds and waivers, the Consultant may recommend to the NYCEDC the issuance of the Certificate of Final Completion. The Consultant shall provide a letter to NYCEDC that certifies the Project was completed according to the plans and specifications developed by the Design Team. If requested by the NYCEDC, the Consultant shall assist in the preparation of the Certificate of Final Completion.

C. POST CONSTRUCTION PHASE SERVICES

1. Guarantee Period

a) The Consultant shall guarantee the Work to ensure that there are no deficiencies or defects in materials and/or workmanship during the Guarantee Period starting from the Final Completion As part of this Guarantee, Consultant shall monitor the completed Project work on a regular basis (minimum quarterly) to ensure that there are no deficiencies or defects in materials and/or workmanship. Additionally, the Consultant shall correspond with the Owner and/or its designated representative to ensure that all systems

and equipment are functioning and fully performing; all such correspondence and/or communication shall be recorded in a format acceptable to NYCEDC As necessary, the Consultant shall work with the Subcontractors(s) expeditiously to resolve any and all defects and deficiencies. The Consultant shall provide quarterly reports to NYCEDC.

b) Thirty (30) days in advance of the Guarantee(s)' expiration, the Consultant and relevant Project Team members will inspect the Project Work to determine if any defects of materials or workmanship have occurred and rectify as needed.

2. Release of Retention

a) The Consultant shall assess whether there are outstanding claims, settlements and/or disputes that need to be resolved relating to Retention, and advise the Corporation if any such issues may affect the release of Retainage and the Project Schedule for Project close-out.

b) The Release of Retainage Payment is prepared by the Consultant and submitted to NYCEDC.

3. Closure Reports

a) The Consultant shall prepare any closure reports associated with Project permits and approvals including a RAP Closure Report and submit to the appropriate Agency for approval.

4. Project Archive

a) The Consultant shall prepare a Project Archive in a format approved by NYCEDC. The Project Archive shall include at a minimum:

i. Project closeout binder (on USB drive or other appropriate electronic transfer mechanism) documenting the following:

a. Consultant's Letter of Completion addressed to NYCEDC
b. Copy of Project's Amendment(s)
c. Project Contact Directory
d. All Agency Approval Letters
e. Executed Contract
f. Financials (Final Payments to Each Contractor, Final Cost Report)
g. Final As-Built Drawings/Specs – PDF; DWG; 3D Modeling Software files
h. Daily Field Logs
i. Architect Field Observation Reports
j. Commissioning Field Observation Reports
k. Progress Photos
l. Meeting Minutes
m. Final Schedule
n. RFIs

o. Submittal log / Submittals
   - Approved submittals, shop drawings, product data, samples
p. Change Order Logs
   - Approved / signed change orders
q. Inspection Reports from Third Party Inspector
r. Surveys
s. Hazardous Waste Documents (if applicable)
t. Sustainable Certification Documents
u. Warranty/Guarantee Register
v. O&M Manuals
w. Training Records – training manuals, and video-taped training sessions with attendance lists
x. Permits/Approvals/Close-out Log
y. Commissioning & Training Log
z. Project lessons learned

ii. All Project Documents for Subcontracts
a. Request for Proposal
b. Full Set of Approved Plans & Specifications
c. Invitation for Bid-Notification to Bidders
d. Bid Addendums
e. Bids Received
   - Bid Bonds
f. Bid Tabulation
g. Negotiated Changes
h. Recommendation of Award letter to NYCEDC
i. Subcontractor Notification of Award
j. Subcontracts & Agreements with the Consultant
k. Performance and Payment Bond
l. Certificates of Insurance and Policies
m. Notice to Proceed

iii. Financial Documents
a. Final Payment Requisition
b. Proof of Payments to Contractors
c. Releases of Liens
d. Final Anticipated Cost Report

iv. Misc. Close out documents
a. Contractor Substantial Completion Statements
b. Certificate of Substantial Completion
c. Certificate of Final Completion
d. Temporary Certificate of Occupancy
e. Certificate of Occupancy

D. Maintenance, Repairs, and Emergency Services

a. Maintenance and Repair Services.

i. The Consultant shall repair and maintain the Project Assignment Sites as directed by the Corporation as needed on a Project Assignment Basis as follows. The Consultant shall perform Maintenance and Repair Services, which shall include, without limitation, the following:

1. Field Inspections. The Consultant shall conduct periodic field inspections on such Properties as directed by the Corporation and record the results of each such field inspection in a written report (a "Field Inspection Report").

2. Field Inspection Reports. Each month during the term of the Project Assignment, on a date to be established by the Corporation, the Consultant shall submit Field Inspection Reports for all field inspections completed during the thirty (30) days prior to the submission date established by the Corporation. The Consultant shall include a letter discussing the progress of Field Inspection Reports of any applicable Subcontract work at each Project Assignment Site.

3. Unlawful Occupancies. The Consultant shall notify the Corporation of any unlawful occupancy of any Project Assignment Site. The Consultant shall not be authorized or required to institute legal actions or proceedings in the name of the Corporation for the collection of rents and other income payable to the Corporation or for the eviction or dispossessing of tenants or other persons from the Project Assignment Site. Except as expressly provided in this Appendix B, this Scope of the Services shall not and is not intended to include any obligation on the part of the Consultant to act as a manager of existing lease obligations arising between the owner of any of the Project Assignment Site and any tenants of any of the Project Assignment Site.

4. Subcontracts for Maintenance Services. The Consultant shall enter into such Subcontracts as may be approved by the Corporation for the purchase of supplies and equipment required for and the provision of Maintenance and Repair Services at any Project Assignment Site.

5. Subcontracts for Construction/Repairs. The Consultant shall enter into such Subcontracts as may be approved by the Corporation for any construction, repair or other related activities at the Project Assignment Site.

ii. Site Office(s). In order to facilitate the performance of the Maintenance and Repair Services by the Consultant, the Corporation may, but is not required to, provide a site office for the Consultant at a Project Assignment Site where such Services are performed. In the alternative, pursuant to a Project Assignment, the Corporation may require the Consultant to establish its own site office(s) at such location(s) as the Corporation, in its sole discretion, may choose. In the event the Corporation, in its sole discretion, provides the Consultant with a site office or offices, or directs the Consultant to establish a site office or offices, the Consultant may be required to staff such site office(s) during regular working hours (9:00 AM to 5:00 PM) with such technical, professional and support personnel as the Corporation may require or permit.

b. Emergency Services.

i. In the event the Corporation declares, with respect to any Project Assignment Site, that an emergency situation exists as described in Section II of the "General

Guidelines For Sole Source Procurement, Emergency Procurement and Competitive Sealed Bids" annexed hereto as Exhibit 1 to Appendix D, (an "Emergency Situation"), the Consultant shall perform Emergency Services, pursuant to a Project Assignment, which shall include, without limitation, the following:

1. Evaluations and Recommendations. The Consultant shall immediately evaluate the nature, extent, and cause of any potential Emergency Situation of which the Consultant becomes aware and/or any Emergency Situation declared by the Corporation. The Consultant shall estimate the extent of any damage or potential damage, recommend repairs or other remedial steps necessary to abate such Emergency Situation and advise the Corporation of the approximate cost of repairs or other remedial steps.
2. Subcontracts for Emergency Services. The Consultant shall enter into any Subcontracts necessary to abate the Emergency Situation and to prevent or remedy any potential or actual damage resulting therefrom; provided, however, that the Consultant shall, as circumstances may permit, diligently attempt to obtain the oral approval of the Corporation before entering into any such Subcontracts or otherwise taking any action with respect to any Emergency Situation.
3. Reporting Emergencies. The Consultant shall promptly report to the Corporation all actions taken with respect to each such Emergency Situation and shall document the necessity for such actions. In all instances in which the Corporation has orally given its approval or disapproval of an action to address an Emergency Situation, the Consultant shall endeavor to obtain the Corporation's written approval or disapproval of the action within twenty-four hours of receipt of oral approval from the Corporation.
4. Emergency Procurement Procedures. The Consultant shall procure any Subcontracts not previously approved by the Corporation as may be necessary to abate an Emergency Situation as competitively as is practicable under the circumstances. The Consultant shall prepare and maintain a written statement of the basis for the Emergency Situation procurement and for the selection of the particular Subcontractor in each such instance. The Consultant shall, as soon as practicable after the selection of such Subcontractor, provide the Corporation with originals of such statements, bearing the original signature of the Consultant's representative that made the determination and prepared such statement.
5. Performance of Emergency Services. The Consultant shall provide Emergency Services to the Corporation, as necessary, at all times during the Term of the Contract, 7 days a week, 24 hours a day, and shall ensure than an individual authorized to act for the Consultant with respect to all aspects of the Emergency Services needed for each Emergency Situation is on location at the Project Assignment Site where the Emergency Situation arises as soon as possible, but in no event later than four hours after the Consultant first becomes aware of the existence of an actual or potential Emergency Situation.

APPENDIX C

PAYMENTS

APPENDIX C

APPENDIX C1

I. For each Executed Project Assignment, the Consultant shall submit to the Corporation, not more than once per calendar month unless otherwise directed by the Corporation, an electronic Requisition setting forth in detail, for the Billing Period for which the payment is requested, the amount of payment requested as described in Part II, Section 2.1.2 of this Contract. The Requisition shall be inclusive of the following items for each Billing Period:

a. A Summary of Services of all Work and Services provided by the Consultant during the Billing Period, performed by the Project Assignment Team members (approved Consultant personnel, Subconsultants, and Subcontractors) that explains:
    i. Project Assignment Team Member Staffing Costs, which may include task-based lump sum percentage completion or the numbers of hours worked by each Project Assignment Team Member, actual base hourly billing rates, applicable Overhead Rates, and the actual salaries earned by each Project Assignment Team Member;
    ii. Subcontractors' Costs
    iii. Fixed Fee Profit Percentage for the Billing Period
    iv. Insurance coverage - Updated Project Insurance and Bonding/SDI Requirement Tracking Sheet;
    v. General Conditions Costs

b. Applicable Funding or Grant-related documents previously established as required in the Contract and Project Assignment;

c. Applicable staffing backup documentation for Project Assignment Team with actual base hourly billing rate staffing costs incurred
    i. G702 Form or equivalent;

d. G703 Form or equivalent Schedule of Values
    i. Subconsultants/Subcontractors must be identified.

e. Subcontractor trade costs incurred ; and

f. Applicable Subconsultant and Subcontractor staffing costs incurred.

g. **First Tier Subconsultant**
    i. G702 Form or equivalent
    ii. If task-based: Schedule of Values with percentages of Tasks completed
    iii. If hourly rate-based: Summary page of numbers of hours worked, applicable billing rates and multipliers, and the actual salaries earned by employees

h. **First Tier Subcontractor or First Tier Supplier**
    i. G702 Form or equivalent

i. General Conditions backup documentation including invoices, receipts, and other applicable back up for all eligible General Conditions
    i. Note: General Conditions older than sixty (60) days should be identified in a separate section and include a memo explaining the delay in billing with confirmation that these costs were not previously billed

II. Summary of Services

The Requisition shall include a cover letter on Consultant's company letterhead stating the Services performed by the Consultant for the Billing Period. If applicable, any Subconsultant or Subcontractor billing shall also be supported by a cover letter on company letterhead stating the Services performed by the Subconsultant or Subcontractor for the Billing Period.

III. Project Assignment Team Staffing Costs

Each Executed Project Assignment shall identify, for each phase of construction, whether the Project Assignment Team staffing costs will be billed on a task basis as lump sum percentage completion or on an hourly billing basis.

A. For Executed Project Assignments with staffing costs paid on a lump sum percentage completion basis, the Requisition shall include a summary page of each Task with percentage completion for the Billing Period.

a. The Corporation shall reserve the right to request supporting timesheets for the approved Project Assignment Team Members who have provided Services during the Billing Period.
b. Overhead Rates will not be eligible for calculating staffing costs due on a lump sum basis.

B. For Executed Project Assignments with staffing costs paid on hourly direct billing rates, the Requisition for each Billing Period shall include a summary of hours worked, actual base hourly billing rates for each approved title, applicable Overhead Rates, and the actual salaries earned by the Project Assignment Team Members.

a. The Consultant shall be reimbursed for the actual base hourly billing rates of the approved Project Assignment Team Members, as established in the Executed Project Assignment.
b. For each Project Assignment, the actual base hourly billing rate of each approved Project Assignment Team Member may be increased once per calendar year to allow for reasonable wage rate increases, with the Corporation's approval in writing at its sole discretion.
c. For each Project Assignment, the actual base hourly billing rate for any approved Project Assignment Team Member shall not exceed the Maximum Allowable Base Hourly Rate for the corresponding title as identified in the Cost Schedule of the Contract.

IV. Fixed Fee Profit

a. The Requisition shall include the amount payable to the Consultant for the Fixed Fee Profit on a Project Assignment percentage completion basis for each Billing Period.

V. General Conditions Costs

A. The Executed Project Assignment shall identify, for each phase of work, whether the Project's General Conditions costs will be billed as lump sum or on an itemized basis as approved by the Corporation. No Overhead Rate, administrative fee or other markup will be paid to the Consultant for General Conditions.

B. For lump sum percent completion General Conditions costs, the Requisition for each Billing Period shall include a summary page with percent completion. The Corporation shall reserve the right to request supporting backup for General Conditions costs, including invoices, receipts, and other relevant backup. The Fee Schedule shall identify the lump sum and provide a basis for determining the costs.

C. For itemized General Conditions costs, the Requisition for each Billing Period shall include a summary page of costs for the Billing Period. The Requisition shall include invoices, receipts, and other relevant backup. General Conditions older than 60 days must be submitted separately for review or include a memo explaining the delay in billing with certification from the Consultant's accountant that the General Conditions were not previously billed.

VI. Subcontractor's Costs

A. The Requisition shall provide complete documentation for each Subcontractor included who performed Work within the Billing Period, including but not limited to an application for payment summary, schedule of values, release of lien forms, and open Sub-CO log.

B. No Overhead Rate, administrative fee or other markup will be paid to the Consultant for Subcontractors' Costs.

VII. Requisition Reporting

A. For each Project Assignment, the Requisition shall be in a form acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence, relating to the amounts set forth in the Requisition, as the Corporation may require, including, but not limited to, invoices, receipts, vouchers, lien waivers and releases from Subcontractors and suppliers, and time sheets of the Project Assignment Team.

B. The Requisition shall include certified payroll reports for all work performed by Subcontractors under Subcontracts.

C. Consultant shall obtain and submit with each Requisition, written releases and waivers of the right to file a mechanic's lien from all Subcontractors **(in the form attached hereto as Appendix C4)** and materialmen with respect to all Services for which payment has been made.

D. Requisitions must be submitted to the Corporation within sixty (60) days of when the Consultant incurred the expense for which it is requesting payment. The Consultant must request advanced approval from the Corporation to submit Requisitions for expenses that were incurred more than sixty (60) days prior to submission of the Requisition, and will need to include with the Requisition a memo explaining the delay in billing with certification from the Consultant's accountant that the expenses were not previously billed

E. The Consultant, with the Corporation's prior approval, may only exceed the Maximum Payment allocated to a particular portion of the Services for a specific Project Assignment if the Consultant by Notice determines that the Maximum Payment initially allocated to the portion is insufficient to adequately perform the portion of the Services and confirms that the Maximum Project Assignment Price will nevertheless not be exceeded, by demonstrating to the Corporation a savings with respect to another portion of the Services for the Project Assignment which is at least equal to the amount of such excess. Any resulting variance in actual costs, fees, or expense for the Consultant shall not entitle the Consultant to adjustment of the Maximum Project Assignment Price. Notwithstanding the above, in no event shall the Corporation pay the Consultant more than the Maximum Contract Price except pursuant to this Section.

VIII. Retainage Policy for Construction Projects

A. For each Project Assignment, Retainage will be held by the Corporation from each invoice at a rate of 10 % of the Subcontractor's Costs that were incurred during the Billing Period, when the Project Assignment's percentage completion is between 0 % and 50 % of the Maximum Project Assignment Price (including work billed against approved Change Orders).

B. At the sole discretion of the Corporation for completion of a Project Assignment between 51 % and 95 % of the Maximum Project Assignment Price (including work billed against approved

Change Orders), the Retainage held may vary between 10% of the Subcontractor's Costs that were incurred during the Billing Period to a minimum of 5% of the total Subcontractor's Costs incurred during the Billing Period. The Corporation reserves sole discretion to continue holding 10% Retainage as it sees fit. The Consultant may request a reduction of the Retainage held by submitting a memo to the Corporation justifying the request for a reduction.

C. In no event shall the Retainage be less than 5% of the Subcontractor's Costs, prior to 95% completion of the Maximum Project Assignment Price (including work billed against Change Orders).

D. At the sole discretion of the Corporation, for completion of a Project Assignment progress between 95 % through 100% of the Maximum Project Assignment Price (including work billed against approved Change Orders), the Retainage held may vary between 10 % to a minimum of 1 % of the Maximum Project Assignment Price (including work billed against approved Change Orders).

E. A minimum of 1% Retainage shall be held for each Project Assignment through the Guarantee Period. A memo justifying the release of the remaining Retainage and final releases from the Consultant and its Subcontractors shall be attached to this final progress payment.

IX. Special Inspection Costs to be borne by the Consultant

A. The Consultant shall review all invoices by the Corporation's Special Inspector. The Consultant shall be liable for the costs of any scheduled Special Inspection Services which are cancelled within 24 hours of the scheduled inspection, including inspections where the Special Inspector arrives on site and the Consultant's Work is not eligible or prepared for inspection.

B. The Consultant shall be liable for the costs of unanticipated additional testing, including duplicate inspections to review conformance issues or retesting to inspect work that failed previous tests or was previously inspected. Refer to the *Scope of Services* (Appendix B) for further information about the Consultant's responsibility with respect to Special Inspection coordination.

C. The Corporation shall inform the Consultant in writing of any monthly charges associated with Special Inspections costs liable to the Consultant, which will be credited to the Corporation in a Requisition during the next Billing Cycle.

APPENDIX C2

PROJECT INSURANCE AND BONDING/SDI REQUIREMENTS

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PROJECT INSURANCE and BONDING/SDI REQUIREMENTS

PROJECT NAME:	Project ABC	CONTRACT TYPE:	Consultant, Construction Management or General Contractor (Indicate Type)	PROJECT OVERVIEW:	I.e., Infrastructure work including streets, sidewalks, etc.	INVOICE NUMBER:	01
PROJECT CODE:	1234	TOTAL PROJECT VALUE:	$X,XXX,XXX (Estimated Hard + Soft Costs)	DETAILED SCOPE OF WORK:	(Outline any unique exposures like work close to railroads, the use of vessels on navigable waters, demolition/excavation/blasting/crane use, work on/near utilities, tractor trailers, etc.) below	INVOICE PERIOD:	MM/DD/2022 - MM/DD/2022
DATE OF REPORT:	MM/DD/YYYY	TYPE OF INSURANCE:	Conventional			PROJECT SCHEDULE:	MM/202X - MM/202X

CONSULTANT / CONTRACTOR INFORMATION				REQUIRED INSURANCE												INSURANCE AS REQUIRED BY PROJECT												Indicate P&P BOND or SDI	Comments
No.	Consultant Construction Manager General Contractor Subconsultant or Subcontractor	Role / Scope of Work	Contract Value	Commercial General Liability (Limits)		Umbrella and/or Excess Liability (Limits)		Automobile Liability (Limits)		Workers Compensation (per Statute) and Employer's Liability (Limits)		Disability (Limits)		Professional Liability (Limits)		Builders Risk (Construction Contract only) (Limits)		U.S. Harbor Workers Long Shoremen' Compensation Act (Statutory)		Marine Protection & Indemnity (Limits)		Railroad Protective Liability (Limits)		Contractor Pollution Liability CPL (Limits)			
STATED CONTRACT INSURANCE LIMITS				$X,XXX,XXX Each Occurrence and Aggregate	Exp Date	As Needed	Exp Date	$1,000,000 Combined Single Limit	Exp Date	Statutory WC and Employer's Liability	Exp Date	Statutory Limits	Exp Date	$X,XXX,XXX Per Claim and Aggregate	Exp Date	N/A	Exp Date	N/A	Exp Date	$X,XXX,XXX Per Occurrence and Aggregate	Exp Date	$X,XXX,XXX Per Occurrence	Exp Date	$X,XXX,XXX Per Occurrence Limit and Annual Aggregate Limit	Exp Date		
1		Architectural or Engineering Firm																											
2		Construction Manager																											
3		General Contractor																											
STATED CONTRACT INSURANCE LIMITS FOR SUBS AND TRADES				$X,XXX,XXX Each Occurrence and Aggregate	Exp Date	As Needed	Exp Date	$1,000,000 Combined Single Limit	Exp Date	Statutory WC and Employer's Liability	Exp Date	Statutory Limits	Exp Date	$X,XXX,XXX Per Claim and Aggregate	Exp Date	N/A	Exp Date	N/A	Exp Date	$X,XXX,XXX Per Occurrence and Aggregate	Exp Date	$X,XXX,XXX Per Occurrence	Exp Date	$X,XXX,XXX Per Occurrence Limit and Annual Aggregate Limit	Exp Date	For Trades whose work will be in place when Subcontract is executed and work will begin on site. Please fill in when work is anticipated to start on X date.	
1		Electrical design																											
2																													
3																													
4																													
5																													
6																													
7																													
		TOTAL CONTRACT VALUE	$ -																										

Consultant acknowledges and certifies that it is in compliance with all terms and conditions for Insurance and Bonding requirements as referenced in the Contract.

______________________ Signature

______________________ Print Name

______________________ Date

APPENDIX C3

COST SCHEDULE

SAMPLE COST SCHEDULE

Maximum Allowable Base Hourly Rate and Overhead Rate Schedule

Respondent shall provide the Maximum Allowable Base Hourly Rate for each Title in the Respondent's Consultant Team and corresponding Overhead Rate. If certain Titles in the Consultant's Team require different Overhead Rates due to the fact that they are Subconsultants, the Respondent should make the different Overhead Rates clear in its Proposal.

TITLE	MAXIMUM ALLOWABLE BASE HOURLY RATE							OVERHEAD RATE
	2024	2025	2026	2027	2028	2029	2030	
Senior Project Manager / Project Executive	$115.00	$119.60	$124.38	$129.36	$134.53	$139.92	$145.51	
Construction Project Manager	$110.00	$114.40	$118.98	$123.74	$128.68	$133.83	$139.19	
Assistant Project Manager	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	
Project Engineer	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	
Construction Field Supervisor	$80.00	$83.20	$86.53	$89.99	$93.59	$97.33	$101.23	
Resident Engineer	$96.00	$99.84	$103.83	$107.99	$112.31	$116.80	$121.47	
Site Safety Manager	$69.00	$71.76	$74.63	$77.62	$80.72	$83.95	$87.31	
Site Safety Coordinator	$69.00	$71.76	$74.63	$77.62	$80.72	$83.95	$87.31	
Construction Superintendent	$90.00	$93.60	$97.34	$101.24	$105.29	$109.50	$113.88	
Project Estimator	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	2.51
Project Controls / Scheduling Expert	$90.00	$93.60	$97.34	$101.24	$105.29	$109.50	$113.88	
Procurement Specialist / Purchasing Agent	$90.00	$93.60	$97.34	$101.24	$105.29	$109.50	$113.88	
Code Review Expert	$97.00	$100.88	$104.92	$109.11	$113.48	$118.02	$122.74	
Quality Assurance Expert	$87.00	$90.48	$94.10	$97.86	$101.78	$105.85	$110.08	
Risk Manager	$90.00	$93.60	$97.34	$101.24	$105.29	$109.50	$113.88	
Construction Communication Liaison	$56.00	$58.24	$60.57	$62.99	$65.51	$68.13	$70.86	
Construction Material Manager/ Environmental Specialist / Circular Economy Analyst Expert	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	
Deputy Project Manager	$112.00	$116.48	$121.14	$125.98	$131.02	$136.27	$141.72	
Website Designer	$51.00	$53.04	$55.16	$57.37	$59.66	$62.05	$64.53	

Graphic Designer	$53.00	$55.12	$57.32	$59.62	$62.00	$64.48	$67.06	
Graphic Artist	$46.00	$47.84	$49.75	$51.74	$53.81	$55.97	$58.20	
LEED Specialist	$71.00	$73.84	$76.79	$79.87	$83.06	$86.38	$89.84	
Envision Specialist	$65.00	$67.60	$70.30	$73.12	$76.04	$79.08	$82.25	
Senior Inspector	$70.00	$72.80	$75.71	$78.74	$81.89	$85.17	$88.57	
Inspector	$55.00	$57.20	$59.49	$61.87	$64.34	$66.92	$69.59	
Mechanical/ Plumbing Inspector	$86.00	$89.44	$93.02	$96.74	$100.61	$104.63	$108.82	
Electrical Inspector	$86.00	$89.44	$93.02	$96.74	$100.61	$104.63	$108.82	
Architect	$80.00	$83.20	$86.53	$89.99	$93.59	$97.33	$101.23	
Landscape Architect	$80.00	$83.20	$86.53	$89.99	$93.59	$97.33	$101.23	
Archeologist / Historian	$60.00	$62.40	$64.90	$67.49	$70.19	$73.00	$75.92	2.51
Value Engineering Leader	$110.00	$114.40	$118.98	$123.74	$128.68	$133.83	$139.19	
Geotechnical Engineer	$80.00	$83.20	$86.53	$89.99	$93.59	$97.33	$101.23	
Mechanical/ Plumbing Engineer	$85.00	$88.40	$91.94	$95.61	$99.44	$103.42	$107.55	
Electrical Engineer	$90.00	$93.60	$97.34	$101.24	$105.29	$109.50	$113.88	
Communication / VSS Expert	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	
Civil/Utility Engineer	$80.00	$83.20	$86.53	$89.99	$93.59	$97.33	$101.23	
Structural Engineer	$90.00	$93.60	$97.34	$101.24	$105.29	$109.50	$113.88	
Traffic Engineer	$70.00	$72.80	$75.71	$78.74	$81.89	$85.17	$88.57	
Elevator-Escalator Expert	$95.00	$98.80	$102.75	$106.86	$111.14	$115.58	$120.21	
BIM Modeler	$65.00	$67.60	$70.30	$73.12	$76.04	$79.08	$82.25	
SUBCONSULTANT: Enovate Engineering								
Assistant Project Manager	$65.00	$67.60	$70.30	$73.12	$76.04	$79.08	$82.25	2.67
Project Engineer	$65.00	$67.60	$70.30	$73.12	$76.04	$79.08	$82.25	
Construction Field Supervisor	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	
SUBCONSULTANT: Caso and Associates								
Expeditor	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	2.00
SUBCONSULTANT: IVY Engineering Group								
Expeditor	$70.00	$72.80	$75.71	$78.74	$81.89	$85.17	$88.57	2.00
SUBCONSULTANT: Titanium Linx Consulting, Inc.								
Community Relationship Specialist	$55.00	$57.20	$59.49	$61.87	$64.34	$66.92	$69.59	2.50
Graphic Designer	$53.00	$55.12	$57.32	$59.62	$62.00	$64.48	$67.06	

SUBCONSULTANT: ZOFS Engineering								
Mechanical/ Plumbing Engineer	$55.00	$57.20	$59.49	$61.87	$64.34	$66.92	$69.59	2.17
Electrical Engineer	$60.00	$62.40	$64.90	$67.49	$70.19	$73.00	$75.92	
Quality Assurance ("QA") Expert Design	$85.00	$88.40	$91.94	$95.61	$99.44	$103.42	$107.55	
Quality Assurance ("QA") Expert Construction	$85.00	$88.40	$91.94	$95.61	$99.44	$103.42	$107.55	
SUBCONSULTANT: CORE Environmental								
Led / Asbestos/ Soils Inspector	$56.00	$58.24	$60.57	$62.99	$65.51	$68.13	$70.86	2.31
SUBCONSULTANT: McLaren Engineering Group								
Demolition Expert	$77.00	$80.08	$83.28	$86.61	$90.08	$93.68	$97.43	2.69
Dive Supervisor / PE Diver	$73.00	$75.92	$78.96	$82.12	$85.40	$88.82	$92.37	
Inspection Diver	$66.00	$68.64	$71.39	$74.24	$77.21	$80.30	$83.51	
Dive Tender	$60.00	$62.40	$64.90	$67.49	$70.19	$73.00	$75.92	
Waterfront Engineer	$82.00	$85.28	$88.69	$92.24	$95.93	$99.77	$103.76	
SUBCONSULTANT: Amaracon Testing & Inspection, LLC								
Special Inspector	$70.00	$72.80	$75.71	$78.74	$81.89	$85.17	$88.57	2.14
SUBCONSULTANT: Studio 5								
Code Review Expert	$110.00	$114.40	$118.98	$123.74	$128.68	$133.83	$139.19	2.73
SUBCONSULTANT: HMMH								
Air/Noise Monitor	$62.00	$64.48	$67.06	$69.74	$72.53	$75.43	$78.45	2.71
SUBCONSULTANT: TCT								
Project Estimator	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	2.96
Risk Manager	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	
Project Controls / Scheduling Expert	$75.00	$78.00	$81.12	$84.36	$87.74	$91.25	$94.90	
SUBCONSULTANT: SafariNY Corp								
Energy Management / Commissioning Expert	$105.00	$109.20	$113.57	$118.11	$122.84	$127.75	$132.86	2.00
Project Accountant / Project Attorney / Administrative Staff	Included in the Overhead Rate							

The actual base hourly rate of each title and individual approved to provide Services under a specific Project Assignment may be increased once per calendar year to allow for reasonable wage rate increases with the Corporation's approval at its sole discretion. However, the actual base hourly rate for any title shall not exceed the Maximum Allowable Base Hourly Rate for each title as identified in the Cost Schedule for the full term of the Contract.

APPENDIX C4

SUBCONTRACTOR / SUPPPLIER
INTERIM RELEASE, WAIVER AND AFFIDAVIT OF PAYMENTS

APPENDIX C4
SUBCONTRACTOR / SUPPPLIER
INTERIM RELEASE, WAIVER AND AFFIDAVIT OF PAYMENTS

Name of Project: _____
Project Address: _____
Owner: **NYCEDC/City of New York**
Consultant: _____
Name of Subcontractor/Supplier (collectively, "Subcontractor"): _____
Subcontract/Purchase Order/Service Agreement ("Agreement") Date: _____
Invoice Date: _____

1. Pursuant to the Agreement reference above, Subcontractor was hired to furnish certain work, labor, materials, equipment and/or other goods and/or services in connection with the Project (the "Work").

2. The following is a statement of all amounts due and paid to the Subcontractor as of the date of this statement covering all labor, materials and equipment used or procured, from commencement of the Project to the date of this statement.

Prior Payments		
1.	**Total amount paid to date:**	$
2.	**Date (up to and including):**	

3. Subcontractor has received to date the amount stated in Line Item #1, which constitutes full payment of all amounts, costs, charges and expenses due to it under the Agreement and for any procured material, equipment, labor or services, or for any other claims, losses or expense that Subcontractor owes including money on other accounts, billings, invoices or the like in connection with the Project through and including the date stated in Line Item #2.

Current Application and Prior Months Outstanding Payments		
3.	**Current net payment due:**	$
4.	**Prior month(s) net payment due:**	$
5.	**TOTAL NET DUE (add lines 3 + 4):**	$
6.	**Total Retention withheld:**	$

4. The sum of the amounts stated in both Line Item #3 & #4, which represents the current and prior month(s) payments due to Subcontractor, are the only other rights and possible liens that the Subcontractor may have with respect to the Project plus the retention amount stated in Line Item #6 and the items stated in the attached Open Change Log.

5. All taxes due and all payments of fringe and union benefits in connection with the Project payable to date have been paid in full through the date hereof.

6. There are no mechanic's liens or other claims, security interest or other interests, encumbrances or liens with respect to, against or on the Project property, the Project or the Work, arising out of or in connection with the Work, outstanding or known to exist as of the date hereof.

SUBCONTRACTOR / SUPPPLIER
INTERIM RELEASE, WAIVER AND AFFIDAVIT OF PAYMENTS

Name of Project: _____
Project Address: _____
Owner: **NYCEDC/City of New York**
Construction Manager: _____
Name of Subcontractor/Supplier (collectively, "Subcontractor"): _____
Subcontract/Purchase Order/Service Agreement ("Agreement") Date: _____
Invoice Date: _____

Upon receipt of payment from the Construction Manager and/or Owner, in the sum of the amounts stated in Line Item #5, Subcontractor for itself and its successors and assigns, does hereby forever release, waive and quitclaim in favor of Construction Manager, Owner, each and every party acquiring title to the property or Project, and any and all of their employees, agents, officers, directors, members, successors and assigns (collectively, the "Released Parties") any and all claims, causes of action, suits, demands, rights pursuant to New York State lien law to file a lien or notice of lien and other rights arising (whether presently existing or accruing hereafter) by reason of any Work performed or labor, materials or equipment provided in the construction of the Project or otherwise arising by reason of any other cause, matter or thing relating to the Project, through the date hereof, except for any retention amount stated in Line #6, and the items stated in the attached Open Change Log ("Released Claims").

The undersigned hereby agrees to indemnify, defend and hold harmless the Released Parties from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable legal fees) directly or indirectly relating to any cause of action, claim or lien filed by any person or entity with respect to (i) any Work performed in the construction of the Project through the date hereof, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation, covenant or warranty made by the undersigned. Upon the request of a Released Party, the undersigned will undertake to defend such causes of action, claims or liens with counsel reasonably acceptable to such Released Party at the sole cost and expense of the undersigned. None of the representations, warranties or covenants in this affidavit are intended to limit any representations, warranties or covenants given prior to the date hereof. This affidavit shall be binding upon the undersigned and its successors and assigns and shall inure to the benefit of Construction Manager, Owner, each and every party acquiring title to the property or Project, and their respective successors and assigns.

I make this statement as _____ of Subcontractor to represent and warrant to the Owner and Construction Manager, and their agents, that the property is free from any other claims or potential claims, including but not limited to construction liens, or the possibility of construction liens except as provided herein.

IN WITNESS WHEREEOF, the undersigned has hereto set its hand this ___ day of _____, 20_____.

Subcontractor: _____

Sworn to before me this _____
Day of _____, 20___

By (signature): _____

Print Name: _____

_____
Notary Public

Title: _____

SUBCONTRACTOR / SUPPPLIER

INTERIM RELEASE, WAIVER AND AFFIDAVIT OF PAYMENTS

Name of Project: _____
Project Address: _____
Owner: **NYCEDC/City of New York**
Construction Manager: _____
Name of Subcontractor/Supplier (collectively, "Subcontractor"): _____
Subcontract/Purchase Order/Service Agreement ("Agreement") Date: _____
Invoice Date: _____

Open Change Log (Non – Executed Change Orders)

List all Open Changes. DO NOT LIST APPROVED CHANGE ORDERS, **ONLY OPEN ITEMS**				
	Date Initiated	**Description**	**Proposed Value**	**Has the Work Been Performed or Currently Underway in the Field (YES/NO)**
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
	Total Value of Pending/Open items listed above		**$**	

APPENDIX C5

SUBCONTRACTOR'S FINAL RELEASE

SUBCONTRACTOR'S FINAL RELEASE

TO WHOM IT MAY CONCERN:

_____ (the "Subcontractor"), in consideration of the receipt from New York City Economic Development Corporation ("the Corporation ") of all monies due to the Subcontractor under the Contract hereinafter described, releases and discharges the Corporation and The City of New York, their successors and assigns from all actions, debts, claims, mechanics' liens, public improvement liens and demands whatsoever, in law or equity, which the Contractor, its successors and assigns ever had, now have or hereafter may have arising from or related to the Contract (the "Contract") dated _____ _____ between the Corporation and the Contractor for **(describe work and site)** _____ _____ including all change orders thereto.

This FINAL RELEASE may not be changed orally.

IN WITNESS WHEREOF, the Contractor has caused this FINAL RELEASE to be executed by its duly authorized officers on _____, 20___.

CONTRACTOR

By:_____
Name:
Office:

STATE OF NEW YORK)
) ss:
COUNTY OF)

On _____, 20___, before me personally came _____, to me known, who, by me duly sworn, did depose and say that he or she resides at _____ _____; that he or she is the _____ of the Contractor, the corporation described in and which executed the foregoing FINAL RELEASE and that he or she signed his or her name thereto by like order.

_____
NOTARY PUBLIC

EXHIBIT C

EFT ENROLLMENT FORM

New York City Economic Development Corporation

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

INSTRUCTIONS: Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

Mail to: New York City Economic Development Corporation, 110 William Street, 4th Floor, New York, NY 10038
Attention: Controller, Accounting Dept. or Fax to: 212-312-3914

SECTION I – VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)

2. VENDOR NAME (AS IT APPEARS ON W-9 FORM); (AS IT APPEARS ON W-9 FORM)

3. VENDOR'S PRIMARY ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON NAME:

6. CONTACT PERSON TELEPHONE NUMBER:

SECTION II – FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:

2. ACCOUNT NAME:

3. BANK NAME:

4. BANK BRANCH ADDRESS:

5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)

6. ACCOUNTING TYPE: (CHECK ONE)
☐ CHECKING ☐ SAVINGS

7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:

8. TELEPHONE NUMBER:

SECTION III – VENDOR SIGNATURE

VENDOR SIGNATURE | PRINT NAME | DATE

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

New York City Economic Development Corporation

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to:

New York City Economic Development Corporation, 110 William St., Room 400
New York, NY 10038 – Attention: Controller, Accounting Dept or Fax to: 212-312-3914.

SECTION I – VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person).

SECTION II – FINANCIAL INSTITUTION INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name.
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account: (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

SECTION III – VENDOR SIGNATURE

Sign and date where indicated.

APPENDIX D

PROCUREMENT

APPENDIX D

PROCUREMENT

ALL DEFINITIONS SET FORTH IN THE CONTRACT BETWEEN NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION AND THE CONSULTANT SHALL HAVE THE SAME MEANING HEREIN UNLESS OTHERWISE DEFINED OR THE CONTEXT OTHERWISE REQUIRES.

I. Methods of Procurement

Subsection A. Methods of Source Selection

1. Subcontracts by the Consultant involving compensation in excess of $2,500 are generally to be procured by the Consultant and shall be awarded pursuant to Subsection H (Contractors Prequalified by Consultant), except that, where convenient or in the Corporation's best interest, Subcontracts may be procured as provided in:

    a) Subsection B (Intentionally Omitted);

    b) Subsection C (Small Purchases);

    c) Subsection D (Sole Source Procurement);

    d) Subsection E (Emergency Procurement);

    e) Subsection F (Competitive Sealed Proposals).

2. Where none of the aforesaid methods are employed, Consultant shall procure Subcontracts pursuant to Subsection F (Competitive Sealed Bidding). Where Federal or State laws, rules or regulations applicable to funds for any services prescribe procurement requirements that differ from those set forth in this Appendix D, the requirements of such laws, rules or regulations shall govern with respect to contracts funded with such funds.

Subsection B. Intentionally Omitted

Subsection C. Small Purchases

Any Subcontract (a) for goods for an amount larger than $20,000 but not more than $100,000, or (b) for services (other than the type described in (c) below) for an amount larger than $20,000 but not more than $100,000, or (c) for Information Technology or for construction or construction-related services (i.e., services that may reasonabley be requireed in the planning, design or construction of improvements, e.g., architectural, engineering, construction supervision, construction management, planning, surveys and reports, testing and investigation, and printing and blue printing) for an amount larger than $20,000 but not more than $100,000, may be made without Competitive Sealed Bidding or Competitive Sealed Proposals, provided the Consultant shall use reasonable efforts to obtain offers from at least three responsible persons or entities to perform the work or provide the goods, unless

the Corporation agrees otherwise. With regard to procurements of $20,000 or less, the Consultant shall obtain offers from one or more persons it deems appropriate. If the Consultant only obtains an offer from one person or entity pursusant to this Subsection, it will not be considered sole source procurement under this Contract. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this Subsection. The Consultant shall maintain records of the persons or entities approached and their responses.

Subsection D. Sole Source Procurement

A Subcontract may be awarded for a supply, service or construction item without competition when permitted specifically by, or under general guidelines of, the Corporation, or when, with the Corporation's approval, the Consultant determines in writing that there is only one source for the required supply, service or construction item. General guidelines For Sole Source Procurement, which are subject to change, are set forth in Exhibit 1 hereto.

Subsection E. Emergency Procurement

When there exists an immediate threat to public health, welfare, safety or property or under emergency conditions as identified specifically by, or under general guidelines of, the Corporation, procurement shall be made with such competition as is practicable under the circumstances. Guidelines For Emergency Procurement, which are subject to change, are annexed hereto as Exhibit 1. A written determination of the basis for the emergency and for the selection of the particular Subcontractor shall be included in the contract file.

Subsection F. Competitive Sealed Bidding

1. Invitation for Bids. An "Invitation for Bids" shall be issued and shall include (whether by attachment or reference) a purchase description, and all contractual terms and conditions applicable to the procurement.

2. Public Notice. Adequate public notice of the Invitation for Bids shall be given by publication in any newspaper of general circulation in New York City a reasonable time prior to the date set forth therein for the opening of bids.

3. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, the name of each bidder and the bid security, if any, shall be recorded. The record and each bid shall be open to public inspection.

4. Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction on the part of the bidder except as authorized in this subsection. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable,

such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used.

5. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in instances in which the Consultant, with the Corporation's approval, finds that it is in the Corporation's interest to do so. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Corporation or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Consultant.

6. Award. The Subcontract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. Notwithstanding the foregoing, any or all bids may be rejected when the Consultant, with Corporation's approval, reasonably deems it is in the Corporation's interest to do so.

Subsection G. Competitive Sealed Proposals

1. Conditions for Use. When permitted specifically by, or under general guidelines of the Corporation, a Subcontract may be entered into by competitive sealed proposals. Guidelines For Competitive Sealed Proposals, which are subject to change, are attached hereto as Exhibit 1.

2. Request for Proposals. Proposals shall be solicited through a request for proposals ("Request for Proposals").

3. Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Subsection F, (2) (Competitive Sealed Bidding, Public Notice).

4. Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A "Register of Proposals" shall be prepared and shall be available for public inspection after Subcontract award.

5. Evaluation Factors. Proposals shall be evaluated on the basis of the quality of the proposals, based on the relative importance of such criteria as: capacity to execute the proposal; if relevant, the experience in the area of knowledge or community to be served or studied or to be the site of the work; and the cost.

6. Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, and under guidelines of the Corporation, discussions may be conducted with one or more of the responsible offerors who submit proposals determined to be reasonably

susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

7. Award. Award shall be made to the responsible offeror whose proposal is determined in writing, with Corporation's approval, to be the most advantageous to the Corporation taking into consideration the evaluation factors set forth in subparagraph (5) above. The Subcontract file shall contain the basis on which the award is made.

Subsection H. Contractors Prequalified by Consultant

1. Conditions for Use. Subcontracts may be entered into pursuant to the procedure set forth in this Subsection H in lieu of all other procedures otherwise set forth in this Appendix D (except as required by applicable law).

2. Selection of Subcontractors. Consultant shall recommend to the Corporation a minimum of five (5) potential Subcontractors, considered from a prequalified list compiled by the Consultant, from a prequalified list provided by NYCEDC or a combination of both, for each contract. Request for Proposals will be sent by the Consultant to all such Subcontractors. The Consultant shall review the proposals received from responding Subcontractors, and may negotiate with some or all of the responding Subcontractors. Revisions to proposals may be permitted after submissions and prior to the award of a Subcontract for the purpose of obtaining best and final offers. In any instance where the Consultant procures a contract, the Consultant will permit the Corporation to monitor and review such procurement for compliance with this Appendix D.

3. Award. The Corporation shall award or shall approve of the Consultant's award of the contract to the responsible Subcontractor whose proposal the Corporation determines to be the most advantageous to the Corporation, taking into consideration price and appropriate evaluation factors. The Subcontract file shall contain the basis on which the award is made.

II. Subcontract Provisions

Subsection A. Provisions to be Included in Construction Subcontracts

The Consultant will diligently endeavor to have each Construction Subcontract entered into by the Consultant or the Corporation (or an affiliate) provide:

1. that payment thereunder shall be made only for work performed to the

satisfaction of the Corporation and only after written approval by the Corporation of a written voucher (which must include certified payroll reports) submitted by the Subcontractor;

2. if administratively practicable, that if any payments are to be made prior to completion of the Subcontract, the Corporation shall withhold retainage in accordance with the retainage policy to assure that Subcontractor complies with all its obligations under the Construction Subcontract;

3. that payment upon substantial completion of the work shall include the amount of the retainage, minus twice the value of any uncompleted work (including uncompleted work pursuant to change orders), minus the value of any claims or judgments on behalf of the Corporation arising out of said Subcontract, and minus any sum retained as security for any guarantee or warranty. Final payment shall be made on approval of work in accordance with subparagraph II, Subsectiion A, (1) of this Appendix D;

4. that neither the Subcontractor nor any of its employees nor any of the Subcontractor's subcontractors is or shall be an agent, servant or employee of the Corporation (or, if applicable, its affiliate) or the City by virtue of the Construction Subcontract or by virtue of any approval, permit, license, grant, right or other authorization given by the Corporation (or, if applicable, its affiliate), or the City or any of its officers, agents or employees; and that the Subcontractor shall indemnify, defend and hold harmless the Corporation (or, if applicable, its affiliate) and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any act or omission of the Subcontractor, its agents, employees or subcontractors in connection with the Construction Subcontract or because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors;

5. that the Subcontractor shall comply with and the Construction Subcontract shall include (i) if any other type of Federal or State funds are being used, all applicable laws, rules, terms, provisions, conditions or other requirements required by the governmental entity providing such funds; and (ii) the provisions contained in Equal Employment and Affirmative Action Compliance for Construction Contracts (Exhibit 2 hereto);

6. that such Subcontract shall be for a specified term and provide for completion of the work within such term;

7. that, if a Construction Subcontract provides for at least $250,000 of Capital Budget funds (or such smaller amount deemed appropriate by the Corporation), the Subcontractor shall provide payment and performance bonds each in an amount equal to 100% of the contract price, except that the Corporation may approve such alternative security as the Corporation reasonably finds satisfactory (in consultation with, if deemed desirable by the

Corporation, the Deputy Mayor and the City's Corporation Counsel), provided that such alternative security has value and liquidity reasonably comparable to payment and performance bonds;

8. that the Subcontractor shall be obligated to pay liquidated damages, in amounts determined by the Corporation, in the event of failure to complete the Construction Subcontract on schedule;

9. that the Construction Subcontract shall be assignable to the City and the Corporation (or an affiliate thereof);

10. provisions so that the Construction Subcontract reflects the provisions of Section 24-216 (relating to noise control) of the City's Administrative Code to the same extent as if the Corporation were a "contracting agency" under such Section 24-216;

11. that tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be utilized in the performance of the Construction Subcontract except as expressly permitted by the foregoing provision of law; and
    a) that Subcontractor shall comply with the MacBride Principles.

Subsection B. Required Provisions; Enforcement

The Consultant shall not use funding under this Contract to pay any Subcontractor under a Construction Subcontract unless the Subcontract with such Subcontractor contains all provisions required hereunder without first informing the Corporation of its intent to do so. The Consultant shall in good faith attempt to enforce the aforesaid provisions to the extent that same are included in Construction Subcontracts.

Subsection C. Provisions to be Included in Consulting Subcontracts

1. Except as otherwise approved by the Corporation, Consulting Subcontracts shall contain (i) the General Terms and Conditions of a Consultant Contract for Architectural and Engineering Assistance (Exhibit 3 hereto), where applicable, (ii) if any federal or State funds are being used, all applicable laws, rules, terms, provisions, conditions or other requirements required by the governmental agency providing such funds; and (iii) Equal Employment and Affirmative Action Compliance for Non-Construction Contracts (Appendix G hereto).

2. the Consultant will diligently endeavor to have each Consulting Subcontract entered into by the Corporation (or any affiliate thereof or the Consultant) provide that:

    a) neither the Subcontractor nor any of its employees nor any of its subcontractors is or shall be an agent, servant or employee of the Corporation (or, if applicable, its affiliate) or the City by virtue of

the Consulting Subcontract or by virtue of any approval, permit, license, grant, right or other authorization given by the Corporation or the City or any of its officers, agents or employees; and that the Subcontractor shall indemnify, defend and hold harmless the Corporation (and, if applicable, its affiliate) and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any act or omission of the Subcontractor, its agents, employees or sub-subcontractors in connection with the Consulting Subcontract or because of any negligence or any fault or default of the Subcontractor, its agents, employees or sub-subcontractors;

b) such Consulting Subcontract shall be assignable to the City and the Corporation (or any affiliate thereof).

Subsection D. Corporation's Approval Before Subcontracting

Prior to entering into a Consulting Subcontract of $10,000 or more, the Consultant shall (x) submit to the Corporation (i) a written work program detailing the services to be performed by the Subcontractor, divided into phases that will allow for periodic review of performance, (ii) a written explanation of the method used to select and the reasons for selecting that particular Subcontractor, and (iii) a budget for the Subcontractor's services, and (y) obtain the Corporation's approval.

Subsection E. Subcontractor's Insurance

1. The Consultant shall cause all Subcontractors under Construction Subcontracts and Consulting Subcontracts to maintain workers' compensation and disability benefits insurance in statutory amounts and, subject to the provisions of subparagraph (2), public liability insurance naming the Corporation, (and, if applicable, its affiliate) and the City as additional insureds, and containing provisions analogous to the Insurance Provisions of the Contract, together with such additional insurance as may be appropriate.

2. The Corporation, under the City Contract, has submitted to the Deputy Mayor and to the Corporation Counsel a schedule of insurance coverage specifying the amounts and types of insurance that the Corporation intends to require Subcontractors under Construction Subcontracts and Consulting Subcontracts to carry, according to the size and type of contract. Such schedule has been approved by the Deputy Mayor and conforms with the insurance requirements of this Contract. The Consultant shall require the same insurance to be carried by its Subcontractors retained pursuant to this Contract, provided that the Corporation may propose a different schedule or individual variations, and the Corporation (after, if desired by the Corporation, consultation with the Deputy Mayor and the City's Corporation Counsel), will give consideration to and

may authorize the same. Notwithstanding the above, the Consultant shall require Subcontractors retained pursuant to this Contract to carry such additional insurance as the Corporation may direct.

3. No work shall be undertaken pursuant to a Construction Subcontract or Consulting Subcontract hereunder unless and until the Consultant has provided the Corporation with a copy of each policy, or suitable certificate, and if requested, proof of payment with respect to all insurance herein required to be obtained by the Subcontractor.

Subsection F. Assignment

All contracts are to be assignable, at the Corporation's option, to the City of New York and/or Apple Industrial Development Corp.

EXHIBIT 1

General Guidelines For Sole Source Procurement,
Emergency Procurement and Competitive Sealed Bids

The following General Guidelines include criteria that PDC will use to justify and permit PDC to enter into contracts under the provisions included in the contract between the City of New York and the Public Development Corporation dated December 14, 1982 and as amended on October 1, 1983 (the "Contract") for Sole Source Procurement, Emergency Procurement and Competitive Sealed Proposals. These General Guidelines do not override the specific provisions of the Contract.

I. Sole Source Procurement:

A. For Professional Services

PDC may enter into a contract for professional services as described in the Sole Source Procurement method outlined in the contract when the President determines after review and approval by the Consultant Review Committee that one or more of the following situations or facts exist:

1) A consultant has exclusive access to unique technical data and/or unique capabilities which are relevant to the progress and/or completion of a project.
2) A consultant's prior and recent experience with a specialized project and/or the geographical location of the specific project and/or familiarity with local community groups would add significantly to the overall quality of either the planning, design or construction of the project.

B. For a Supply Service or Construction Item

PDC may enter into a contract for supply services or the purchase of a construction item as described in the Sole Source Procurement method outlined in the contract when the President determines after review and approval by the Consultant Review Committee that one or more of the following situations or facts exist:

1) A unique construction item (new or a replacement) or service is made and/or supplied by only one vendor. In this case PDC would have no other viable alternatives.
2) Failure or insufficient response to the public bidding process which forces PDC to seek a company which supplies an item to avoid possible cost overruns or a delay in the project.
3) A small component needed for a project is a critical path item where competitive public bidding would unduly delay the overall project or cause possible cost overruns. A small component is defined as an amount that is one hundredth of the cost of the total private and public funds involved in the project.

II. Emergency Procurement

PDC may enter into a contract under the Emergency Procurement method outlined in the contract when the President determines after review and approval by the Consultant Review Committee that one or more of the following situations or facts exist:

1) That failure to immediately procure and expedite materials would threaten or jeopardize the security or value of property (or goods) associated with the project.
2) To avoid or prevent possible cost overruns or a substantial delay in the project's completion. Also applicable when the scheduled delivery date of an item intrinsic to the construction's progress has been adversely altered.
3) When PDC must remedy any threat to public health, safety or welfare caused by or present during the course of a project.

III. Competitive Sealed Proposals

PDC may enter into a contract for construction as described in the Competitive Sealed Proposal method outlined in the contract when the President determines after review and approval by the Consultant Review Committee that one or more of the following situations or facts exist:

1) That Competitive Sealed Bidding is determined to be an inadequate selection method for a construction contract that must consider other evaluation factors in addition to the cost factor such as capacity to execute the proposal, the experience in the area of knowledge or community to be served or studied or to be the site of the work.
2) That a contract will require discussions between PDC and prospective contractors prior to the contract award to insure their full understanding and responsiveness to the contract requirements.

APPROVED
CITY OF NEW YORK

By: _____
Deputy Mayor

Exhibit 1

235-A
7 OCT 85

AMENDMENT TO GENERAL GUIDELINES

The General Guidelines for procurement under the Contract, dated as of December 14, 1982, between The City of New York and New York City Public Development Corporation, as amended, are amended by adding, as an additional situation permitting sole source procurement of a supply, service or construction item (subdivision I.B.), the following:

4. Construction work funded under the Contract is an integral component of a project being developed by an entity other than PDC, and considerations of timeliness and/or coordination and control dictate that such construction work should be awarded to such entity. In no event shall the amount to be procured by sole source exceed 20% of the project cost.

October 10, 1985

Approved:

THE CITY OF NEW YORK

Deputy Mayor

Exhibit 1

EXHIBIT 2

EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR CONSTRUCTION CONTRACTS

[Note: for purposes of this rider, the "contractor" means the Consultant identified in this Contract]

"This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§ 10-14) ("E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

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

(2) will not discriminate in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status or is an equal employment opportunity employer;

(4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder;

(5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§ 10-14) the rules and regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("Division"). Copies of all required reports are available upon request from the contracting agency; and

(6) will permit the Division to have access to all relevant books, records and accounts by the Division for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance

shall constitute a material breach of the contract and noncompliance with E.O, 50 (§ 10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

(i) disapproval of the contractor;

(ii) suspension or termination of the contract;

(iii) declaring the contractor in default; or

(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of the small purchase limit established by rule of the Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§ 10-14) 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 the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§ 10-14) and the rules and regulations promulgated thereunder."

EXHIBIT 3

General Terms and Conditions of a Consultant Contract
for Architectural, Engineering, and Resident Engineering Assistance

GENERAL TERMS AND CONDITIONS OF A CONSULTANT CONTRACT FOR ARCHITECTURAL AND ENGINEERING ASSISTANCE

ARTICLE 1
CONSULTANT'S SERVICES

A. General

1. The Consultant shall prepare a timetable setting forth the schedule for accomplishing the Contract objectives and shall submit such timetable to the Corporation for approval. The timetable shall include completion dates for all design phases of the Project. The Corporation shall require the Consultant to adhere to such timetable.

2. The Consultant shall submit such Monthly Progress Reports in such form and as often as may be required by the Corporation. The Monthly Progress Reports shall show the status of the Work and shall clearly state the reasons for any delays.

3. The Consultant, or its duly authorized representative, shall attend such conferences as the Corporation requires. The Consultant shall at all times be available for all required interpretations of the plans and specifications and shall promptly advise the Corporation of inadequacies of or conflicts between drawings, specifications, or both.

B. Site Data

1. The Consultant shall make a personal examination of the designated site, noting all conditions and implications of same pertaining to the completion of construction of all phases of the Project. The Consultant shall promptly bring to the attention of the Corporation inadequacies or impediments which would prevent orderly and expeditious accommodation of the Project.

2. The Consultant shall design and plan the Work with reference to and in conformity with information relating to existing lines, grades, levels, sewers, subsurface structures, conditions and facilities, supplemented by an inspection of the site, as well as examination of all relevant public records and any needed additional information or investigation required.

C. Rehabilitation or Alteration of Existing Structure

When the Project involves alteration of or an addition to an existing structure, the Consultant shall be responsible for verifying all measurements and details of construction thereof. All drawings, specifications and data of the structure must be checked in the field by visual examination and physical measurements by the Consultant as well as through all sources of records available.

If, through no fault of the Consultant, the existing construction ultimately proves to be at variance with the construction as shown, subject to the prior approval of the Corporation, the

Consultant shall be compensated for any necessary additional services on the same basis as a change in the contract documents after approval.

D. Design Phases

1. The Contract may require the Consultant to prepare and complete such schematic, preliminary and final designs (the "Design Phases") as are deemed by the Corporation to be necessary under the circumstances. The Contract shall (i) list the Design Phases and (ii) state what is required of the Consultant during each phase. The Consultant's Work Product under each Design Phase shall be subject to approval by the Corporation, and such approval shall be a condition precedent for commencing a subsequent Design Phase.

2. All drawings before being submitted to the Corporation for final acceptance, shall bear the stamps of approval and be accompanied by all necessary applications, certificates or permits of all City, State or Federal agencies having jurisdiction over any phase of the Work.

3. Where the Consultant is required to produce "final contract drawings and documents" the Consultant shall deliver to the Corporation the following:

a. All sets of construction documents as approved by each required government agency.

b. All final drawings revised where necessary to conform to comments by the Corporation and bearing all required stamps of approval, including the seal and authorized facsimile of the signature of the Consultant. These final contract drawings shall be in ink on tracing cloth or in lieu thereof, copies on cloth or mylar, as made by a photo-lithographic method, and reviewed by the Corporation.

c. All final specifications shall be submitted in clear legible form, acceptable to the Corporation, properly collated and ready for photocopying or other direct machine producing processes.

d. Final estimates to include:

(1) A summary giving estimated costs for each construction contract of the project.

(2) A quantity breakdown containing items of work, quantities, unit prices and amounts, including such information for each prime contract. When alterations as well as new additions to existing structures are involved in the same contract, estimates shall be separated accordingly.

e. Typical plans, in black and white, suitable for small scale reproduction and publication. Copies of final accepted preliminary plans will be accepted.

These documents shall not be deemed to have been accepted until the Corporation has so notified the Consultant in writing.

4. In addition to the preliminary and final estimates of cost required to be submitted by the Consultant, the Consultant shall maintain current information relating to the estimated cost of the project during the design period and shall inform the Corporation promptly in writing of any significant changes in such estimated cost due to market conditions or changes in the scope or design of the project. If the Corporation so directs, the Consultant shall at its own expense, engage a competent cost estimating firm to prepare cost data and required estimates of costs. The name of such firm shall be submitted in writing to the Corporation for approval. A cost control program shall be maintained throughout the course of design.

E. Contract Bidding Phase

Should the Contract require the Consultant to prepare and supervise bid documents during the period of advertising, receipt and analysis of bids, the Consultant shall:

1. Interpret plans and specifications when required by prospective bidders' inquiries.

2. Prepare and issue, through the Corporation, addenda, amendments and/or supplementary drawings required for clarification of plans and specifications.

3. Attend bidder meetings and bid openings when notified by the Corporation.

4. Assist in the analysis of bids and make recommendations and reports as requested by the Corporation on the disposition of bids and awards of Subcontracts.

5. Examine, recommend adjustment and indicate their approval of the schedule of items and costs prepared by the Subcontractors on each awarded Subcontract so as to prevent unbalanced value from being established as the basis for the Subcontractors' partial payments.

6. When requested by the Corporation, interpret construction documents in writing. The Consultant shall prepare all supplementary drawings necessary for the enlargement and clarification of the documents.

F. Construction Phase

Should the Contract include a construction phase, the Consultant shall be required to do the following:

1. The Consultant shall act promptly and systematically to check and approve shop drawings and samples submitted to the Consultant. The Consultant shall determine whether such Shop Drawings and samples are in accordance with the design and construction contract drawings and specifications prepared by the Consultant for the Project. tThe Consultant shall indicate changes necessary to conform to the contract drawings and specifications.

Subsequent to the start of construction, the Consultant shall submit to the Corporation a complete listing of Shop Drawings for each construction Subcontract. The listed information shall include names of Subcontractors, names of shop drawings, due dates in accordance with approved shop drawing schedules required from contractors, dates of issue, receipt, checking, return for correction, resubmission and final approval and any other information that will clearly

provide the Corporation with the progress of shop drawings. In addition to checking shop drawings, the Consultant shall also check any required drawings of sheeting, bracing and underpinning.

The Corporation reserves the right to select samples for testing for approval of any or all materials required for construction of the Project.

2. The Corporation shall issue all Change Orders to Subcontractors. The Corporation, in its discretion, may consult with the Consultant prior to the issuance of such Change Orders.

G. Additional Obligations of the Consultant

1. All personnel assigned to the Project by the Consultant shall be required to cooperate fully with personnel assigned to the Project by the Corporation and in the event the Consultant's personnel fail so to cooperate, the Consultant shall relieve them of their duties on the project when required by the Corporation.

2. The Consultant shall designate in writing one person who, on Consultant's behalf, shall be responsible for coordinating all of the services to be rendered by the Consultant hereunder. Such designee shall be subject to the approval of the Corporation.

3. Drawings and specifications shall not violate Section 346 of the City Charter relating to patented articles. The Consultant may not, without the prior written approval of the Corporation, specify for the Project or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.

ARTICLE 2
CORPORATION'S OBLIGATIONS

A. Pursuant to its obligations under its Contract with the City, the Corporation shall require that all drawings, tracings, specifications and other material prepared and furnished for it by the Consultant shall become the property of the City upon their acceptance by the Corporation, or upon the termination of the services of the Consultant. Such documents shall be promptly delivered to the Corporation upon demand and thereafter may be used by the City in whole or in part or in modified form, for those purposes it may deem advisable without further employment of, or payment of additional compensation to the Consultant.

B. The Contract shall give the City a direct cause of action against the Consultant, as a third party beneficiary of the Contract, in the event that any claim be made or any cause of action be brought against the City or the Corporation or should the Consultant breach the Contract.

C. The Corporation shall further provide that the Director's decision shall be final and binding upon the Consultant as to all matters arising in connection with or relating to the Contract. The Corporation shall determine the amount, quality, acceptability and fitness of work being performed pursuant to the Contract and shall determine all matters relative to the fulfillment of the Contract on the part of the Consultant and such determination shall be final and

binding on the Consultant. Acceptance by the Corporation of any document thereunder shall not relieve the Consultant of sole responsibility for final design of the Project, including the plans, specifications and all supporting documents, except as to any feature thereof which the Corporation had specifically directed in writing to be included over the written objection of the Consultant. The Consultant shall accept the Director as the final arbiter and in case any question shall arise, the Corporation's determination shall be a condition precedent to the right of the Consultant to receive payment under the Contract.

Notwithstanding any of the foregoing provisions, the Consultant may avail itself of Article 78 of the Civil Practice Law and Rules.

ARTICLE 3
PAYMENT AND SERVICES

A. Payment provisions shall be in accordance with the terms and conditions set forth pursuant to certificate CS-29B and CS-50A issued by the City's Office of Management and Budget and such other terms and conditions as the Corporation may require. Payments shall be made only upon approval by the Corporation of the work performed by the Consultant.

B. The Contract and all payments thereunder shall be subject to audit by the City's Comptroller.

C. The Contract shall provide that if the Corporation shall have reasonable grounds for believing that:

1. The Consultant will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or

2. A meritorious claim exists or will exist against the Corporation, Consultant or the City arising out of the negligence of the Consultant or the Consultant's breach of any provision of the Contract, then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder. An amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the parties against any loss and may after written notice to the Consultant, be applied in satisfaction for any claim herein described. This provision is intended solely for the benefit of the City or Corporation, and no person shall have any right against the Corporation or any claim against the City and the Corporation by reason of the Corporation's failure or refusal to withhold monies. No interest shall be payable by the Corporation on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the Corporation or the City.

D. The Contract shall provide that acceptance by the Consultant, its successors or assigns of any payment made on the final certificate under the Contract, or of any final payment due on termination of the Contract, shall constitute a full and complete release of the City and the Corporation from any and all claims, demands and causes of action whatsoever which the Consultant, its successors or assigns have or may have against the City or the Corporation under the provisions of the Contract.

ARTICLE 4
SUSPENSION OR TERMINATION OF PERFORMANCE

A. Suspension of Performance

The Contract shall provide that the Corporation may at any time, and for any reason, direct the Consultant to stop work under the Contract for a period of time. Such direction shall be in writing and shall specify the period during which Work shall be stopped. The Consultant shall resume work upon the date specified in such direction, or upon such other date as the Corporation may thereafter specify in writing. The period during which work shall have been stopped shall be deemed added to the time for performance. Stoppage of work under this article shall not give rise to any claim against the Corporation.

B. Termination Without Cause

The Corporation may at any time, and for any reason, terminate the Contract by written notice to the Consultant specifying the termination date, which shall not be less than seven (7) days from the date such notice is given. In the event of such termination, the Consultant shall be paid such amount as shall compensate it for the portion of the work satisfactorily performed prior to the termination date. Such amount shall be fixed by the Corporation after consultation with the Consultant, and shall be subject to the approval of the Corporation and audit by the Comptroller. Termination under this section shall not give rise to any claim against the Corporation or the City for damages or for compensation in addition to that provided hereunder.

C. Termination for Cause

The Contract shall provide that if the Consultant, through any cause, fails to perform any of the terms, covenants or provisions of the Contract, or if for any cause the Consultant fails to progress with the work called for under the Contract in a manner considered reasonable by the Corporation, or if in the judgment of the Corporation, the conduct of the Consultant is such that the interests of the Corporation are likely to be impaired or prejudiced, the Corporation shall thereupon have the right to terminate the Contract by giving notice in writing of the fact and the date of such termination to the Consultant, and thereupon the Contract shall terminate and all inventory notes, photos, designs, sketches or other written or photographic data prepared by the Consultant in connection with the Contract shall be surrendered and turned over within 10 days after such termination to the Corporation, provided in such case, however, that the Consultant shall receive equitable compensation for such services as shall, in the judgment of the Corporation, have been satisfactorily performed by the Consultant up to the date of the termination of the Contract. Such compensation shall be fixed by the Corporation subject to the approval by the Corporation and audit by the Comptroller. The Corporation may deduct from such compensation the total amount incurred by the Corporation in order to satisfactorily complete the work required to be performed by the Consultant under the Contract including the cost of engaging another architect or engineer. The Corporation may thereafter take over the work to be done thereunder and may prosecute the same to completion by Contract or otherwise, and the Consultant shall be liable to the Corporation for any excess cost if due to the negligence, fault or default of the Consultant or its Subcontractors. However, if circumstances warrant, the

Consultant shall be given a reasonable time after written notice of termination to correct the condition giving rise to said termination.

ARTICLE 5
PERSONAL SERVICES OF THE CONSULTANT

The Contract shall designate the members of the Consultant's professional staff who shall have the primary responsibility for performing the services. The Consultant shall obtain the prior written approval of the Corporation prior to the substitution of such personnel.

ARTICLE 6
ASSIGNMENT BY CONSULTANT

The Consultant shall not assign, transfer, convey, pledge, sublet or otherwise dispose of the Contract without the prior written consent of the Corporation.

ARTICLE 7
CONTRACT SUCCESSION

In the event of the death or disability of the Consultant, any qualified partner or associate of the Consultant may be authorized, at the option of the Corporation, to continue, perform and complete all of the terms, covenants and provisions contained in the Contract as the completing Consultant.

ARTICLE 8
AUDIT AND EXAMINATION OF ACCOUNTS

The Consultant shall keep, and will cause its Subcontractors to keep, accurate books of record and account, in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred under the Contract in relation to the engagement and payment of all personnel and in relation to any services performed for which additional compensation will be claimed. The aforementioned accounts shall be available, upon reasonable and authorized request, to the Corporation and the Comptroller of the City of New York or their representatives for examination and audit. Said account shall be kept for a period of six years after termination of the Contract.

ARTICLE 9
EXTENSION OF TIME

The Contract shall provide that if the Consultant has been delayed and as a result will be unable, in the opinion of the Corporation, to complete performance fully and satisfactorily within the time fixed therefor, the Consultant, upon submission of evidence of the causes of the delay in such form as is satisfactory to the Corporation, shall, subject to the discretion of the Corporation and approval by the Corporation, be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed.

ARTICLE 10
LIMITATION OF ACTION

No Action shall be maintained by the Consultant, its successors or assigns, against the Corporation on any claim based upon or arising out of the Contract or out of anything done in connection with the Contract unless such action shall be commenced within six (6) months of the termination of the Contract.

ARTICLE 11
INDEMNIFICATION

A. Under the terms of the Contract, the Consultant shall not be deemed to be acting as an agent, servant or employee of the Corporation or the City, but shall be deemed to be an independent contractor performing services for the Corporation and shall be solely responsible for all advice, decisions and information given in its technical capacity.

B. The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under the Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or Subcontractors retained by the Consultant pursuant to the Contract. The Consultant agrees to indemnify and hold the Corporation and the City harmless from any liability upon any and all claims for injuries to persons, (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors and Subcontractors retained by the Consultant. The Consultant shall be solely responsible for the safety and protection of all of its employees and shall assume all liability for injuries, including death that may occur to said employees due to the negligence, fault or default of the Consultant.

ARTICLE 12
INSURANCE

The Corporation shall require its Consultants to obtain insurance in accordance with the provisions contained in Article 4 of the contract between the Corporation and the City.

ARTICLE 13
NOTICES

Except as provided herein, any notice, approval, acceptance, request, bill, demand, or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally or deposited in a U.S. mail box in a postage prepaid envelope, addressed to the other party. Either party may at any time change such address by delivering or mailing, as aforesaid, to the other party a notice stating the change and the changed address.

ARTICLE 14
LEGAL INSERTIONS AND/OR ERRORS, INCONSISTENCIES OR DISCREPANCIES IN CONTRACT

It is the intent and understanding of the parties to the Contract that each and every provision of law required to be inserted in the Contract shall be inserted therein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted therein, and if through mistakes or otherwise, any such provision is not inserted in correct form, then the Contract shall forthwith upon application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

If the Contract contains any unlawful provisions, not an essential part of the Contract and which appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect, and shall upon the application of either party, be stricken from the Contract without affecting the binding force of the Contract as it shall remain after omitting such provision.

If the Contract contains any errors, inconsistencies, ambiguities or discrepancies, including typographical errors, the Consultant shall request a clarification of same by writing to the Corporation whose decision shall be binding upon the parties.

ARTICLE 15
CAPTIONS OR HEADNOTES

The captions or headnotes on articles or sections of the Contract, and marginal notes are intended for convenience and for reference purposes only and in no way define, limit or describe the scope of intent thereof, or of the Contract nor in any way affect the Subcontract.

ARTICLE 16
CONFLICT OF INTEREST

The Consultant covenants that it, including any officer o partnership partner, has any interest, nor shall acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the Consultant's services. The Consultant further covenants that in the performance of the Contract no person having such interests shall be employed by it.

ARTICLE 17
RIGHT TO INSPECT

The Corporation and the City shall have the right at all times to inspect the operations and records of the Consultant relating to the Contract.

ARTICLE 18
COMPLIANCE WITH THE LAW

The Consultant agrees that all acts to be performed by it in connection with the Contract shall be performed in strict conformity with all applicable federal, state, and local laws, rules, regulations, and orders.

ARTICLE 19
CLAIMS OR ACTIONS AGAINST THE CORPORATION

A. The Consultant shall look solely to the funds appropriated by the Corporation for the Contract for the satisfaction of any claim or cause of action the Consultant may have against the Corporation in connection with the Contract or the failure of the Corporation to perform any of its obligations thereunder.

No officer, employee, agent or other person authorized to act on behalf of the Corporation or the City shall have any personal liability in connection with the Contract or any failure by the Corporation to perform its obligation thereunder.

B. If any claim is made or any action brought relating to the work or services to be performed under the Contract wherein Consultant is not a party, Consultant shall diligently render to the Corporation any and all assistance which the Corporation may require of the Consultant.

ARTICLE 20
COMPLETENESS

This agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise regarding the subject matter of the agreement shall be deemed to exist or to bind any of the parties hereto.

APPENDIX E

FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS

APPENDIX E

FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS

STATE OF)
) ss.:
COUNTY OF)

The undersigned, being first duly sworn, deposes and states as follows:

1. I am the Principal of the Consultant named below in connection with the contract (the "Contract") identified below between the Consultant and New York City Economic Development Corporation ("NYCEDC").

2. I make this affidavit pursuant to Section 5.2.6(iii) of the Contract to verify certain information regarding non-original materials included in the Work Product (as defined in the Contract) furnished by the Consultant to NYCEDC pursuant to the Contract.

3. I hereby certify that the information set forth on the "List of Rights, Limitations and Requirements Regarding the Use and Display of Non-Original Materials Included in Consultant's Work Product" (the "Non-Original Materials List") annexed hereto and made a part hereof, and the licenses, releases, permissions, clearances and other documents (collectively, the "Licenses") annexed thereto, are complete, true and accurate as of the date of this affidavit, and I acknowledge and understand that NYCEDC shall rely thereon in connection with any use and display of such materials.

4. In particular, I hereby certify that the annexed Non-Original Materials List and Licenses set forth (i) all non-original materials included in Consultant's Work Product; (ii) all information as to the source of such materials; (iii) all information as to any durational limitations on use of such materials; (iv) all requirements as to notices that must be displayed in connection with display, including the specific owner of the rights to be credited; and (v) all other limitations on the use and display under the Licenses.

Dated: _____ Signature: _____

Consultant: _____ Printed Name: _____

NYCEDC Contract No.: _____ Title: _____

Sworn to before me this day
of , 20

Notary Public

LIST OF RIGHTS, LIMITATIONS AND REQUIREMENTS REGARDING THE USE AND DISPLAY OF NON-ORIGINAL MATERIALS INCLUDED IN CONSULTANT'S WORK PRODUCT

Non-Original Material	Source	Rights/Limitations/Requirements*

* **ATTACH COPIES OF ALL LICENSES, RELEASES, PERMISSIONS, CLEARANCES AND OTHER RELEVANT DOCUMENTS**

APPENDIX F

INSURANCE REQUIREMENTS

1. **Required Policies and Amounts**
2. **Additional Insureds**
3. **Required Provisions**
4. **Sample Form of Contractor Insurance Cover Sheet, Certificate, and Endorsements**
5. **Bond Requirements**

APPENDIX F

INSURANCE REQUIREMENTS

1. Minimum Required Policies and Amounts

Workers' Compensation/ Employer's Liability and Disability Benefits:	In statutory amounts
Commercial General Liability:	A minimum of $1,000,000 per occurrence, with an annual aggregate of not less than $2,000,000 in the aggregate applying on a per project basis The maximum deductible or self-insured retention ("SIR"), if the latter is approved by Corporation as outlined in Article 6.3.17, for the Commercial General Liability policy shall be $50,000, unless prior approval for a higher amount is approved by Corporation. Any such self-insurance program shall provide the City and the Corporation and any other Additional Insureds with all rights that would be provided by traditional insurance required under this Article 6, including but not limited to, the defense obligations that insurers are required to undertake in liability policies.
Automobile Liability:	$1,000,000 combined single limit per occurrence and aggregate
Umbrella/Excess Liability:	Consultant determined limits to apply on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer's primary liability limits. Notwithstanding the above, Consultant shall contractually require the Subcontractors to obtain and maintain the minimum Umbrella/Excess insurance limits ("Minimum umbrella/Excess Subcontractor Insurance Limits") as outlined below. Consultant also warrants that it has met any requirements (including, but not limited to, requirements for limits, coverages, and/or compliance documentation) imposed by its insurer in order to fulfill any subcontractor warranty endorsements on any of Consultant's liability policies. The Minimum Umbrella/Excess Subcontractor Insurance Limits are as follows:

Any Subcontractor performing demolition-related work:
$15,000,000 per occurrence and aggregate
Any Subcontractor performing rooftop and exterior work:
$10,000,000 per occurrence and aggregate

Any Subcontractor performing interior renovation (including painting) work:
$5,000,000 per occurrence and aggregate

Any Subcontractor performing standard trade work:
$2,000,000 per occurrence and aggregate

Builders Risk/Installation Floater: ☒ **Required. See attached Builders Risk Requirements**

Professional Liability:[1] $[X],000,000 per occurrence or $[X],000,000 per claim and $[X],000,000 aggregate with a maximum deductible or SIR (if approved pursuant to Article 6.3.17) of $10,000

If the Consultant or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Consultant and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

U.S. Harbor Workers' Long Shoremens' Compensation Act: In statutory amounts

Marine Protection and Indemnity: $25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than $25,000,000 in the aggregate per year

If the Project is adjacent to or includes an existing railroad or subway line, the Consultant, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Consultant and its Subcontractors, and any work incidental thereto:

Railroad Protective Liability: $2,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than $6,000,000 in the aggregate or as required by the railroad/subway owner, whichever is higher

[1]. Limit should be adjusted based on the project size and exposure, but should be a minimum of $2M.

If the Consultant or any of its Subcontractors is performing asbestos or other toxic or hazardous materials remediation, removal, abatement, storage or disposal work including, without limitation, related demolition work, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services and any work incidental thereto:

Contractor Pollution Liability ("CPL") Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability ("PLL") Policy, Transportation Coverage and Non-Owned Disposal Site Coverage:	$10,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than $10,000,000 in the aggregate per year dedicated to this Project, on an "occurrence" basis, with a term of not less than ten (10) years covering ongoing and products/completed operations and covering the Additional Insureds without regard to privity of contract

Such CPL and PLL policies shall be for a term of not less than ten (10) years, on an "occurrence" basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST's; (c) a definition of "property damage" that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured's rights will not be prejudiced if there is a failure to give notice due to the insured's belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of "stop loss" or "cleanup cost cap" that includes monitoring activities; (h) a definition of "cleanup costs" that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans ("RAP") shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach) (j) coverage on a suspected release basis with no natural resource damage or non-compliance exclusions. The Consultant shall request that the disposal facility(ies) add the Consultant and the Additional Insureds to the Pollution Legal Liability Insurance policy or policies. If the facility's insurance carrier(s) agree to add such Additional Insureds, copies of applicable Certificates of Insurance, with appropriate endorsements if a Subcontractor is providing the service, received by Consultant shall be provided to the Corporation upon request.

BUILDERS RISK REQUIREMENTS

The Consultant shall carry Builders Risk coverage in an amount not less than 100% of the Maximum Project Assignment Price. Coverage must be written on *ISO Special Form CP 10 30 04 02* or its equivalent on a completed value non-reporting basis and provide coverage for the Corporation, the City, the Consultant and all Subconsultants and Subcontractors. Coverage must also include an "Agreed Amount" provision which eliminates any coinsurance provision.

Mandatory Extensions and Provisions:

- Soft Costs, including architectural, engineering, financing, legal fees and all other pre- and post-construction expenses
- Flood Coverage, including Water Damage other than Flood and Backup or Overflow of Sewer, Drains or Sumps
- Earthquake Coverage
- Mechanical / Electrical Breakdown or Failure Exclusion Deleted
- Testing Exclusion Deleted
- Terrorism Coverage
- Permission to Occupy Endorsement
- Covered Property while in Offsite Storage / Temporary Location
- Covered Property while in Transit
- Demolition, Debris Removal, Increased Cost of Construction & Ordinance or Law
- Trees, Shrubs, Plants, Landscaping
- Expediting Expenses / Extra Expense
- Claim Preparation Expense
- Delay in Opening / Business Income coverage through actual completion date
- Blanket Loss Payee Endorsement
- Fire Department Service & Extinguishing Expenses
- Scaffolding (including cost to re-erect), Construction Forms and Temporary Structures
- Valuable Papers including, but not limited to, Plans, Blueprints & Drawings Renderings Specifications and other Contract Documents or Models
- Outdoor Coverage for Rain, Snow, Ice, or Sleet sublimit

Due to the nature of the Work being performed under this Contract, the following coverage extensions and provisions are also required:

- ☐ Emergency Property Protection Expenses
- ☐ Existing Property (damage due to building activities only)
- ☐ Pollution Clean Up & Removal
- ☐ Mold & Fungus Remediation
- ☐ Earlier Notice of Cancellation (60 days)
- ☐ Escalation Coverage Applies

APPENDIX F

INSURANCE REQUIREMENTS

2. Additional Insureds

For the purposes of this Contract and the requirements of the Insurance Provisions including, without limitation, Section 6.3.3 (iii), the term "Additional Insureds" shall include the following individuals and entities:

New York City Economic Development Corporation
The City of New York

and their respective employees, members, officials, and officers,

and any such other entities and individuals the Corporation may direct from time to time in each Project Assignment.

APPENDIX F

INSURANCE REQUIREMENTS

3. Required Provisions

The policies required under the Insurance Provisions of the Contract shall contain the following provisions, if available:

"A. Notices from the insurer (the "Insurer") to the New York City Economic Development Corporation (the "Corporation") and the City of New York (the "City"), in connection with this policy, shall be addressed to the General Counsel, New York City Economic Development Corporation, at One Liberty Plaza, New York, New York 10006 (with a copy to the Corporation's Contract Administrator at the same address), and to the Commissioner, New York City Department of Small Business Services, at One Liberty Plaza, New York, New York 10006 or such other addresses as may be specified by the Corporation**; : If required, Notices from the Insurer to Port Authority of New York and New Jersey ("PANYNJ") in connection with this policy, shall be addressed to the Port Authority of New York and New Jersey, General Manager, Risk Management, 241 Erie Street, Room 301, Jersey City, NJ 07310**;

B. The Insurer shall accept notice of accident from the Corporation or the City, as soon as practicable after receipt by an official of such Additional Insured (as identified in Appendix F of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City as soon as practicable after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, as soon as practicable after receipt by such party as valid and timely notice under this policy;

D. Notice of accident or claim to the Insurer by the Consultant, the Corporation or the City shall be deemed notice by all under this policy;

E. This policy shall not be canceled, terminated or modified by the Insurer or the Consultant unless thirty (30) days prior written notice is sent by registered mail to the Corporation or the City;

F. The presence of engineers, inspectors or other employees or agents of the Consultant, the Corporation or the City at the site of the Services performed by the Consultant shall not invalidate this policy of insurance; and

G. Violation of any of the terms of any other policy issued by the Insurer to the Consultant or a subcontractor of the Consultant shall not inviolate this policy; and

H. Insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer."

I. If applicable, unless otherwise agreed by PANYNJ, the liability policy shall be specifically endorsed, to prohibit the Insurer from raising any defense involving in any way jurisdiction of the PANYNJ's Tribunal, immunity of PANYNJ, governmental nature of PANYNJ or the provisions of any statutes respecting suits against PANYNJ without obtaining written express advance permission from the General Counsel of PANYNJ.

APPENDIX F

INSURANCE REQUIREMENTS

4. Sample Form of Contractor Insurance Cover Sheet, Certificate, and Endorsements

New York City Economic Development Corporation
Contractor Insurance Documentation Cover Sheet & Checklist

This cover sheet should be completed and attached by all existing or prospective NYCEDC Contractors when submitting insurance documentation for review. ***Insurance documents submitted without this cover sheet cannot be reviewed and could delay processing of contracts and invoices.***

Contractor's Name: _____ Contract Number: -

_____

NYCEDC Project Manager:

_____

ALL Certificates of Insurance: *Please acknowledge by checking the box that the following conditions are satisfied and evidenced on all certificates:*

☐ Policy effective date is as of or prior to the date of contract execution

☐ All limits meet or exceed minimum limits required in the contract*

☐ Certificate Holder states: NYCEDC, Attn: Contracts Department, One Liberty Plaza, New York, NY 10006

☐ Named Insured matches entity entering into contract with correct address

☐ Insurance Company Ratings comply with contract minimum rating requirement

☐ Insurers are licensed to do business in the state of New York

Liability COI Only: Please acknowledge by checking the box that the following conditions are satisfied and evidenced on the certificates:

☐ Description of Operations must include the following language:

The City of New York and the New York City Economic Development Corporation and [insert any other additional insureds as required in the contract] their employees and officers are additional insureds on a primary and non-contributory basis on the Commercial General Liability, Auto Liability and Umbrella Liability [include Pollution Liability if applicable] policies using forms [insert form numbers here]. All policies other than Professional Liability include a waiver of subrogation in favor of The City of New York and the New York City Economic Development Corporation. Coverage is equivalent to or broader than ISO CG 0 01 with no modifications to the contractual or employers' liability coverage and with no exclusion for claims arising from New York Labor Laws.

☐ General Liability Aggregate Limit applies on a per project basis

☐ Accord 855 included unless no construction/renovation/alterations/fit-out work is being done, check here if N/A: ☐

General Liability (and Pollution Liability, if applicable to the contract) Endorsements (or their equivalents) – *Please acknowledge by checking the box that the following have been provided:*

☐ CG 20 10 & CG 20 37 – EITHER MUST NOT REQUIRE A CONTRACT BETWEEN NYCEDC AND THE CONTRACTOR OR MUST SPECIFICALLY NAME THE ADDITIONAL INSUREDS IN SCHEDULE

☐ CG 20 38 – CAN BE PROVIDED IN PLACE OF CG 20 10 (above) IF CONTRACT BETWEEN SUBCONTRACTOR AND PRIME CONTRACTUALLY REQUIRES COVERAGE FOR THE ADDITIONAL INSUREDS

☐ Primary and Non-Contributory and Waiver of Subrogation Endorsements on the General Liability and Umbrella/Excess policies – EITHER MUST NOT REQUIRE A CONTRACT BETWEEN NYCEDC AND THE CONTRACTOR OR MUST SPECIFICALLY NAME THE ADDITIONAL INSUREDS IN SCHEDULE

Other Coverages – *Please check those that apply (evidence must be provided):*

☐ Workers Compensation / Employer's Liability – Refer to Article 6 of Contract for forms allowed

☐ New York State Disability – Refer to Article 6 of the Contract for forms allowed

☐ Builder's Risk (if applicable)

☐ Professional Liability (if applicable) and/or ☐ Media/Privacy Liability (if applicable) – Refer to contract

☐ Site Pollution Liability (if applicable) and/or ☐ Contractor's Pollution Liability (if applicable) – Refer to contract

☐ Maritime Protection & Indemnity (if applicable) and/or ☐ Maritime Hull (if applicable) – Refer to contract

☐ Railroad Protective Liability (if applicable) – Refer to contract and permit from railroad owner for limits required

☐ MCS-90 and CA9948 Pollution coverage included in Auto (if applicable) – Refer to contract

☐ Other Coverage as required by Contract, please describe:

_____

Date of Submission of Checklist:_____
Contractor/Consultant Signature: _____
Name: _____
Title: _____

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/11/1111

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 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	CONTACT NAME:	
Insurance Broker's Name Address	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Your Firm's Name Address	INSURER A : Commercial General Liability Company	
	INSURER B : Auto Liability Company	
	INSURER C : State Insurance Fund	
	INSURER D : Umbrella Liability Company	
	INSURER E : Professional Liability Company	
	INSURER F : Builders Risk Company	

COVERAGES **CERTIFICATE NUMBER:** **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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	Y	Y	Insurance Policy #	11/11/1111	22/22/2222	EACH OCCURRENCE	$ 1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE OCCUR						MED EXP (Any one person)	$
	X Additional Insureds - City of New York; New York City Economic Development Corporation; Apple Industrial Development Corp.						PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$
								$
B	AUTOMOBILE LIABILITY	Y	Y	Insurance Policy #	11/11/1111	22/22/2222	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
D	X UMBRELLA LIAB OCCUR	Y	Y	Insurance Policy #	11/11/1111	22/22/2222	EACH OCCURRENCE	$ 10,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 10,000,000
	DED RETENTION $							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N	N / A		Insurance Policy #			X WC STATU-TORY LIMITS OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)			*The greater of statutory amounts or $1,000,000			E.L. EACH ACCIDENT	$ 1,000,000*
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
E	Professional Liability (Consultant Contracts Only)						$2,000,000 per claim and in the aggregate (100% of Maximum Contract Price)	
F	Builders Risk (Construction Contracts Only)							
G	Owner's Protective Liability** (Construction Contracts Only)							
	**In very limited situations, the City/NYCEDC/Apple may require Owner's Protective							

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

Referenced Project: Contract No. 1000000
Name of Project - Type of Project

MUST LIST EACH ADDITIONAL INSURED AND STATE THAT COMMERCIAL GENERAL LIABILITY AND UMBRELLA /EXCESS LIABILITY SHALL BE ON A PRIMARY AND NON-CONTRIBUTORY BASIS FOR EACH ADDITIONAL INSURED

CERTIFICATE HOLDER	CANCELLATION
New York City Economic Development Corporation 110 William Street, 6th Floor New York, NY 10038 Attention: Contract Administration	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 Signature

© 1988-2010 ACORD CORPORATION. All rights reserved.

ACORD 25 (2010/05) The ACORD name and logo are registered marks of ACORD

SAMPLE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
New York City Economic Development Corporation, City of New York, and their respective members, officers directors, officials, amd employees and any other additional insureds as designated in the contract	Note: For subs, coverage cannot be subject to a written contract betwee EDC and the sub
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

© Insurance Services Office, Inc., 2012

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
New York City Economic Development Corporation, City of New York, and their respective members, officials, directors, officers, and employees and any other additional insureds as designated in the contract	Note: For subs, coverage cannot be subject to a written contract between NYCEDC and the sub

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

© Insurance Services Office, Inc., 2012

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

CERTIFICATE OF INSURANCE COVERAGE UNDER THE NYS DISABILITY BENEFITS LAW

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

1a. Legal Name and Address of Insured (Use street address only)

Contractor or Consultant
Street Address
City, State Zip

1b. Business Telephone Number of Insured
123-456-7890

1c. NYS Unemployment Insurance Employer Registration Number of Insured
12345

1d. Federal Employer Identification Number of Insured or Social Security Number
12-3456789

2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)

New York City Economic Development Corporation
The City of New York
110 William St
New York, New York 10038

3a. Name of Insurance Carrier
ABC Insurance Company

3b. Policy Number of entity listed in box "1a":
ABCD1234567

3c. Policy effective period:
xx/xx/xx to xx/xx/xx

4. Policy covers:

a. ☒ All of the employer's employees eligible under the New York Disability Benefits Law

b. ☐ Only the following class or classes of the 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 Benefits insurance coverage as described above.

Date Signed xx/xx/xx By *Signature*
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 123-457-7890 Title Title

IMPORTANT: If box "4a" is 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" is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the Disability Benefits Law. It must be mailed for completion to the Workers' Compensation Board, DB Plans Acceptance Unit, 20 Park Street, Albany, New York 12207.

PART 2. To be completed by NYS Workers' Compensation Board (Only if box "4b" 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 Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of NYS Workers' Compensation Board Employee)

Telephone Number _____ Title _____

Please Note: *Only insurance carriers licensed to write NYS disability 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.***

DB-120.1 (5-06)

SAMPLE

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (Use street address only) Contractor or Consultant Street Address City, State Zip Code **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** 123-456-7890 **1c. NYS Unemployment Insurance Employer Registration Number of Insured** 12345 **1d. Federal Employer Identification Number of Insured or Social Security Number** 12-3456789
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) New York City Economic Development Corporation The City of New York 110 William St New York, NY 10038	**3a. Name of Insurance Carrier** ABC Insurance Company **3b. Policy Number of entity listed in box "1a"** 1234567890 **3c. Policy effective period** xx/xx/xx to xx/xx/xx **3d. The Proprietor, Partners or Executive Officers are** ☐ **included.** (Only check box if all partners/officers included) ☐ **all excluded or certain partners/officers excluded.**

SAMPLE

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: Jane Doe
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Signature xx/xx/xx
(Signature) (Date)

Title: Title

Telephone Number of authorized representative or licensed agent of insurance carrier: 123-456-7890

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.*

C-105.2 (9-07) www.wcb.state.ny.us

APPENDIX F

INSURANCE REQUIREMENTS

5. Bond Requirements

General Requirements. For each Project Assignment, the Consultant shall secure, as a part of the Services, and keep in full force at all times during the performance of any Construction Subcontract, payment and performance bonds, each in the face amount of not less than 100% of each Subcontract. The bonds shall be provided by surety companies licensed to do business and in good standing in the State of New York and registered with the New York State Department of Insurance, and otherwise approved by the Corporation. The bonds shall each be executed in a form and amount approved by the Corporation and delivered to the Corporation at least 10 days before any Subcontractor Work is performed under the Contract. The cost of said bonds shall be included in each Subcontract.

Supporting Documents. Each executed bond must be accompanied by the following:

(i) appropriate acknowledgments of the respective parties;

(ii) an appropriate duly certified copy of Power of Attorney or other certificate of authority where the bond is executed by an agent, officer or other representative of the principal and/or the surety;

(iii) a duly certified extract from the by-laws or resolutions of the principal and/or the surety under which the Power of Attorney or other certificate of authority of its agent, officer or representative was issued; and

(iv) a duly certified copy of the latest published financial statement of the assets and liabilities of the surety.

APPENDIX G

EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION

COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM

[E.O. 50 SUPPLY AND SERVICE RIDER]

APPENDIX G

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

[Note: for purposes of this rider, the "contractor" means the Consultant identified in this Contract]

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) as revised ("E.O.50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

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

(2) will not discriminate in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status or sexual orientation or citizenship status;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status, or it is an equal employment opportunity employer;

(4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder; and

(5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14), the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (the "Division"). Copies of all required reports are available upon request from the contracting agency; and

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

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, such noncompliance shall

constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

(i) disapproval of the contractor;
(ii) suspension or termination of the contract;
(iii) declaring the contractor in default; or
(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of New York City's small purchase limit established by rule of New York City's Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) 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 the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

APPENDIX H

E.O. 50 EMPLOYMENT REPORT FORM

The Consultant shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Corporation which can be found at http://www.nycedc.com/resources/vendor-resources

If the Consultant cannot access or download these forms, the Corporation will, upon request, send the Consultant the required forms.

Non-Construction Consulting Contracts

Non-construction consulting contracts require a Supply & Service employment report. Generally, the "under 50 employees" form should be used by companies with fewer than 50 employees, and the longer "full form" should be used for companies with more than 50 employees. Please refer to the Supply & Service instructions document to learn more about the forms.

Supply & Service Employment Report Instructions
Supply & Service – under 50 employees
Supply & Service – full form

APPENDIX I

PAYROLL REPORT FORM AND INSTRUCTIONS

THE CITY OF NEW YORK • OFFICE OF THE COMPTROLLER • BUREAU OF LABOR LAW

PAYROLL REPORT

TO BE SUBMITTED WITH REQUISITION FOR PAYMENT

NAME OF PRIME CONTRACTOR			AGENCY
NAME OF CONTRACTOR/SUBCONTRACTOR	ADDRESS	PHONE #	PAYROLL # / TAX I.D. #
CONTRACT REGISTRATION #	JOB CODE / WEEK ENDING DATE		PROJECT NAME & LOCATION

(1)	(2)	(3)	(4) DAY AND DATE	(5) TOTAL HOURS	(6) BASE RATE OF PAY PER HOUR	(7) TOTAL BASE PAY	(8) SUPPLEMENTAL BENEFITS: RATE PER HOUR	(9) SUPPLEMENTAL BENEFITS: PAID TO (Local # if Union is checked)	(10) TOTAL BENEFITS PAID	(11) GROSS PAY	(12) TOTAL TAX & OTHER DEDUCTIONS	(13) NET PAY
NAME ADDRESS LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER	LIST TRADE & CHECK CLASSIFICATION JOURNEYMAN APPRENTICE (NYS DOL REGISTERED) HELPER	TIME	HOURS WORKED EACH DAY									
	☐ J ☐ A ☐ H	RT OT						U Local# ____ E ____ O ____				
	☐ J ☐ A ☐ H	RT OT						U Local# ____ E ____ O ____				
	☐ J ☐ A ☐ H	RT OT						U Local# ____ E ____ O ____				
	☐ J ☐ A ☐ H	RT OT						U Local# ____ E ____ O ____				
	☐ J ☐ A ☐ H	RT OT						U Local# ____ E ____ O ____				
	☐ J ☐ A ☐ H	RT OT						U Local# ____ E ____ O ____				
	☐ J ☐ A ☐ H	RT OT						U Local# ____ E ____ O ____				

INSTRUCTIONS ON REVERSE SIDE

FALSIFICATION OF THIS STATEMENT IS A PUNISHABLE OFFENSE

This certified payroll has been prepared in accordance with the instructions contained on the reverse side of this form. I certify that the above information represents wages and supplemental benefits paid to all persons employed by my firm for construction work on the above project during the period shown. **I understand that falsification of this statement is a punishable offense.**

SIGNATURE _____ NAME (Print) _____ TITLE _____ DATE _____, 20____

Instructions for the Preparation and Submission of a Payroll Report

1. All persons who performed any on-site construction activity, during the period of the requisition, shall be listed on the Payroll Report.

2. Separate Payroll Reports shall be submitted by the prime contractor and each subcontractor who performed any on-site construction activity during the period of the requisition.

3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment being reduced.

4. PAYROLL REPORT HEADING: The Payroll Report Heading shall require the following information:

NAME OF PRIME CONTRACTOR: Enter the name of the firm that has entered into the contract with the New York City government agency.
NAME OF CONTRACTOR / SUBCONTRACTOR: The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation. Circle either the word CONTRACTOR or SUBCONTRACTOR as applicable.
ADDRESS: Insert the current address (i.e., street, city, state and zip code) of the firm submitting the Payroll Report.
PHONE NO.: Enter the telephone number of the firm submitting the Payroll Report in the space provided.
AGENCY: Enter the name of the New York City government agency that has the contract with the Prime Contractor.
PAYROLL NO.: In the space provided, enter the Payroll Number of the Contractor or Subcontractor.
CONTRACT REG. NO.: Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and / or the "Order to Commence Work" letters.
JOB CODE: In the space provided, enter the Contractor/ Subcontractor's in-house labor distribution code or job number where applicable.
WEEK ENDING DATE: In the space provided, enter the last date of the pay-week (i.e., month, day, year).
PROJECT NAME & LOCATION: In this space, enter the Project Name and Location where contract work is being performed.
TAX I.D. NO.: Enter in this space the Federal Tax Identification Number of the firm submitting the Payroll Report.

5. For every employee who performed any on-site construction activity during the period of the Payroll Report, the following information shall be provided:

1) **NAME, ADDRESS, LAST FOUR DIGITS OF THE SOCIAL SECURITY NO.:** The legal name, current address and the last four digits of the social security number of each employee. (Employers must keep the full social security number on file for each of their covered workers.) If the employee has no social security number, please list his/her IRS Individual Taxpayer Identification Number and mark it "ITIN".
2) **LIST TRADE & CHECK WORK CLASSIFICATION:** Specify and insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller, i.e., Electrician, Laborer, etc. Check next to the letter J if the individual is a Journeyperson. Check next to the letter A if the person is a Registered Apprentice with the Department of Labor of the State of New York. Check next to the letter H only if the person is a Helper in a trade classification that has Helper rates listed in the Comptroller's Schedule of Prevailing Wages.
3) **TIME:** RT indicates Regular Time, and OT indicates Overtime.
4) **DAY AND DATE:** Below this heading, in the first row, enter the appropriate sequence of the contractor's pay records. MTWTFSS, for example, is the sequence to use if the workweek ends on a Sunday, and SSMTWTF is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the workweek, insert the corresponding date. Below the heading HOURS WORKED EACH DAY, at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate box either for RT (Regular Time) and / or OT (Overtime). If an employee worked Shift Time, the RT (Regular Time) row shall be used and adjusted accordingly.
5) **TOTAL HOURS:** Add the hours worked for Regular and / or Shift Time with the hours worked for Overtime, and enter separate totals in this column.
6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
7) **TOTAL BASE PAY:** Total amount earned by the employee not including benefits.

SUPPLEMENTAL BENEFITS:

8) **RATE PER HOUR:** Amount of supplemental benefits paid / provided per hour.
9) **PAID TO:** Place a check mark in the appropriate box: U for Union if benefits paid to a Union, E for Employee if benefits paid in cash (or check) directly to the Employee, or O for Other, if benefits are otherwise paid / provided to the employee. If U is checked, you must insert the "Local" number of the union in that box.
10) **TOTAL BENEFITS PAID:** Total amount of supplemental benefits paid / provided for the workweek to the employee.
11) **GROSS PAY:** Total amount earned for workweek: This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee [i.e., column (7) + column (9) E if Box E is checked and payment made directly to employee]. No other type of benefit should be included in this column's total.
12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State and City Taxes, etc.). This does not absolve you from maintaining appropriate tax and other records required by law).
13) **NET PAY:** Total amount of pay after all deductions (i.e., the actual Take-Home Pay).

FEDERAL PAYROLL CERTIFICATION REQUIREMENT

Each Payroll Report submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or their agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347, attached hereto, shall satisfy the requirement for submission of the required "Statement of Compliance".

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

The Contractor or subcontractor shall make the records required in this section available for inspection, copying, or transcription by authorized representatives of the NYCEDC, the City, the NYSDOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the Contractor, NYCEDC, the City or NYSDOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

APPENDIX J

APPLICABLE AGREEMENTS

To be determined on a Project Assignment basis

APPENDIX K

APPLICABLE REQUIREMENTS

To be determined on a Project Assignment basis

UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

(Version 01.20.2021)

[Instructions to Agencies: This Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts ("Rider") must be attached to all federally funded procurement contracts (of any dollar amount) that are subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). This Rider does not apply to subrecipient or subaward agreements. Procurement contracts funded by HUD's CDBG Program, CDBG-DR Program, or by FEMA must also include the program-specific rider.]

A. *Definitions.* As used in this Rider:

(1) "Awarding Entity" means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.

(2) "City" means the City of New York.

(3) "Commissioner" means the head of the City agency entering into this Contract.

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

(5) "Contract" refers to the contract or the agreement between the Awarding Entity and the Contractor.

(6) "Contractor" means the entity performing the services pursuant to a Contract.

(7) "Federal Agency" means the U.S. agency or agencies funding this Contract in whole or in part.

(8) "Government" means the U.S. government.

(9) "Rider" means this Uniform Federal Contract Provisions Rider.

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

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

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After

completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the City may be charged against and deducted out of monies earned by the Contractor.

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

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

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

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

iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination ("Notice of Termination"), specifying

the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.

c. **Termination due to Force Majeure**

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

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

iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.

d. **Termination due to Reductions in Federal Funding**

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

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

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

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

(1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.

(2) *Non-Discrimination*. Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.

(3) *Environmental Protection.* If the Contract is in excess of $150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.

(4) *Energy Efficiency*. The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).

(5) *Debarment.* The Contractor certifies that neither it nor its principals or affiliates are currently in a state of debarment, suspension, exclusion, disqualification, or other ineligible status as a result of prior performance, failure, fraud, or violation of City or New York State laws. The Contractor further certifies that neither it nor its principals or affiliates are debarred, suspended, excluded, disqualified, or otherwise ineligible for participation in Federal assistance programs. The City reserves the right to terminate this

Contract if knowledge of debarment, suspension, exclusion, disqualification or other ineligibility has been withheld by the Contractor.

(6) *Lobbying.* The Contractor certifies, to the best of its knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf) in accordance with its instructions; and

(c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.

(d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(7) *Solid Waste Disposal Act*. Pursuant to 2 CFR § 200.323, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) *Prohibition on certain telecommunications and video surveillance services or equipment*.

(a) The Contractor is prohibited from obligating or expending loan or grant funds to:
(1) Procure or obtain;
(2) Extend or renew a contract to procure or obtain; or
(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered

telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) The Contractor's attention is directed to Public Law 115–232, section 889 for additional information.

(d) The Contractor's attention is directed to § 200.471.

(9) Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:
(1) ''Produced in the United States'' means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) ‘‘Manufactured products’’ means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(10) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.

(11) *Records Retention.* The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract in accordance with 2 C.F.R. §200.334.

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

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

a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;

b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and

e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

(14) *Intangible Property*.

a. Pursuant to 2 CFR § 200.315, the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.

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

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

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

of which shall be provided to the City upon execution of this Contract.

e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

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

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

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

a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): <u>If required by the federal program legislation</u>, in Construction contracts involving an excess of $2000, <u>and subject to any other federal program limitations</u>, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.

b. <u>If required by the federal program legislation and subject to any other federal program limitations,</u> Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of $2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for

his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.

c. Copeland Anti-Kickback Act: If required by the federal program legislation and subject to any other federal program limitations: (i) the Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract; (ii) The Contractor or subcontractor shall insert in any subcontracts the language contained in (i) of this subsection and also a clause requiring the subcontractors to include the language in subsection (i) in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor of this subsection; and (iii) A breach of this subsection may be grounds for termination of the Contract, and for debarment as a contractor or subcontractor as provided in 29 C.F.R. § 5.12.

d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2. If there is a conflict between the provisions of this Article D and FEDERAL EXHIBIT 2, the stricter standard shall be controlling.

(2) *Equal Employment Opportunity.* Executive Order 11246, as amended, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of $10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction .

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

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

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

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

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

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the

availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

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

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

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

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

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

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

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

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility

for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

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

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

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

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

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

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

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

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

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

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted

as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

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

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

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

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

i. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*).

ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.

iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a

process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

v. "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

vi. "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

vii. "Statutory period" means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b), as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

viii. The "contractor" means any person, small business firm or nonprofit organization, or as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

b. *Allocation of Principal Rights*. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. *Invention Disclosure ,Election of Title and Filing of Patent Application by Contractor*.

i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.

iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the Contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Contractor will file patent applications in additional countries or international patent offices within earlier ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent

applications where such filing has been prohibited by a Secrecy Order.

iv. For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

v. Requests for extension of the time for disclosure, election, and filing under paragraphs (i), (ii), and (iii) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

d. Conditions When the Government May Obtain Title

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

i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c) of this clause, or elects not to retain title., .

ii. In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) of this clause, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.

iii. In any country in which the Contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Contractor and Protection of the Contractor Right to File

i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Contractor Action to Protect the Government's Interest

i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the

rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), of this clause, to assign to the Contractor the entire right, title and interest in and to each subject invention made under Contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

iii. For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination..

iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the

contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."

g. Subcontracts

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

ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.

iii. In the case of subcontracts, at any tier, when the prime award with the Federal Agency was a contract (but not a grant or cooperative agreement), the Agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal Agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

i. *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such

person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. *March-in Rights*. The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

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

   ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;

   iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or

   iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor is a nonprofit organization, it agrees that:

   i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions

the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;

iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Federal Aency may review the Contractor's licensing program and decisions regarding Small Business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal Agency when the Federal Agency's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

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

FEDERAL EXHIBIT 1

NOTICE TO BIDDERS

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

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

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

Goals and Timetables for Minorities

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

Goals and Timetables for Women

From April 1, 1980 until the present	6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

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

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

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

FEDERAL EXHIBIT 2

[Insert Exhibit 2 for applicable federal grant program]

APPENDIX L

OUTSIDE FUNDING SOURCE PROVISIONS

1. General Terms.

This Contract will be funded in whole or in part by the Funds identified in Part I, Section 4.1 of this Contract. The receipt of such Funds is conditioned upon the Consultant's compliance with certain mandatory federal, State and City terms and conditions. The Consultant must comply with all applicable mandatory terms and conditions set forth in the Applicable Requirements and Applicable Agreements including, without limitation, those set forth in Part I, Section 4.4, 4.5, this Appendix, Appendix J and in Appendix K. This Appendix shall be annexed to and made a part of any subcontract entered into by the Consultant pursuant to this Contract, and shall be binding on any Subcontractor. To the extent any terms and conditions set forth in this Appendix conflict with any other terms of this Contract, the terms and conditions of this Appendix shall govern. In the event any terms and conditions set forth in this Appendix conflict with the terms and conditions of Appendix J or Appendix K, the more stringent of the conflicting provisions shall govern.

Consultant acknowledges and agrees that the Corporation has the right to delegate the responsibilities of the Corporation to the City or such agency of the City as may be appropriate.

The Funds have been made available for the Project under the Applicable Statutes and Applicable Agreements including, without limitation, those listed in Part I, Section 4.4 and 4.5, and any other governing statute or agreement related to the Funds, the Project and/or the Contract.

Notwithstanding anything to the contrary in this Contract, the Corporation shall be under no obligation to make such payments except when, and to the extent, such Funds are available. The Corporation shall not be liable to the Consultant in the event any or all of such Funds are not made available.

2. Termination or Suspension Related to Unavailability of Funds.

In addition to any other right to postpone, delay suspend or terminate the Services or the Contract set forth in this Contract, if, pursuant to the Applicable Statutes or Applicable Agreements or otherwise, there shall be a suspension, termination or reduction of the Funds funding this Contract as a result of which Funds are not available for some or all payments under this Contract, the Corporation shall so notify the Consultant and the Consultant shall, and agrees to, cease to perform the activities specified in the notice (permanently or temporarily, as specified in the notice) on the date set forth therein, which may be immediately. The Consultant shall assume no further binding obligations in connection with any Services specified in the notice to be stopped, after the date set forth in the notice, except that such cessation need only be for the period of suspension if

the Services are suspended rather than terminated. The award of Funds funding this Contract may be suspended or terminated if the Consultant materially fails to comply with any term of such award. The award may also be terminated for convenience in accordance with the Applicable Statutes and Applicable Agreements.

APPENDIX M

M/WBE FORMS

[To be inserted from Proposal]

M/WBE Narrative Form

NYCEDC is dedicated to furthering the participation of minority- and women-owned businesses in its work. Each RFP Respondent must submit this form together with its proposal to indicate how M/WBE participation will be achieved if it is selected.

Respondent: NV5-Naik Engineers JV

Project Number: 964800X/10820000

A. Establishment of numerical M/WBE contracting utilization goals or targets

The Participation Goal Range for this contract is set in Section [Insert section here] of the RFP. From this participation goal range, please acknowledge your intention to meet the M/WBE goal requirements of this RFP by entering a single M/WBE Participation Commitment Percentage below. Please note that a commitment percentage lower than the proposed Participation Goal range will result in a "0" score for the M/WBE selection criteria.

Please note that this proposal will have an overall M/WBE participation goal commitment range. However, as part of EDC's commitment to increase opportunities for BIPOC (Black American, Hispanic American, Native American, and Asian WBE) firms, participation goals disaggregated by ethnicity will be expected on subsequent task orders.

Overall M/WBE Participation Commitment Percentage*: 40%

*M/WBE Participation Commitment Percentage = Projected Payments to M/WBEs/Total Contract Payments

B. Prequalified list information (Construction Management contracts only)

What is the size of your list of prequalified subcontractors who are prequalified to do work in New York? 50-100

How many M/WBE's are on your list of prequalified subcontractors who are prequalified to do work in New York? Approximately 25%

Provide a breakdown of firms by the following race and ethnicities:

- **Black-Owned M/WBE:** Approximately 20%
- **Hispanic-Owned M/WBE:** Approximately 20%
- **Native American-Owned M/WBE:** 0
- **Asian WBE:** 0

Please fill out table below so that we may determine how well M/WBE are represented on your prequalified list for trades that are key to this project. For project specific RFPs, Please refer to the Scope of Services in Appendix B, and break down by race, ethnicity and gender.

Key Trade	Trade/Scope	Prequalified Contractors/Consultants for Trade/Scope	M/WBE % of PQL	% per Ethnicity/Gender Category (e.g. Black, Hispanic, Asian, Native American M/WBEs, non-minority WBEs)
1	To Be Determined. A project scope has not been identified to match up against the required trades.			
2				
3				
4				
5				
6				

C. List of Subcontractors/Subconsultants

Please list all subcontractors/subconsultants who are included as members of the team in the proposal and a sentence on their role. Indicate which ones are M/WBE, and their respective race, ethnicity and gender.

See Attached List

D. Strategies and methods that will facilitate participation by M/WBE firms:

Please separately attach a narrative that lists the specific strategies that will be taken to fulfill the M/WBE requirements of this contract and the goals established. Your narrative should relate to the project scope. These strategies should be specific and easily verifiable. Note that specific actions committed to in the narrative must be documented sufficiently so that proof of their application can be readily obtained. As this narrative will be a factor in selection, it is critical that consultants fulfill every aspect of the narrative set forth in the response to the RFP. Your narrative should address, but is not limited to:

- Firm's personal commitment to diversity and inclusion
- Pre-qualification process
- Outreach strategy on this contract
- Internal roles of team members to assure M/WBE performance. Including (but not limited to) purchasing agent, project managers, project executive, M/WBE and/or economic inclusion managers
- Accountability for first-tier subcontractors
- Bidding process & strategy on this contract

E. Experience & References

EDC as part of the M/WBE evaluation will review past projects with regards to the respondent's past

M/WBE compliance. Please list five (5) projects that are similar in size and scope to this RFP, the ones that you refer to in your RFP response as part of Section ###, where your firm served as a prime/Construction Manager and where M/WBE goals were set. For every project where the goals were not met, please attach a brief narrative detailing your good faith efforts.

See Attached List

Contract Name & Number	*Description of work*	*M/WBE Goal (%)*	*M/WBE Award (% of M/WBE award $ in relation to total contract $)*	*Current or final M/WBE % (M/WBE payments divided by total payments)*	*Client Contact (Name, title, email address, phone number)*

F. Provide the name and contact information of in-house M/WBE contact Shelley Ann Floyd-Benjamin.

G. Attestation

I acknowledge that all the information provided herein is true and correct. In addition, I confirm the following:

- I have read and understand the M/WBE requirements for this contract.
- I will make and thoroughly document Good Faith Efforts utilized in encouraging M/WBE participation.
- I understand that I must notify NYCEDC of any material changes to the information submitted herein.

x _____

Authorized Person

06/20/2024

Date

Joseph Menzer, PE, DBIA, Principal

Officer's Name, Title

APPENDIX N

DOING BUSINESS DATA FORM

The Consultant shall complete and submit a Doing Business Data Form which can be found at http://www.nycedc.com in the following section:

"Resources/Vendor Resources".

If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

Doing Business Accountability Project Forms

Local Law 34 of 2007 (LL 34) requires the creation of a database containing information about entities that do business with the City as defined by the law, and principal officers, owners and senior managers of these entities. This information will be collected on Doing Business Data Forms that are distributed, collected and reviewed by agencies, and forwarded to the Doing Business Accountability Project (DBAP) at MOCS for processing. Collected data will be used to identify entities and people who are subject to LL 34's limitations on campaign contributions in municipal elections.

If you have any questions or concerns, please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.

Doing Business Form
Doing Business Form-Real Property
Q&A General
Q&A Real Property

CAPACITY BUILDING TRAINING PROGRAM COMMITMENT FORM

NYCEDC provides specialized capacity building training programs to support the ongoing growth of M/W/DBE businesses. These trainings provide one-on-one technical assistance and/or exclusive opportunities for a business to work on selected projects (either directly for NYCEDC or through NYCEDC contracts as subcontractors). The businesses who complete the necessary training are placed on a prequalified list for one or more eligible trades. Applicants for the prequalified list ("PQL") are thoroughly vetted by NYCEDC.

Eligible Trades include:

Professional Services

- Construction Estimating & Budgeting
- Compliance Consulting
- Inspections & Special Inspections
- MEP, Civil, Structural, Crane Engineering & related fields
- Marine & Maritime Logistics
- Naval Architecture
- Safety Consultants & Trainers
- Surveying (Bathymetric, Geophysical, Environmental & related fields)
- Testing (Environmental, Geotechnical & related fields)

Construction Services

- Carpentry
- Concrete, Foundations & Excavations
- Electrical
- Fencing, Sitework & Site Improvements
- General Construction
- Heavy Civil Construction
- HVAC
- Landscaping
- Masonry & Brickwork
- Marine Construction (Piling, Diving Services, Tugging, Barge Services)
- Mechanical Fabrication
- Miscellaneous Metals, Metal Fabrication, Ironwork
- Plumbing
- Roofing & Waterproofing
- Trucking & Logistics
- Underground Utilities

NYCEDC manages two capacity building programs:

CONSTRUCTNYC

This program was launched in 2016 and is designed to be a resource of and for general contractors, plumbers, electricians, and other building construction trades that want to work on on-land construction and green/decarbonization construction projects.

WATERFRONT PATHWAYS

This program launched in 2023 and is designed as a resource of and for construction and professional services looking to gain opportunities in waterfront construction, including offshore wind waterfront redevelopment projects.

HOW DOES A CONTRACTOR MAKE IT ONTO NYCEDC'S PQL?

Step 1: The contractor submits its information to NYCEDC via an online eligibility form. The criteria for eligibility to join the PQL includes:

- Demonstration of sound financial standing as well as ability to perform work,
- Operational status of business for at least two years, and
- MBE, WBE or MWBE certification with NYC Department of Small Business Services (SBS) or Empire State Development Corp (ESDC) or DBE certification with the U.S. Department of Transportation.

Step 2: NYCEDC thoroughly vets the contractor and the information submitted. Contractors deemed initially eligible are invited to submit a full program applicable. NYCEDC will review the full application and:

1. Conducts reference checks to verify reported experience.
2. Reviews Safety Record, Financial Capacity, and Integrity Records.
3. Conducts a technical interview with a panel inclusive of representatives from the Asset Management and Capital Program Departments.
4. Identifies any areas of assistance to be addressed with training.
5. Determines any risk mitigation measures that should be put in force when the contractor is awarded work.

Step 3: Eligible contractors who meet the necessary qualifications become eligible to be placed on a PQL. Each project is reviewed individually, and only qualified contractors are placed on the PQL for each project.

HOW DOES NYCEDC DETERMINE WHETHER A CONTRACTOR IS QUALIFIED FOR A PARTICULAR PROJECT?

NYCEDC assesses project scopes to determine whether there is opportunity to utilize the PQL(s). If NYCEDC determines that a project is appropriate for the use of the PQL(s), it will provide a list of suitable PQL contractors to the respondent.

NYCEDC recommendation of PQL contractors are relative to the following criteria:

1. Contractor is prequalified for the appropriate trade (based on NYCEDC's thorough vetting in Steps 1 and 2).
2. Contractor's Project Experience: Bid estimate is not more than 150%-200% of contractor's largest contract for that trade. [1]
3. Contractor's Financial Capacity: Assessment of the contractor's financial capacity to take on project.
4. Contractor's Backlog: Contractor has less than two NYCEDC projects in process at time of bid. [2]
5. Contractor's Interest: Contractor has demonstrated desire to bid on project work & has the capacity to submit a bid in the given timeframe.

The respondent will invite recommended PQL contractors to bid on the designated contracting opportunities.

Step 4: Where a contractor is deemed ineligible for a PQL, NYCEDC provides training to support certain contractors to reach the proficient knowledge required to be placed on a PQL.

- During the vetting process, NYCEDC rejects applicants with critical weaknesses beyond the scope or depth of program training offered. Contractors will only be added to the PQL(s) after they demonstrate proficient knowledge.

- Trainings leverage small-to-mid-size M/W/DBE experts, industry resources, educational courses, and information on NYCEDC projects to help improve access and awareness about the city's contracting opportunities relative to on-land, green construction, waterfront construction and offshore wind projects.

- Applicants with a weakness in a critical training topic will be required to successfully complete specific module(s) designed to address that deficiency. In such instances, applicants will not be accepted to PQL(s) until successful completion of required modules occurs.

WHAT TRAINING & RESOURCES ARE PROVIDED BY NYCEDC?

Required Training

Both *ConstructNYC* and *Waterfront Pathways* require multi-week, intensive trainings that focus on key areas including but not limited to safety, contract management, legal contract administration, project management, quality assurance and quality control, records retention, and financial management strategies.

Specialized Training

- ConstructNYC: Participants can opt into 'Green Training' to learn basic principles of green building, methods of building decarbonization as it relates to retrofitting and be connected to green construction bidding opportunities.

- Waterfront Pathways: Participants are trained in subjects related to technical administration for offshore wind and waterfront-adjacent firms, union workforce development and PLA administration.

[1] To be adjusted based on feedback from proposals.
[2] Under special circumstances there may be exceptions to this rule.

Additional Resources

- Technical Assistance: Consultant(s) retained to administer training for NYCEDC's capacity building programs are tasked with providing technical assistance to each PQL contractor. Technical assistance is not limited to NYCEDC projects and is available to PQL contractors at the request of the PQL contractor, NYCEDC or the respondent.

- Access to Mobilization Capital: PQL contractors have direct access to loans from the Contract Financing Loan Fund offered by NYC SBS. Loans of up to $1,000,000 are available through BOC Capital and Trufund.

- Payment Tracking: NYCEDC is implementing various measures to ensure payments to PQL contractors are received in a timely manner. Invoice tracking is available; respondent should reach out to NYCEDC if they need any payments expedited.

WHAT ARE MY RESPONSIBILITIES AS A RESPONDENT?

Respondents awarded NYCEDC contracts play a major role in ensuring the success of NYCEDC's capacity building programs. NYCEDC requires that respondents provide certain information with their proposals to determine the extent to which a particular respondent will be a good steward of these programs. Respondents are encouraged to work with NYCEDC's capacity building programs teams and PQLs.

RESPONSES WITHOUT AN M/W/DBE CAPACITY BUILDING PROGRAM COMMITMENT WILL BE CONSIDERED INCOMPLETE/UNRESPONSIVE.

NYCEDC will also consider respondent(s)' recommendations and input for training needs, particularly around safety and injury and incident free workshops.

IF A RESPONDENT IS RETAINED BY NYCEDC:

- **Respondent must invite PQL contractors recommended by NYCEDC to bid on work for their projects.**

- **If respondent selects a contractor from the PQL(s), respondent must continue utilizing such contractor until such contractor's contract work is completed.** Removal of PQL contractors from a project is subject to NYCEDC's discretion.

- Respondent is permitted to reject PQL contractors from the bid list only through written objection. Respondent must provide a substantive objection for any PQL contractor with which the respondent takes issue.

    - Respondent may also object to specific candidates (and NYCEDC may consider removing that contractor from the bid list for that bid). If respondent objects to the use of a particular PQL contractor, respondent must provide information relative to the rejection [3] to NYCEDC's Opportunity M/W/DBE program.

- Respondent acknowledges that technical assistance is provided by the Capacity Program Consultant (a third-party training consultant hired by NYCEDC) and is available to all PQL contractors at their request, at the request of NYCEDC and respondent.

- **Respondent agrees to communicate with NYCEDC's Opportunity M/W/DBE Team regarding procurements prior to their release.** Respondent will make good faith efforts to hire PQL contractors for project opportunities. Respondent will share scopes and package estimates throughout the duration of procurement in this contract.

[3] Objections must be submitted in writing and substantiated with all relevant documentation. When an objected is issued by respondent, it must be supported by sound logic, reflect a best faith effort to accomplish the goal of giving opportunities to M/W/DBE contractors, and should be issued only as a last resort. Written objections should also indicate the risk mitigation measures that were considered and why they would be insufficient.

- Respondent acknowledges that meetings with Opportunity M/W/DBE are to the benefit of the respondent and their M/W/DBE attainment, meetings should not be at any cost to NYCEDC.

- **Respondent will attend Capacity Building Program events as requested by NYCEDC.**

    - Respondent acknowledges that attendance at Capacity Building Program networking events is not considered solely or wholly 'outreach' as it pertains to good faith efforts.

- Respondent is encouraged to recommend new or additional M/W/DBE contractors to apply and be considered for the PQL(s).

- **Respondent is required to make any non-negotiable restrictions known upfront via the form on the next pages.**

- If respondent plans to solicit PQL contractors for work they are not prequalified for, respondent should reach out to NYCEDC before doing so.

- **Feedback Required.** Respondent will provide feedback and review for awarded PQL contractors. Respondent must submit *Review Form* for awarded PQL contractors at the completion period of their work.

    - The Review Form is intended for the project team who work directly with the contractor on site and is used to inform points of technical assistance and improvement.

    - Training curriculum feedback is also welcomed as respondent sees fit.

DO RESPONDENTS HAVE ANY OTHER RESPONSIBILITIES?

Respondent will provide the following services for awarded PQL contractors:

- Monthly, in-depth 'pencil rec' meetings,
- Help with site safety plans,
- Help with job hazard analysis/pre-task planning,
- Provide Superintendent/ Resident Engineer for all work performed by PQL contractor,
- Daily field reports

Respondent must keep detailed records of time spent on all of the above activities.

Respondent will also be required assist in tracking payments to PQL contractors.

Respondent may be required to issue two-party checks when that is employed as a risk mitigation measure for a particular contractor.



Signature

Risk Mitigation Measures Favored by respondent. Respondent should list favored risk mitigation measures in *M/W/DBE Capacity Building Programs Commitment*.

- Emergency Modification Rate (EMR): Assuming all other information regarding a PQL contractor is favorable, is there an EMR threshold beyond which the respondent will not work with a contractor? If so, please specify the rate:

  1.20

- List the minimum EMR that should trigger implementation of risk mitigation measures of some sort:

  1.20

- Please describe the risk mitigation measures that should be put in place and the corresponding EMR that should trigger such measures.

Trigger EMG	Risk Mitigation Measure
First Aid Injury, OSHA Recordable Injury, Lost Time, Fatality, etc.	We have 90 safety procedures that can be used as a risk mitigation measure (i.e. operational controls, job instruction guidelines, etc.)

- Please list any other important safety requirements.

  N/A

Maximum Awardable Project Size (MAPS)

When considering the capacity of a PQL contractor, NYCEDC will evaluate both their project size experience and financial capacity as well as the expected duration of the project at hand. Evaluation of these two factors will determine Maximum Awardable Project Size.

- Assuming the financial capacity is sufficient, NYCEDC allows contractors to bid on work up to 150% or 200% (depending on project timeline) of their largest project of similar nature. Please indicate what you determine to be an appropriate upper limit. If the limit is below 200%, please explain.

We concur with EDC limits

- Please describe your guidelines for determining the relationship between a contractor's key financial metrics and project size at which they are deemed competitive. Please identify each key financial metric that should be considered in this assessment.

Bonding Company Financial Performance on similar size projects within the Past 5 years Backlog to Revenue Ratio Borrowing Capacity (Letter of Credit(/Credit Rating Balance Sheet Income Statement Statement of Cash Flow

APPENDIX O

WHISTLEBLOWER POSTER

REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

Department of Investigation (DOI) Complaint Bureau
212-825-5959

or by mail or in person at:

DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE, 17th FLOOR
NEW YORK, NEW YORK 10038
Attention: COMPLAINT BUREAU

or file a complaint on-line at:
www.nyc.gov/doi

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over $100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

